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## Libya in Transition: Human Mobility, International Conflict and State Building

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# From one Libya to Another: The Unexpected Place of Law in Approaching Migration

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## Abstract:

Migration was one of Qaddafi's key diplomatic instruments, and for Libyan stakeholders today it remains a bargaining chip. While Libya in Qaddafi's era was considered 'rogue' and the new Libya is seen as a place without rule, the law has been used to orientate migrations, to a greater degree than in other countries of the region. The prolific, specific, and ideology-based law Qaddafi developed over twenty years to support Libya's migration diplomacy and policy has been standardised and adapted to global norms since the beginning of the 2000s, with a focus on combating irregular migration. Henceforth taken only as a transit area, the 'new Libya' has accentuated this line and engaged more deeply with external partners, intensifying mechanisms to retain migrants upstream of the Mediterranean and experimenting platforming migration management in the Sahel.

**Keywords:** Libya, Migration, Law, Mediterranean, Sahel

## Introduction

Libya is now considered a space without faith or law, a hell for migrants trapped there on their way to Europe. Today, as in the past, the country's complex reality, especially as regards migration, has been misunderstood outside the country as well as by Libyans themselves also caught in mainstream discourses. Strikingly, the harshness of the Libyan context has hardly reduced Libya's attraction as a space for mobility and work – it is only the diminishing of opportunities that has. Also strikingly, in a place that has long been considered rogue, the law – as norms issued by public authorities – has been used to orientate migrations, even more than in other countries of the region.

During Qaddafi's era, laws and orders related to migration were mainly messages sent to Arab, African, and European states and to the Libyan population – which explains the proliferation of legal texts. Since 2011, because of – or in spite of – an ineffective government, Libya has become a field of experimentation with new forms of migration management, which bring together, on a precarious basis, Libyan and external stakeholders around evolving legal norms. Till the beginning of the 2000s, the law was used to announce political and diplomatic intentions. As the law has become standardised and adapted to global norms, it has lost this dimension in favour of focusing on restricting individual rights. While this does not mean that such rights were better upheld before, the law that has developed over the last 15 years along a standard widely shared worldwide supports and enables restrictions and repression. For 50 years Libya has been a country with strong labour-based immigration. Thanks to and in addition to oil revenues, the political and ideological system defined by Qaddafi led to salaried work going to foreign nationals, resulting in a strong labour market for the latter. Libya's attraction for migrants was also fuelled by an emancipatory discourse that was seductive for fellow Africans.

In the 1980s foreign workers were estimated as accounting for more than half of the country's workforce, and virtually all of that of agriculture. This proportion, while falling, was still a fifth, or even a quarter, by the fall of Qaddafi in 2011. It was difficult to determine the exact number of foreign workers in Libya because of the size of the informal economy and the manipulation of statistical data. According to the 2006 census in Libya, the number of foreign nationals legally residing in the territory was estimated at 300,000, 70% of whom were present for work reasons.<sup>1</sup> The following year, the official estimate was around 700,000,<sup>2</sup> in line with that of the United Nations Population Division. The number of foreign nationals in an irregular or informal situation cannot be verified, but estimates ranged from more than one million to as many as two million,<sup>3</sup> for a Libyan population of 6 million people. Whatever the exact figure, Libya was a regional economic powerhouse because of its abundant and easily accessible labour market. It was a major destination for migrants from the neighbourhood, and then later coming from further and further afield.

However, Libya has been seen for the past 15 years as a transit area for migration to Europe, a way for the country to be seen as not only an important economic market, energy supplier, and bulwark against Islamism but also a border guard essential to preventing migrants from heading to Europe, and above all to its nearest points of Italy and Malta. The Libyan leader stated time and again after 2004 that his country was being overwhelmed by one to two million Africans,<sup>4</sup> whose desire to travel to Europe was tempered only by Libya's policy of cooperation. The state of disarray in Libya since 2011 has helped revive the European phobia of 'invasion' by unwanted migrants. Nevertheless, transit migration has also become a more significant reality as insecurity and economic breakdown have reduced opportunities in Libya for migrant

workers while also fostering – along with the disruption of controls – border crossing and the smuggling economy.

Even if there are no reliable data on the presence of foreign nationals, various current estimates approximate the number of migrants at the fall of Qaddafi. According to the International Organization for Migration (IOM), 663,000 migrants were identified in Libya in December 2018, 93% of which were from African countries. More than half are from the neighbouring countries of Egypt, Niger and Chad.<sup>5</sup> The fact that these are not among the nationalities intercepted in the Mediterranean confirms that their presence in Libya is not linked to ambitions of transiting to Europe but rather indicates traditional circular migration. The United Nations High Commissioner for Refugees (UNHCR) also estimates that of the approximately 50,000 refugees and asylum seekers currently registered in Libya, 40,000 – the majority from Middle Eastern countries – have been living in Libya for many years and are integrated into the community.<sup>6</sup> Other field research (Morone 2016: 247)<sup>7</sup> indicates a presence of migrants unrelated to the crossing of the Mediterranean. However, the fall of Qaddafi has changed the institutional situation and the balance of power and has had an impact on the way in which migration occurs. It has also opened up a new field of cooperation and action for the European Union (EU) and its 'strategic partners' in the Sahel-Saharan region that conditions approaches to migration.

The constant violation of migrants' human rights (detention, collective expulsion, inhumane treatment, non-payment of wages) under Qaddafi's rule has been well documented.<sup>8</sup> Paradoxically, the law was always in the foreground. Qaddafi ratified a large number of international treaties, including most human rights instruments.<sup>9</sup> As far as migration is concerned, the 'man of treaties' ratified in 2004 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, together with the Palermo Protocols supplementing the United Nations Convention against Transnational Organized Crime.<sup>10</sup> National law was also abundant, a basic instrument of Qaddafi's policies, including his migration policies. But while the law was an instrument, it was never a basis: the law acted as the posting of policy rather than a binding framework. It thus reflected shifts in the Libyan leader's positions, within the country but especially outside, as a part of its diplomacy.

Today's Libya represents less a break than a continuation and accentuation of the changes ongoing since the early 2000s, when post-embargo Libya entered an international and regional context of struggle against smuggling and 'transit migration'. The legal framework, or absence thereof, at that time, continued to prevail, and cooperation on border and migrant control with the EU and its member states, especially Italy, has even intensified. In the new Libya, like in the former one, law is created and used more than elsewhere in the region, but it serves to dismiss rights. What is unprecedented is the role left to international agencies – the UNHCR and IOM – and the articulation of legal and political strategies with Niger in the management of migrants' profiles, routes, and

destinies, transforming a large transnational Sahel-Saharan territory into a platform for the selection and distribution of migrants.

### **Libya in Qaddafi's era: from a specific and ideology-based law for an immigration country to a standardised law for a transit country<sup>11</sup>**

Migration was one of Qaddafi's diplomatic instruments (Bensaâd 2012, Haddad 2005, Perrin 2009), as was law (Perrin 2011). Three major overlapping phases are generally identified in Qaddafi's diplomacy, which appears to correlate with changes in the composition of the foreign workforce. From the origins of the Guide's regime, between 1969 and 1997, a pan-Arab policy and ideology justified and encouraged the use of mainly Arab labour. From 1998, Qaddafi was disappointed by weak Arab support and played the African card to obtain the lifting of the international embargo weighing on Libya. The 'African' workforce was thus solicited and welcome. Finally, after the sanctions were lifted in 2003, Tripoli, with a view to strengthening its status and place on the international scene, turned to other diplomatic fields, in particular Asian and European. At that time, Qaddafi complained of the presence of African<sup>12</sup> migrants and presented them as migrants in transit to Europe. These three great diplomatic-migratory waves – which also have internal (economic, social, and political) bases – have been marked by legislative creation.

#### *a) The role of law in supporting migration diplomacy: The national diversification of immigrants*

In the early 1970s, the foreign presence in Libya was almost 90% Arab, mostly Egyptian and Tunisian (Pliez 2004: 140). Along with attempts to unite Libya with its Arab and Sahelian neighbours in the 1970s and 1980s,<sup>13</sup> Qaddafi developed a network of bilateral agreements to guarantee the opening of Libya's labour market to nationals of those countries. Libya, from its convention with Tunisia in 1973 to agreements binding it to Algeria and Morocco, claims to guarantee and respect a range of rights for immigrants, from the rights of ownership and access to professions to that of transferring wages and social benefits to one's country of origin.

Domestic law was also adapted to guarantee the Libyan pan-Arab policy. A series of decisions adopted in the 1980s gave Arab nationals privileges over other foreigners. As early as 1980, Law No. 18 defined an 'Arab nationality' and strengthened Arab citizens' access to Libyan nationality, already provided for in 1954 by Law No. 17 on Libyan nationality. A few years after obtaining this facilitated access to naturalisation, Arabs were also granted rights and duties similar to nationals, provided they expressly choose Libya as their country of residence. After the adoption of Law No. 6 in 1987 on "organising the entry and residence of foreign nationals in Libya", a series of decisions granted Arabs access to professions and the public sector, property, free public services (education, care), and even conscription and participation in the army of the people

(Decision No. 456 of 1988 on the rights of Arab citizens). To the freedom to enter and reside in the *Jamahiriyah* (Law No. 10 of 1989) were added political rights such as participation in general popular committees, as well as high administrative and political functions (Decision No. 49 of 1990) and priority over other foreign nationals in access to work (Decisions No. 602 of 1988 and No. 238 of 1989).

This pro-Arab communication through law does not exclude the reception of nationals of other regions. It was accompanied by an active Sahelian policy, vis-à-vis, for example: Niger, with which an agreement was concluded in 1988 to ensure Nigeriens a set of rights, but not that of entering the *Jamahiriyah* without a visa; Chad, which Libya occupied and annexed until its withdrawal in 1994; and Sudan, with which it signed a 'declaration of integration' in March 1990 for a merger that would never happen.

There were also sub-Saharan Africans in the country. Nevertheless, in that period still affected by the Cold War, labour migration often remained local and sub-regional, and forced migration was less intense. The Ethiopian/Eritrean, Somali, and Ivorian wars had not yet erupted. West Africa still had labour markets, notably Ivorian. From the 1990s, new migrations were layered over previous ones, forced for some (due to civil wars in East Africa) and de-regionalised for others (due to war in Ivory Coast and economic difficulties in the region).

From 1990, Libya concluded various agreements with its Egyptian neighbour, but the decade marked a decline of pan-Arabism and its legal display. In 1991, Decision No. 195 extended the scope of exceptions to the use of non-Arab labour, already provided for in Decision No. 238 of 1989 for medical professions in particular, to other areas such as construction.

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At this stage, it is important to emphasise two aspects of Libyan law. First of all, the law with an empirical basis, such as a need for medical skills, takes on a legal form in order to be used politically; second, the law appears to be discriminatory, with a gradation of rights according to national or even ethnic origin, and it is mainly a law of exception: rather than being a common law, it enounces categorial rights that appear as negotiated (and precarious) privileges.

When Libya swapped pan-Arabism for pan-Africanism because of more explicit support from the Organisation of African Unity (OAU) against the embargo, the diplomatic shift was obviously introduced into law. The Ministry of Arab Unity disappeared, replaced by a Secretary of African Unity, and Qaddafi launched in 1998 the Community of Sahel-Saharan States (CENSAD) with the particular objective of freedom of movement between its members, the number of which quickly climbed to 28 and now is 24. Bilateral agreements were also negotiated with African states.

Internally, regulations were adapted to official declarations calling for African workers and announcing the abolition of entry visas for sub-Saharan 'brothers'. In 2001, Decision No. 403 allowed the African workforce access to the private and public sectors in the areas of agriculture, construction, and cleaning services. This temporary, unskilled

workforce would theoretically benefit from accommodation and medical expenses provided by the employer. References to 'Africans' tended to not include Arab migrants in the African group rather than stating privileges for Africans, and in parallel Qaddafi continued to pursue his Arab policy. The open-door policy for 'Africans' did not close the door to Arabs, who continued to make up the majority of the foreign population and enjoy their privileges. Moreover, even if the call for Africans was emphasised, there was actually an opening and a general diversification of the Libyan labour market. Yet, even while Libya concluded labour agreements with Jordan in 1998 and Ukraine in 2004, communication was focused on 'African' workers – gradually feeding into the idea of a transit Libya.

The year 2004 saw significant legal changes. With the lifting of the international embargo, Libya undertook a rapprochement with the EU. Decision No. 1, concerning the conditions for using foreign labour, drew an unprecedented distinction between nationals of countries with which Libya had concluded bilateral agreements and citizens of other countries, who lost priority over the former. This represented a change from a (pro-)regional approach to a bilateral policy on a case-by-case basis, though the pursuit of diplomatic priorities has remained decisive in the creation and implementation of the law. In 2007 it was announced that all foreign nationals would now require an entry visa. Even though this did not apply to nationals of Maghreb countries after Tunisia reacted strongly, Libyan law appeared to slip towards an indifference to regional membership in favour of promoting a more rational approach – a de-ideologisation of migration law. From 2004 onwards, the vocabulary used in law returned to that of the 1970s, that of distinguishing Libyans from foreign nationals.

National diversification was all the more noticeable as the loss of privileges for Arabs did not translate into their departure. Indeed, they remained the majority among the immigrant population, joined by 'Africans' coming not just from the Sahel but now beyond it, due to shrinking labour markets, instability, and violence in West and East Africa, and also by Asians and workers of other origins, a new diversity illustrated by partnerships concluded in 2010 with China, Ukraine, Iran, Turkey, and Venezuela. However, this opening to foreign workers was accompanied by a decline in the rights associated with immigration. For instance, Decision No. 98 of 2007, reserved for nationals of countries bound to Libya by agreement, excluded foreign nationals from free access to public health services and education.

In its Strategy Paper for Libya 2011–2013, the EU noted a substantial increase in and unprecedented flows of irregular migration across Libya since 2007.<sup>14</sup> This increase was likely due to the legal tightening of migration, as was the case when the EU extended its visa requirement at the end of the 1990s. Despite – or because of – an abundant law, the situation of foreign nationals in Libya was marked by informality, and then reinterpreted as irregularity.

*b) The role of law in turning informality into irregularity: The statutory diversification of immigrants*

Immigration in Libya was characterised by a high degree of informality and ease of access to the country and to work. The flip side of this was an absence of protection of immigrants, who were likely to be arrested, expelled, or imprisoned with similar flexibility. It was only in 2006 that employing a foreign national expressly became subject to the obligation of regular entry (Decision No. 91). In 2007, having an employment contract became a condition for legal employment. That same year, the entry visa was reinstated for all nationalities, with the exception of certain Arab nationalities. New legal requirements were thus imposed for the acceptance of foreign workers, and these requirements were accompanied by checks and arrests apparently aimed at enforcing them. These changes did not mean that migration became formalised and that the requirements were necessary. Still, the effect of these measures was that they enabled and legitimised increased controls and repression. Above all, they supported the political message within and outside the country.

As a consequence, Libya converted thousands of migrants in a regular situation, or tolerated as such, into irregular migrants denounced as such – a situation that Qaddafi was able to exploit very effectively vis-à-vis Libyan public opinion<sup>15</sup> and Libya's new European partners. Irregularity mainly affected sub-Saharan Africans who had been 'welcome' without an entry visa since 1998, and saw this formality reinstated from 2007 onwards. Mainly recruited into the least skilled jobs and the informal economy, they represented the most visible part of irregular immigration, which Qaddafi began to publicly complain about when it seemed politically advantageous for him to do so. The emergence of the term 'migration' and the newly created link with illegality are meaningful in this regard. This can be seen in Decision No. 10 of 2006, adopted by the Supreme Council of Judicial Bodies, which established a court and a prosecutor's office dedicated to violations of Law No. 6 of 1987 and efforts to halt 'illegal migration', and later in Law No. 19 of 2010 "on combatting illegal migration". This is in line with international rhetoric and a more repressive context already present since Law No. 2 of 2004 (amending Law No. 6 of 1987), which for the first time drew an association between the terms 'immigrants' and 'smuggle'. Actually, foreign nationals' irregular entry, residence, or exit had already been considered felonies under 1987 law, but assisting them, as well as engaging in migrant smuggling, were added in 2004 and specified in 2010, like in most countries of the region (Perrin 2016).

In reality, the diplomatic posting of new orientations in Libyan migration policy is often merely a camouflage for internal political and economic difficulties. The collective expulsions that affected Egyptians, Sudanese, Palestinians, Mauritians, and other nationalities in 1995, apparently acts of retaliation for rapprochement with Israel, were above all justified by rising unemployment and discontent among Libyan youth, as well as by political instability (Day 2004: 796). The 2007 decisions were part of

a context of economic restructuring to reduce public spending and reorganise the workforce, especially to promote the employment of Libyans whose unemployment rate was constantly increasing. The priority of employment of Libyans, already in place since 1989, therefore needed to be bolstered by a policy that affected foreign labour. Nevertheless, the 'Libyanisation' of employment was relative. A letter from the General People's Congress to the Ministry of Labour in March 2007 limited to a maximum of 70% the use of foreign labour in public and private entities. Moreover, the new framework retained empirical flexibility. For instance, Decision No. 1 of 2004 imposed wage and housing guarantees on employers even before the regularisation of the situation of foreign workers; Decision No. 125 of 2005 made having a work visa prior to entry a condition of working legally in the country, but provided in the same article (art. 43) the possibility of regularising the situation *ex post*; Decision No. 98 of 2007 enabled a three-month right of residence for job searching.

At the time of Qaddafi's fall, migration-related law was already in the process of standardisation in accordance with mainstream trends, for both internal and international reasons. Violations of rights, previously a matter of practice, increasingly came to be based on law, and continued to vary from one nationality – or colour – to another.

When civil war broke out in 2011, more than 200,000 people fled to Tunisia, with similar numbers to Egypt and Niger. Thousands of them were from Mali, Bangladesh, and Ghana. Tens of thousands of Tunisians and Chadians also left to return to their home country. Among those who were repatriated, UN agencies reported thousands of Russians, Chinese, Pakistanis, and Guineans who had worked in Libya for months or even years.<sup>16</sup> Many Algerians and Moroccans were also repatriated. These facts alone highlight the importance and diversity of foreign workers in Libya at that time, even while the country was already being depicted as a transit step to Europe.

### **The 'New Libya':<sup>17</sup> between legal continuity and managerial innovation for a buffer zone**

In 2011, hundreds of thousands of foreign nationals left Libya, mainly for neighbouring countries. Since then, Libya has been exclusively considered and highlighted as a transit zone for migrants wishing to travel to Europe. This has led to denying the reality of immigration in Libya. Indeed, hundreds of thousands of foreign nationals have stayed in Libya or returned there,<sup>18</sup> and this figure has not significantly fallen.

Thousands of Nigerien citizens live in Libya, where they continue to work as labourers on construction sites or as domestic workers. Between 750,000 and 1 million Egyptians are estimated to be living in Libya, despite the fact that Egypt has enforced a complete travel ban on Libyans since February 2015, when the Islamic State beheaded 21 Coptic Egyptians.<sup>19</sup> While there has also been an undeniable continuity in patterns of immigration to Libya (Morone 2016: 247), there is also an accentuation of pre-

2011 dynamics, such as the national diversification of immigrants. Private companies in Libya seek to emancipate themselves from the logic of proximity and from geopolitical hazards, which lead them to recruit fewer 'neighbours' (Tunisians or Egyptians) and more 'outsiders' (for instance, Asians in cleaning and computing or Moroccans in tourism).<sup>20</sup> Nevertheless, Libyan authorities may still link immigration to their foreign policy. Between 2012 and 2018, for instance, the Libyan Labour Ministry announced several times that Libya was in need of labour from Egypt, a country closely involved in the Libyan peace process. Yet, the Egyptian-Libyan mixed commission, like with Tunisia, has not resumed meetings, illustrating the lack of framework behind the current supposedly legal immigration. Insecurity is also a reason for irregularity, like in the case of Moroccan students or workers unable to renew their passports and therefore falling into irregularity due to the absence of a Moroccan consulate in Libya.<sup>21</sup>

Since the downfall of Qaddafi, law-making and legal institutions have focused exclusively on combatting 'illegal migration' and on the containment of migrants upstream from the Mediterranean and Libya. This is a consequence of the European strategy's renewal, since 'New Libya' has resulted in a weaker capacity to control mobility and a search for international legitimacy, which has led to increased opportunities for external partners to intervene. Two dynamics can therefore be observed: the development of mechanisms to make Libya efficient and Europe step back in the Mediterranean; and the management of migrants by international agencies, on a 'platform' coupling Niger and Libya.

#### *a) Intensifying mechanisms to retain migrants: Making Libya efficient in the Mediterranean*

On the legal side, there is continuity with the pre-existing legal arsenal. As no other law has been adopted concerning migration, it is therefore the short Law No. 19 of 2010 on combatting illegal *immigration* that applies, as well as Law No. 6 of 1987, amended by Law No. 2 of 2004. The 2010 law defines an "illegal immigrant" (anyone whose entry or stay is illegal) and lists the possible penalties for him/her. While Law No. 2 of 2004 penalises irregular entry, residence, or *exit* of a *foreign national* by imposing (undefined) detention and/or a fine not exceeding 2,000 LYD, Law No. 19 of 2010 provides for (undefined) detention with *hard labour* or a fine not exceeding 1,000 LYD for the "illegal immigrant" (a term for which the definition does not include exit). Law No. 19 of 2010 above all specifies forbidden smuggling activities and penalties for those who help the migrant to enter, stay, exit, or work irregularly – a fine for illegal employment – while the 1987 Law provides for the possibility of imprisonment, and detention for 5 years, 10 years, or life, for smuggling (limited to 1 year under the 2004 Law). In addition to their overall vagueness and potential for mutual contradiction, Libyan laws are manifestly lacking in terms of administrative or judicial remedies. Besides, they do not condemn trafficking or provide for the protection of victims. Lastly, while there is

no explicit provision for administrative detention, the practice of detaining migrants (independently of any conviction for illegal immigration) has increased considerably along with Qaddafi's commitment to containing migrants (Morone 2016).<sup>22</sup> The law still appears as a matter of show and a 'megaphone' for intention rather than a framework. It backs arrest, detention, and expulsion without guaranteeing any rights.

On the other hand, the operational dimension of combating illegal migration has been developed through the creation of institutions dedicated to it. As an example, Decree No. 386 of 2014, adopted during the interim government, created the Anti-Illegal Migration Agency (AIMA), under the Ministry of the Interior. This agency coordinates and supervises actions against illegal migration carried out by the branches and offices affiliated with it; its job includes apprehending "illegal migrants in Libya" and "placing them in shelters" prior to their deportation.<sup>23</sup> As we will see, the placement of migrants in (holding/transit/reception) camps has become central to the national and international system of migration management that is developing in Libya. The EU's pressure on Libya to control its borders and contain migrants has never eased, even during and after the war. The EU and its member states' strategy since 2011 has consisted in restoring Libya's effective control over its territorial sea, but also beyond, in order to circumvent the limits of European and international law.

Whereas Qaddafi was an unpredictable partner, reluctant to integrate Euro-Mediterranean mechanisms, he undertook close cooperation with Libya's historical partner, Italy. In 2003–2004, the two countries organised joint flights to bring back to Libya the thousands of migrants who had left its shores – collective expulsions for which Italy has never been condemned. The collaboration intensified after the conclusion of a friendship agreement in 2008 and, the following year, joint patrols started in the Mediterranean, going as far as setting up Italy's push-back practice: migrants intercepted by Italians at sea were directly entrusted to Libyan ships who brought them back to Libya, without any guarantee for their future. Italy was finally condemned in February 2012 by the European Court of Human Rights (ECtHR) in the now famous *Hirsi Jamaa* judgment.<sup>24</sup> The judgment contains important statements that have conditioned the evolution of practices and policies in the Mediterranean, among them: Libya cannot be considered a safe third country to which people can be pushed back or deported; European countries are responsible for the fate of migrants they once had in their charge, even at sea: they cannot divest themselves of their human rights obligations, even on the basis of a bilateral agreement.

At the time of this judgment, practices, policies, and law seemed to be shifting, yet pulled by opposing forces. The National Transitional Council (NTC), which was set up at the beginning of the war in Libya in February 2011, wanted to reassure Europe and enter the "concert of nations", both in terms of combatting irregular migration and respecting human rights. Composed largely of jurists and former activists, the NTC sought to advance a human rights agenda (Eyster, Paoletti 2016: 145). While it entered

into a widely criticised Memorandum of Understanding (MoU) with Italy, in which it made a commitment to working against unauthorised departures from Libyan coasts and facilitating returns,<sup>25</sup> it also promised to develop a migration policy as well as ratify the Geneva Convention on the Status of Refugees, something Qaddafi always refused to do. It recognised the right to asylum in the 2011 Constitutional Declaration and enabled the UNHCR to return to the country. It also created the DCIM (Department for Combatting Illegal Migration), which seeks to regain control over detention centres, and adopted Law No. 10 of 2013, criminalising torture, forced disappearances, and discrimination.

In parallel, the new but ephemeral President of the Italian Council, Enrico Letta, launched in October 2013 the Mare Nostrum operation to rescue migrants at sea. Nevertheless, while the NTC gave way in August 2013 to the National Congress elected by the Libyans as political chaos spread, Italy was not able to obtain the support of Europe for its rescue operation, considered a pull factor for migrants, and so ended it. Mare Nostrum was replaced in November 2014 by Frontex's Operation Triton, which significantly reduced the area of intervention and was less about rescuing migrants than it was about combatting smuggling. In the same period, in Libya, deepening clashes among a myriad of non-state armed groups paralysed already weak state institutions, and insecurity and instability made governance hazardous.

In fact, since 2011, Italy and the other EU member states have continued to pursue the restoration of Libya's capacity to act as a border guard, but the *Hirsi* judgment has led to a rethinking of this strategy. EU Border Assistance Mission (EUBAM) Libya, launched in 2013, aimed to generate an "integrated border management" strategy like that already in place in the EU's neighbourhood, i.e., to enhance Libya's capacity to control its borders. In parallel to the failure of this mission,<sup>26</sup> which also had to be relocated in Tunisia in 2014, various partnerships and mechanisms have been put in place or suggested by Italy and the EU, but also IOM and the UNHCR, all of them focused on enhancing Libya's capacity to manage migration and borders, supposedly while respecting human rights and international law. In reality, the tendency is to try to strengthen this capacity while at the same time supplanting Libyan actors deemed incapable. This justified the EU's attempt, in 2015, to set up a military operation (European Union Naval Force in the South Central Mediterranean - EUNAVFOR Med), inspired by the anti-piracy naval operation off Somalia, that would act directly on Libyan territory to destroy smugglers' boats and "disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean".<sup>27</sup> Faced with the refusal of the Libyan authorities of the time and of the UN Security Council to authorise such an action, EUNAVFOR Med limited its military Operation Sophia to the high seas and extended its scope to capacity building and training of the Libyan Coast Guard and Navy. This is something it has carried out in coordination with Frontex to provide the Libyan Coast Guard and Navy with various types of training. The Seahorse

Mediterranean Network as well has offered training (aiming at information exchange), in preparation for Libya's incorporation into the European border surveillance system (EUROSUR).

Libya has also received various financial and material support in recent years, including through the 2015 Emergency Trust Fund (ETF) for Africa to enhance its capacity to control its borders, intercept migrants, and ultimately become solely responsible for search and rescue (SAR) in the Libyan area. Libya, as well as Egypt and Tunisia, has indeed been urged by the EU to declare its SAR zones and create maritime rescue coordination centres (MRCCs). This should enable a progressive disengagement of the EU and its member states from SAR operations on the high seas that would allow them to divest themselves of their jurisdiction over migrants as per the terms of the ECtHR *Hirsi* judgment. Despite the human and humanitarian consequences on migrants, it would also avoid the possibility of being saved at sea and brought to European shores – considered a pull factor for migrants. The restrictive code of conduct for NGOs engaged in SAR operations, issued by the Italian authorities in 2017, is part of the policy of deterring migrants from undertaking the trip to Europe,<sup>28</sup> along with the signing, in February 2017, of a Memorandum of Understanding which aims at boosting and extending cooperation between Italy and Libya in combatting irregular migration.

Up until then, Libya had sovereignty over its territorial seas (12 nautical miles). Between these territorial seas and the limit of 24 nautical miles (the contiguous zone where the state can enforce its laws, particularly with regard to migration, but without exercising sovereignty), it had not exercised its prerogatives. SAR operations were generally coordinated by the Italian Coast Guard, something that still represented a legal risk for Italy.<sup>29</sup> Hence the importance of clearing Europe of any liability and of transferring this responsibility to the Libyan Coast Guards within their SAR area. Libya eventually notified the International Maritime Organisation (IMO) of the creation of a SAR and a national MRCC in summer 2018. Since then, the Libyan MRCC has received distress calls and been empowered to coordinate rescues. Incidents have consequently multiplied (distress signals left unanswered by the MRCC, conflicts between the Libyan Coast Guard and NGOs at sea, etc.) and contributed to excluding NGOs from search and rescue – together with European states' tactics to prevent NGOs from sailing.

The official government's lack of authority over the security forces, border guards, and militias, as well as the latter being involved in the smuggling economy, are well-known,<sup>30</sup> as is the continued violation of migrants' rights at sea and on land. The profusion of capacity-building activities and mechanisms serves both as a lure and tool of legitimisation. The Libyan government of Fayez al-Sarraj is legitimised by agreements and cooperation, and reinforced both internationally and internally by the 'trust' granted to Libya to assume rescues and control in its SAR. Capacity building also legitimises Italy's and the EU's support to Libyan stakeholders in fighting migration, including when it is likely to fuel migrants' detention and mistreatment. While arbitrary and inhumane

detention conditions are constantly denounced, the MoU of February 2017 encouraged Libya to host migrants in EU- and Italy-funded camps while Italy agreed to provision and train the staff working in these centres.<sup>31</sup> Whatever the reality of the Libyan field, Italy and the EU adapt their strategy to pursue a migrant containment policy, which the fragmented context has provided new opportunities for. In parallel to enhancing Libya's capacity to counter migration in the Mediterranean, new mechanisms aim to supplant its incapacity upstream and around its territory.

*b) Managing migrants' containment, selection, and distribution upstream: The role of international organisations in platforming<sup>32</sup> the new European border in the Sahel*

As early as 2005, when the EU started an ad hoc dialogue with Libya on migration, the project to secure the 'Central Mediterranean route' upstream, in the Sahara and beyond, was already on the agenda. From 2006, the EU was calling for strengthening the Libya-Niger border and the inclusion of IOM to assist 'voluntary returns' (Enhancement of Transit and Irregular Migration Management in Libya programme). The project to develop transit camps in Libya to organise returns, however, was controversial within the EU itself. Qaddafi was also reluctant to accept international agencies on Libya's territory. Furthermore, expulsions of migrants remained a diplomatic instrument that he did not wish to rationalise.

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However, from 2008, Qaddafi embarked on agreements with states along its southern border (Niger, Chad, Sudan), as well as within the CENSAD, aimed at countering irregular migration and facilitating repatriations. These agreements, which broke with bilateral and regional commitments in favour of mobility in the region, have been little followed in practice and were subject to diplomatic and geopolitical considerations. In addition, negotiations between the EU and Qaddafi were still harsh, and the 2010 agenda for Libya's cooperation with the EU stumbled over the Libyan leader's financial claims for the cost of its cooperation in border control (Perrin 2011: 297).

In the meantime, however, IOM, present in Niger and Libya since 2006, built its first transit centre in 2009 in Dirkou, northern Niger, where it received migrants expelled from Libya by the Libyan authorities and organised their repatriation (Brachet 2016: 279). The EU was also intensifying programmes in the region, such as the 2010 "Sahara-MED: Prevention and Management of Irregular Migration Flows from Sahara Desert to Mediterranean Sea".

Qaddafi's downfall and the situation that has prevailed since then have radically changed the context in which "migration management" (Geiger, Pecoud 2010) can be implemented. As Brachet perfectly poses it, "[t]hrough the replacement of local politics by international crisis management, the Sahara is gradually integrated into a zone of international bureaucratic expedience" (Brachet 2016: 287).

Two turning points have enabled the de-politicisation of the protection, selection, and distribution of migrants in a large deterritorialised area: the flight of hundreds

of thousands people during the war in 2011, which strengthened and consolidated the role of IOM in repatriating migrants (humanitarian evacuations) and presented an opportunity for the UNHCR to expand the 'protection space'; and more recently, in November 2017, the video of CNN showing a sale of migrants, which led to the organisation of a system of evacuation, selection, and distribution involving IOM and the UNHCR on a platform coupling Libya and Niger.

The UNHCR, which has been tolerated in Libya since 1991, has struggled hard to gain access to detention centres and identify potential refugees there. In 2004, it was in charge of 12,000 people in need of protection, and relations with the Libyan authorities were about to warm after difficult times. In April 2009, a plan for developing a national asylum system was launched, and the UNHCR obtained permission to open offices in Libya. The refugee agency subsequently was granted the right to visit 15 migrant detention centres across the country to identify possible refugees where many other organisations had been denied access. However, after it was expelled from Libya in 2010, it had to back off.

Even if the situation has changed little in legal terms, the UNHCR has been able to intensify its action since 2011. In April 2011, a protection cluster was established for Libya, while a Regional Protection Programme (RPP) was launched, funded by the EU and implemented by the UNHCR, with the aim of developing protection capacity in Libya and Tunisia. Between 2011 and 2013, the UNHCR engaged in training coast guards and detention authorities. If no MoU was concluded, the UNHCR has been able to give assistance to persons in detention and to conduct refugee status determination since then. Together with IOM and NGOs like Human Rights Watch, it is allowed to visit the migrant detention centres run by the DCIM.

The same partners also have access to disembarkation points where migrants intercepted at sea by the Libyan Coast Guard are landed. The UNHCR covers the 12 points in terms of protection monitoring and shares them with IOM in terms of humanitarian and medical assistance. All the people intercepted and disembarked are routinely placed in detention. The UNHCR advocates for the release of individuals and registers refugees for the purpose of humanitarian evacuations.<sup>33</sup>

The emergency evacuation plan through a "joint task force", announced by the African Union (AU), the EU, and the United Nations in November 2017,<sup>34</sup> has enabled these missions to be intensified and systematised. The chairman of the AU Commission stressed that "between 400,000 and 700,000 African migrants were living in camps in Libya, often under inhuman conditions".<sup>35</sup> Libya has suddenly been presented as a large "camp" where migrants would all be "stranded" on their way to Europe. As a first step in the emergency voluntary humanitarian return (VHR) operation, IOM organised the repatriation of 3,100 Ivorians, bringing the number of migrants assisted by IOM to go home in 2017 to 16,561, compared to 2,700 in 2016.

In November 2017, the UNHCR welcomed the decision of the Libyan authorities to set up

a "gathering and departure facility" (open in December 2018) in Tripoli through which "people in need of protection" would be "transferred",<sup>36</sup> either through evacuation to UNHCR-run emergency facilities in other countries or through return or resettlement. Most evacuations and resettlements are organised towards and from Niger. Out of the 2,793 individuals evacuated out of Libya, 2,202 have been sent to its Emergency Evacuation Transit Mechanism in Niger, created at the end of 2017. The UNHCR regularly calls upon countries to offer refugee resettlement places. While it tries to associate refugees' protection needs to border protection, it struggles to get pledges. In 2016, "resettlement opportunities were offered to only 6% of the refugees in need in the 15 priority countries of asylum and transit along the Central Mediterranean route".<sup>37</sup> In September 2017, the UNHCR asked for 40,000 additional resettlement places along the same route; it has received approximately 13,000 offers for 2018 and 2019.<sup>38</sup> Refugee resettlement, which involves only a small part of refugees worldwide,<sup>39</sup> is advocated by the UNHCR and the EU as a way to provide protected entry procedures for refugees as well as selection opportunities for states. Yet, not only are states reluctant to offer resettlement places, they don't always resettle as they pledged.

The question of the protection of migrants is closely linked to that of their selection and distribution because protection justifies and legitimises the latter – while at the same time selection also generates the need for protection. It is with the aim of protecting migrants that IOM and the UNHCR have gained access to detention centres and landing points for migrants. Protection is also a means of counteracting intentions of passage to Europe and even to Libya. While the reduction in legal modes of mobility has increased migrants resorting to irregularity and criminal networks, thus aggravating their vulnerability, the protection mantra justifies further containing mobility upstream from the Mediterranean, but also upstream from Libya and parts of Niger that are increasingly considered no-cross zones. The search for protection is the criterion on which is based the distinction between refugees and other migrants considered to have left their country for other reasons. It therefore forms the basis for the distribution of roles between the UNHCR, competent for the former, and IOM for the latter. Nevertheless, the distinction has recently gotten blurred, both by mistreatments in Libya that can turn 'migrants' into 'people in need of protection' to be evacuated by UNHCR and by the agenda to curb irregular migration and therefore orientate the selection of refugees to be resettled in Europe.<sup>40</sup>

In addition to the 'guesthouses' the UNHCR has to operate in Niger, IOM now manages six centres (in Dirkou, Niamey, Agadez, and Arlit) where migrants evacuated or expelled from Libya or Algeria, or who arrived in Niger from various places, are assisted and encouraged to return to their home country. IOM has also developed 'information campaigns' to deter migrants from heading to Libya, also using 'community mobilisers' trained to reach out to migrants in various parts of Niger and convince them to go to transit centres and organise their return.

Coupled with Libya, the Nigerien territory has turned into a 'platform' for managing the new European border in the Sahel. Since Qaddafi's downfall, and especially since 2014 and the intensification of chaos in Libya, Niger has become the new target of the EU's pressure to stop migrants upstream. As the main beneficiary of the ETF, it is now 'the place to be' for a myriad of national and international external stakeholders developing projects and opportunities dedicated to migration management on the route to Libya. Niger has indeed been affected by the Libyan crisis, in terms of insecurity but also migration routes and the economy around it. While an Order criminalising the trafficking of persons was adopted in 2010 with little impact, Law No. 36 of 2015 against migrant smuggling emerged in a completely different context. In the meantime, the EU's external border has moved from Libya south into Niger (Boyer, Chappart: 2018), bringing with it a series of border security forces (EUCAP Sahel, French-Spanish joint investigative team, Frontex liaison officer, among others). The implementation of Nigerien Law No. 36 in 2016, which led to the arrests of hundreds of drivers and the confiscation of numerous cars, also resulted in changes in migration routes and networks to Libya, becoming more discreet and dangerous. The same year, IOM observed a significant increase in numbers of people arriving at its centres and slated to be repatriated.

## Conclusions

This new situation of Niger and its articulation with Libya is interesting in various regards, four of which I highlight here. First, there is a growing trend in recipient countries of migrants to require the states upstream of their borders to retain people in their territory or readmit them (Spain/Morocco, United Kingdom/France, etc). Strikingly, Libya is replaced by a set of European and international actors in the requirement that Niger contains and readmits migrants. Suspected of taking the first step on the 'Central Mediterranean route', Nigeriens and other nationals of ECOWAS (the Economic Community of West African States) countries deemed free to move in Niger must be kept from going north, whether they leave Agadez or Zinder.<sup>41</sup> Second, both Libya and Niger are also disempowered in the implementation of containment, readmission, and protection: the selection of people in Libya to be evacuated to Niger and their distribution, as well as the organisation of repatriation and resettlement from Libya and Niger, are carried out by IOM and UNHCR. While Niger had agreed on this platform on the condition that the management would be fluid and would guarantee short stays before return or resettlement, resettlement pledges remain very low and the foreign presence has been greater and longer. Third, this 'platforming' of the European border in the Sahel is part of a dynamic of 'encampment' (Agier 2011) and experimentation with new forms of extraterritorial migration management that henceforth accompany the outsourcing of EU migration policies. Fourth, a humanitarian discourse masks these developments and hides the complexity of migrants' profiles, routes, and ambitions. Their overall victimisation, fueled by confusion in discourses and mechanisms as well

as on the ground, between smuggling and trafficking, justifies the decisions taken on their destinies.

It is likewise through a narrative of victimisation that the Libyans have come to view migration on their territory, considering it – as it has been suggested to them – a step for migrants heading for Europe. The resulting depoliticization of migration in Libya reduces migrants and the mechanisms put in place to refrain their mobility to a bargaining tool.

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#### NOTES:

1 - CARIM database on Libya: <http://carim-south.eu/carim/index.php?callContent=58>.

2 - Libyan Ministry of Labour, quoted by A. Maghur, *Libyan legislation on labour: Political tool or legalization?*, CARIM ASN 2009/33, note 44: <http://cadmus.eui.eu/handle/1814/12837>.

3 - *Frontex Report of the Technical Mission*, 28 May/5 June 2007: <https://www.statewatch.org/news/2007/oct/eu-libya-frontex-report.pdf>.

4 - "More than 2.5 million Africans live in Libya and only 1,700 have identity cards", AFP, 1 November 2000. The Minister of Foreign Affairs in 2004, denouncing his country's "invasion", said, "There are over a million. If they stay another ten or fifteen years, Libya will never be the same again. In some areas they enforce their own rules. We can't tell if they are coming here to live and work or if they are terrorists", AFP, 9 August 2004.

5 - See IOM, *Displacement Tracking Matrix: Libya's Migrant Report Round 23*, "International Organization for Migration", November–December 2018: <https://www.iom.int/libya-displacement-tracking-matrix-libyas-migrant-report-round-23-november-december-2018>; G. Zandonini, *The new European border between Niger and Libya*, "Open Migration", 11 May 2018: <http://openmigration.org/en/analyses/the-new-european-border-between-niger-and-libya/>.

6 - UNHCR Libya Fact Sheet, May 2018.

7 - A. Bensaâd, *L'immigration en Libye en contexte de guerre civile: Pérennité et mondialisation d'un fait sociétal structurant*, presentation delivered to the seminar of the Chair for Mediterranean Studies, "MediaMed", 2 May 2017: <http://mediamed.mmsh.univ-aix.fr/chaines/labexMed/Pages/Labexmed-0027.aspx>.

8 - See Human Rights Watch and Amnesty International reports (e.g. September 2006, *Stemming the Flow: Abuses against Migrants, Asylum Seekers and Refugees*, HRW report on Libya, "Human Rights Watch", 12 September 2012: <https://www.hrw.org/report/2006/09/12/stemming-flow/abuses-against-migrants-asylum-seekers-and-refugees>).

9 - These include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1970, the Convention against Torture in 1989, and the Convention on the Rights of the Child in 1993.

10 - The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

11 - This part is largely inspired by a previous article of the author. See: Perrin (2011).

- 12 - The Libyan distinction between Arabs and Africans does not take into account the fact that several Arab countries are also African and vice versa. The 'Arab' countries of Africa are generally regarded as Arab, such as Sudan. Nevertheless, the border between 'Africans' and 'Arabs' varies according to the interlocutors and circumstances. All "blacks" are associated with 'Africans' when it comes to the Libyan leader talking with his European counterparts or his public opinion.
- 13 - About these unions, see D. Perrin, *La gestion des frontières en Libye*, ASN 2009/31, CARIM, RSCAS, EUI, "European University Institute", 2009, <http://cadmus.eui.eu/handle/1814/12257>.
- 14 - *Libya. Strategy Paper & National Indicative Programme 2011-2013*, European Neighbourhood and Partnership Instrument, p. 7, "European Union External Action", n.d.: [http://eeas.europa.eu/enp/pdf/pdf/country/2011\\_enpi\\_csp\\_nip\\_libya\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/country/2011_enpi_csp_nip_libya_en.pdf).
- 15 - Strong xenophobia, illustrated by pogroms in 2000, was instrumentalized by Qaddafi to explain the ills of society such as crime and disease. It was exacerbated in 2011 by the regime's recourse to 'African' mercenaries.
- 16 - According to IOM, between February and September 2011, more than 700,000 migrants, representing more than 120 nationalities, left Libya. *Humanitarian evacuation on the Libyan border: Three-month report on IOM's response, 28 February 2011-28 May 2011, 2011*, "IOM", n.d.: <https://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/MENA-Seven-Month-Report.pdf>.
- 17 - References to a 'New Libya' date back to 2004, with regard to the country's reintegration into the international community. See Pliez (2004).
- 18 - A. Bensaâd, *L'immigration en Libye en contexte de guerre civile*, cit.
- 19 - A statistical range from the press review.
- 20 - A. Bensaâd, *L'immigration en Libye en contexte de guerre civile*, cit.
- 21 - The Moroccan consulate was closed in 2014, replaced by a 'crisis service' at Ras Ajdir, situated on the border with Tunisia and often closed. There are between 50,000 and 70,000 Moroccans working in Libya. H. Bentaleb, *En situation irrégulière par la force des choses*, "Liberation.ma", 3 May 2018: [https://www.libe.ma/En-situation-irreguliere-par-la-force-des-choses\\_a97556.html](https://www.libe.ma/En-situation-irreguliere-par-la-force-des-choses_a97556.html)
- 22 - See also Libya Immigration Detention Profile, February 2015: <https://www.globaldetentionproject.org/countries/africa/libya>.
- 23 - Decree No. 386 of 2014.
- 24 - *Hirsi Jamaa and others v. Italy*, Judgment of the Grand Chamber, 12 February 2012.
- 25 - *Is It Time for Italy to Resume Cooperation with Libya in the Field of Migration?*, "European University Institute", n.d.: <http://www.migrationpolicycentre.eu/publication/is-it-time-for-italy-to-resume-cooperation-with-libya-in-the-field-of-migration/>.
- 26 - See for instance G. Højstrup J. Ruohomäki, A.P. Rodt, *The European Union Border Assistance Mission in Libya - successes, shortcomings and lessons identified*, "Royal Danish Defence College", January 2018: <http://www.fak.dk/publikationer/Documents/LibyaBrief.pdf>.
- 27 - EUNAVFOR Med presents itself in this way: <https://www.operationsophia.eu/about-us>.
- 28 - For a synthesis of recent developments in the Mediterranean, including states "harassing and discouraging NGOs", see P. Cuttitta, *Pushing Migrants Back to Libya, Persecuting Rescue NGOs: The End of the Humanitarian Turn*, part 2, "University of Oxford", 19 April 2018: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/pushing-0>.
- 29 - The ECtHR was seized in 2018 by a network of NGOs and researchers taking action against Italy for the coordination, by the Rome Maritime Rescue and Coordination Centre, of Libyan Coast Guard pull-backs "resulting in deaths and abuses" in November 2017. See <https://www.glanlaw.org/single-post/2018/05/08/Legal-action-against-Italy-over-its-coordination-of-Libyan-Coast-Guard-pull-backs-resulting-in-migrant-deaths-and-abuse>.
- 30 - Including by EUBAM Libya: see EUBAM Libya Initial Mapping Report Executive Summary, "Council of the European Union", January 2017: [statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf](http://statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf).
- 31 - A. Skordas, *A 'blind spot' in the migration debate? International responsibility of the EU and its Member States for cooperating with the Libyan coastguard and militias*, "EU Immigration and Asylum Law and Policy", 30 January 2018: <http://eumigrationlawblog.eu/a-blind-spot-in-the-migration-debate-international-responsibility-of-the-eu-and-its-member-states-for-cooperating-with-the-libyan-coastguard-and-militias/>.
- 32 - I use the term 'platforming', derived from 'platform' inspired by management sciences, to qualify

a process also observed in other fields (for a discussion of the term and its emergence in the field of training and teaching see: Bullich 2018): a process of rationalisation and technicization associated with an ideologization of production on the one hand and a process of commodification on the other.

33 - It managed to release 969 refugees from detention in 2018 and 1,430 in 2017. UNHCR's replies to J. Crisp in April 2018: <http://refugee-rights.org/leaving-libya-by-boat/>. UNHCR Factsheet Libya – January 2019 brings the figure to 2,700 releases.

34 - *Joint Press Release – Meeting of the Joint AU-EU-UN Taskforce to Address the Migrant Situation in Libya*, "European Union External Action", 14 December 2017, [https://eeas.europa.eu/headquarters/headquarters-homepage/37401/meeting-joint-au-eu-un-taskforce-address-migrant-situation-libya\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/37401/meeting-joint-au-eu-un-taskforce-address-migrant-situation-libya_en).

35 - A. Adele, *Between 400,000 and 700,000 African migrants in Libya: AU*, "Associated Press", 30 November 2017: <https://www.apnews.com/b313f6c120c3412c9b58a804ef924081>.

36 - *UNHCR Flash Update Libya (21 - 29 June 2018)*: <https://reliefweb.int/report/libya/unhcr-flash-update-libya-21-29-june-2018>.

37 - *Central Mediterranean situation: UNHCR calls for an additional 40,000 resettlement places*, "RefWorld", 11 September 2017, <http://www.refworld.org/country,,UNHCR,,NER,,59b7ee104,0.html>.

38 - Yet, as of 31 December 2018, 12 states had committed a total of 5,456 resettlement places for the Libya-Niger situation. Out of these pledges, 1,940 are to be used for resettlement processing directly out of Libya while 3,516 will be allocated to evacuees from Libya and refugees registered in Niger. *UNHCR Factsheet Libya*, "UNHCR", January 2019: <http://reporting.unhcr.org/sites/default/files/UNHCR%20Libya%20Factsheet%20EN%20-%20January%202019.pdf>.

39 - For an overview see <http://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html>.

40 - The potential to be an irregular migrant in the Mediterranean was inserted in the guidance that French President Macron sent to the Office Français Pour les Réfugiés et Apatrides (OFPRA) for its selection missions to Niger and Chad in 2017 for resettlement in France.

41 - See field report, D. Perrin, *Niger: Quelles relations entre dynamiques d'acteurs et dynamiques juridiques et politiques concernant les migrations?*, "Atelier Movida", 16 February 2018: <https://movida.hypotheses.org/2032>.

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