

## ITALY'S MIGRATION POLICIES AND ITS LEGAL IMPLICATIONS: NON-REFOULEMENT AND EXTRATERRITORIAL RESPONSIBILITY IN LIBYA

Mohammad Bitar,<sup>\*</sup> Rupal Malik,<sup>\*\*</sup> Benarji Chakka<sup>\*\*\*</sup>

**Abstract:** *Following the civil war, Libya emerged as a prominent transit nation for migrants striving to access the territories of the European Union (EU), primarily Italy. Subsequently, the EU and Libya entered into cooperative agreements to regulate migratory flows. These accords have prompted significant legal concerns under international law involving Italy's interception and repatriation of migrants to Libya, a country where severe human rights violations occur. This practice amounts to a breach of the fundamental tenets of international refugee law, particularly the principle of non-refoulement. In this context, the present research aims to ascertain if Italy's collaboration with Libyan authorities in managing migration qualifies as aid or assistance under Article 16 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSI-WA) and whether this cooperation infringes upon Italy's non-refoulement obligations under international law. The research uses a doctrinal legal methodology to analyse treaties, customary norms, case law from the International Court of Justice and the European Court of Human Rights, as well as pertinent Italian jurisprudence.*

*The present analysis suggests that Italy's financial, logistical, and operational support to Libya, especially through the 2017 Memorandum of Understanding, meets the requirements of Article 16, including material contribution, knowledge, and wrongfulness. Various forms of support provided by Italy with complete awareness of widespread human rights violations in Libya create derivative responsibility through aiding and assisting in the commission of internationally wrongful acts. The study further underlines the possible shared responsibility of the EU under the Articles on the Responsibility of International Organisations (ARIO) and emphasizes the necessity of mechanisms of accountability that ensure migration control policies conform to peremptory norms of international law.*

**Keywords:** *Non-refoulement, Italy-Libya Cooperation, Human Rights Violations, International Law, Extraterritorial Jurisdiction.*

### INTRODUCTION

Libya has remained politically divided and beset by widespread instability since Muammar al-Gaddafi's rule collapsed in 2011. Armed groups and semi-official organizations have been able to retain control over important state operations, such as border administration and migrant detention centres, due to the incapacity of government to exercise power.<sup>1</sup> These groups have not only evaded accountability for their involvement in crimes and human rights violations but have time and again been relied upon for law enforcement and security, blurring the lines between legitimate state actors and

<sup>\*</sup> Dr. Mohammad Bitar, VIT-AP School of Law (VSL), VIT-AP University, India. E-mail: 1mohammad.bitar@gmail.com, ORCID: <https://orcid.org/0000-0003-4686-7411>.

<sup>\*\*</sup> Dr. Rupal Malik, Assistant Professor, Ramaiah College of Law, Bengaluru, India. E-mail: rupalmalik96@gmail.com, ORCID: <https://orcid.org/0009-0001-2461-8580>.

<sup>\*\*\*</sup> Dr. Benarji Chakka, Professor of International Law and Dean, VIT-AP School of Law (VSL), VIT-AP University, India. E-mail: benarjich@gmail.com, ORCID: <https://orcid.org/0000-0001-5520-5343>.

<sup>1</sup> Amnesty International. Libya: 10 years after uprising, abusive militias evade justice and instead reap rewards. In: *Amnesty International* [online]. 17. 2. 2021 [2025-11-03]. Available at: <https://amnesty.org/en/latest/news/2021/02/libya-ten-years-after-uprising-abusive-militias-evade-justice-and-instead-reap-rewards>.

criminal organizations.<sup>2</sup> These groups, some of which are incorporated into state institutions, have been implicated in widespread human rights abuses against migrants, who are particularly vulnerable as they transit through Libya on their way to Europe.<sup>3</sup> The integration of militias into the fabric of Libyan governance has deepened a culture of impunity, complicating efforts to restore order and protect human rights. One of the most disturbing aspects of the conflict in Libya is the treatment of refugees and migrants.

As a result, Libya has emerged as a significant transit nation for migrants attempting to go across the Central Mediterranean to Europe, especially Italy, seeking safety from conflict, violence, poverty, and persecution in Africa and the Middle East.<sup>4</sup> Migrants halted in Libya face unimaginable horrors, including starvation, enslavement, torture, forced labour, racial discrimination, sexual violence, especially in trafficking hubs like Bani Walid and Sabratah,<sup>5</sup> and murder, as documented by various international bodies, including the United Nations (UN) High Commissioner for Human Rights,<sup>6</sup> the International Organization for Migration (IOM),<sup>7</sup> and the International Criminal Court.<sup>8</sup> These abuses are tied to the country's fragmented security apparatus, including the Directorate for Combating Illegal Migration (DCIM), the Libyan Coast Guard (LCG), and Stability Support Apparatus.

The LCG and DCIM, sponsored by the EU and Italy, intercept migrant boats trying to cross the Mediterranean, contributing to this dismal reality.<sup>9</sup> Accordingly, Italy and the EU have inked a series of cooperation agreements with Libyan officials in an effort to decrease maritime migrant flows.<sup>10</sup> Officially framed as humanitarian and security measures, these arrangements are meant to reduce illegal migration and save lives at sea, but have resulted in thousands of migrants being intercepted and returned to Libya, where they are subjected to arbitrary detention, torture, and other forms of cruel, inhuman, or degrading treatment.<sup>11</sup>

Italy's material, financial, and operational assistance has made it viable for Libya to have a detention and abuse system that is in violation of international law's pre-emptive rules. Italy has contributed to the increase in Libya's ability to intercept migrants and return them to circumstances that amount to torture and cruel treatment by giving the

<sup>2</sup> UN General Assembly. Human Rights Council: Report of the Independent Fact-Finding Mission on Libya. In UN General Assembly. 20 March 2023. A/HRC/52/83.

<sup>3</sup> UN General Assembly. Human Rights Council: Report of the Independent Fact-Finding Mission on Libya. In UN General Assembly. 31 August 2022. A/HRC/50/63.

<sup>4</sup> MORONE, A. M. The cycle of migrants' containment between Libya and Africa: navigating their life among dreams, resilience, and defeats. *Journal of Eastern African Studies*. 2024, Vol. 18, No. 1, pp. 18–35.

<sup>5</sup> UN General Assembly. Human Rights Council: Report of the Independent Fact-Finding Mission on Libya. In UN General Assembly. 20 March 2023. A/HRC/52/83.

<sup>6</sup> *Ibid.*

<sup>7</sup> UNHCR, IOM and Mixed Migration Centre. On This Journey No One Cares If You Live or Die: Abuse, Protection and Justice along Routes between East and West Africa and Africa's Mediterranean Coast, Volume 2. 2024.

<sup>8</sup> ECCHR, FIDH and Lawyers for Justice in Libya. No Way Out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity. 2021.

<sup>9</sup> KOS, Maarten. *Italy's Responsibility Under International Law for Human Rights Violations of Migrants Intercepted at Sea and Returned to Libya by the Libyan Coast Guard with the Support of Italy*. Master thesis. Amsterdam: Vrije Universiteit Amsterdam, Faculty of Law, 2024.

<sup>10</sup> CECCORULLI, M. Triangular migration diplomacy: the case of EU-Italian cooperation with Libya. *Rivista Italiana di Scienza Politica*. [Italian Political Science Review]. 2022, Vol. 52, No. 3, pp. 328–345.

<sup>11</sup> UN Security Council. Security Council consolidated list and Security Council resolution 1970. 2011. S/RES/1970 (2011).

LCG and migration authorities vessels, training, and logistical support.<sup>12</sup> Ongoing collaboration with Libya presents serious concerns about derivative responsibility under Article 16 of the ARSIWA, particularly in light of the European Court of Human Rights' decision in *Hirsi Jamaa and Others v. Italy*, 2012,<sup>13</sup> which determined that Italy's push-back operations contravened Article 3 of the European Convention on Human Rights (ECHR) and the principle of non-refoulement.

Against this backdrop, the present research employs a doctrinal legal analysis to ascertain the scope of Italy's international obligations. The study analyses whether Italy's acts constitute participation in the internationally illicit operations of another state. Therefore, Article 16 of ARSIWA has been applied to Italy's actions, to examine the elements of aid or assistance, knowledge, and wrongfulness. The possible accountability of the EU has been examined in accordance with the ARIO with comparative jurisprudence and Italian scholarship. The study concludes by assessing the ramifications of Italy's actions on the developing practice of externalized migration control and the accountability of states operating through cooperative agreements.

## Methodology

The present study employs a doctrinal approach to legal research, hence limiting itself to the identification, interpretation, and systematization of the applicable rules of international law. The actual analysis relies, inter alia, on treaties, customary law, case-law of international and regional courts, as well as scholarly commentaries. The aim is to assess Italy's possible international responsibility by means of legal argumentation, rather than empirical investigation.

Reports from the UN, EU, and non-governmental organizations such as Amnesty International, Human Rights Watch, and the International Organization for Migration have been relied upon to establish the factual background of Italy's cooperation with Libya. These sources serve as supplementary evidence and are not relied on as authorities of law. The foundation of legal argumentation, however, lies in academic works and judicial decisions, whether from the International Court of Justice or the European Court of Human Rights. This methodology will ensure that the study remains firmly moored to legal doctrine, with consideration for sound factual findings when essential to the evaluation of state responsibility.

## I. LEGAL FRAMEWORK: NON-REFOULEMENT AND STATE COMPLICITY UNDER INTERNATIONAL LAW

In Libya both state and militia-run Libyan detention centres violate the human rights of migrants and asylum seekers. Municipal laws criminalize irregular entry, stay, and exit<sup>14</sup>

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<sup>12</sup> URBANI, Josefine. *Borders Beyond the Law: Human Rights Violations and State Complicity in the EU and Italy's Migration Cooperation with Libya and Tunisia*. Master thesis. Uppsala: Uppsala University, Department of Theology, 2025.

<sup>13</sup> European Court of Human Rights. *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09. 23. 2. 2012.

<sup>14</sup> Libya. Law 19 of 2010 on Combating Irregular Migration; Law 6 of 1987 on Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya (amended by Law 2 of 2004).

and the lack of due process have led to widespread arbitrary and indefinite incarceration.<sup>15</sup> The increased number of migrants captured by the LCG has compounded the humanitarian catastrophe caused by overcrowding, lack of food, unclean conditions, and medical neglect.<sup>16</sup> Prisoners report beatings, electric shocks, extortion, and systematic rape by guards, militias, traffickers, and smugglers who act without consequence.<sup>17</sup> Many men, women, and children are enslaved or trafficked alongside formal institutions.<sup>18</sup> Deaths from violence, untreated disease, or malnutrition are widespread, but impartial investigations are lacking.<sup>19</sup> International policies like the Italy-Libya Memorandum of Understanding (MOU) and EU backing for the LCG allow migrants to be intercepted and sent to inhumane detention camps.<sup>20</sup> These characteristics demonstrate a system of exploitation and neglect that endangers Libyan migrants' rights and life.

The concerns regarding state responsibility and the preservation of human rights are increasingly prominent in the realm of global migration governance. States attempting to reconcile sovereignty with humanitarian considerations face complex challenges in aligning migration control with international cooperation and fundamental legal commitments. This section accordingly analyses the essential legal principles that constrain governmental conduct in this context. It offers an examination of the relevant international legal frameworks concerning state accountability and the prohibition of refoulement. Article 33 of the 1951 Refugee Convention, Article 3 of the ECHR, and Article 16 of the ARSIWA have been examined in this context. These standards together define the boundaries of permissible cooperation in migration control and the conditions under which a state may bear responsibility for supporting or assisting another state in perpetrating globally unlawful activities.

### 1.1 The Principle of Non-Refoulement

The notion of non-refoulement is a core principle of international refugee law that forbids states from repatriating individuals to territories where they are at significant risk to their lives, liberty, or torture and inhumane treatment.<sup>21</sup> The principle is outlined in

<sup>15</sup> Human Rights Watch. No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya. In: Human Rights Watch. January 2019.

<sup>16</sup> MS Frontiers. Libya: Arbitrary detention of refugees, asylum-seekers and migrants must stop. In: *MSF* [online]. 1. 9. 2017 [2025-11-04]. Available at: <https://www.msf.org/libya-arbitrary-detention-refugees-asylum-seekers-and-migrants-must-stop>.

<sup>17</sup> UN-OHCHR. Abuse Behind Bars: Arbitrary and unlawful detention in Libya. In: *UN-OHCHR* [online]. April 2018 [2025-11-04]. Available at: [https://www.ohchr.org/sites/default/files/Documents/Countries/LY/Abuse-BehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/LY/Abuse-BehindBarsArbitraryUnlawful_EN.pdf).

<sup>18</sup> Amnesty International. Libya: “No one will look for you”: Forcibly returned from sea to abusive detention in Libya. In: *Amnesty International* [online]. 15. 7. 2021. [2026-03-17]. Available at: <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>.

<sup>19</sup> EuroMed Rights. Libya: Death of detainee underscores lethal conditions in migrant detention centres. In: *EuroMed Rights* [online]. 30. 8. 2023 [2025-11-5]. Available at: <https://euromedmonitor.org/en/article/5794/Libya-Death-of-detainee-underscores-lethal-conditions-in-migrant-detention-centres>.

<sup>20</sup> PALM, A. The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe? In: *EU Migration Law Blog* [online]. 2017 [2025-11-05]. Available at: <https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>.

<sup>21</sup> MOLNAR, T. The Principle of Non-Refoulement Under International Law: Its Inception and Evolution in a Nutshell. *Corvinus Journal of International Affairs*. 2016, Vol. 1, No. 1, pp. 51–61.

significant international agreements, including Article 33(1) of the 1951 Refugee Convention which provides that no contracting state shall deport or return a refugee in any way to the territories where his freedom or life would be in danger due to his race, religion, nationality, membership in a certain social group, or political beliefs.

This has become a principle of customary international law, and is considered by many to be non-derogable. It is bolstered by corresponding duties in Article 3 of the ECHR and in Article 3 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The European Court of Human Rights has repeatedly stated that Article 3 ECHR prohibits the removal of a person to a country where they face a substantial risk of being subjected to ill-treatment, without regard to the individual's legal status or the state's interests in migration control.<sup>22</sup>

Although some courts, like the United States Supreme Court and Australia's High Court, have argued that non-refoulement does not apply outside of their territories,<sup>23</sup> a more convincing argument considers the broader context, goal, and purpose of the Refugee Convention. Italy's obligations are further strengthened by Article 3 of the ECHR. Moreover, this interpretation is confirmed in *Hirsi Jamaa and Others v. Italy*, 2012 where by the European Court of Human Rights found Italy to be in violation of Article 3 of the ECHR for intercepting migrants at sea and returning them to Libya, where they were subjected to a real risk of inhuman treatment. The Court held that the exercise of effective control by Italy over the migrants while on its vessels triggered its Convention obligations beyond national territory, therefore affirming the extraterritorial scope of the principle of non-refoulement.<sup>24</sup>

Furthermore, the Inter-American Commission on Human Rights has confirmed that Article 33(1) of the Refugee Convention is not restricted by geographical boundaries, therefore providing additional support for the wider understanding of non-refoulement.<sup>25</sup> In addition, the Vienna Convention on the Law of Treaties strengthens this perspective by underlining the need to interpret treaty provisions in good faith and alignment with the instrument's intended goals and objectives.<sup>26</sup> The Refugee Convention's structure, which includes territorial limitations in some articles but excludes them from Article 33(1), implies that the non-refoulement principle is not constrained by geographical boundaries.<sup>27</sup>

Italy is bound under international law to extend its obligations beyond the Refugee Convention. Additionally, the CAT forbids the deportation, repatriation, or extradition

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<sup>22</sup> MAVRONICOLA, Natasa. Facilitating (Further) Inhumanity: On the Prospect of Losing Article 3 ECHR, a Vital Guarantee for the Under-Protected. *European Convention on Human Rights Law Review*. 2024, Vol. 5, No. 1.

<sup>23</sup> KIM, Seunghwan. Non-refoulement and extraterritorial jurisdiction: State sovereignty and migration controls at sea in the European context. *Leiden Journal of International Law*. 2017, Vol. 30, No. 1, pp. 49-70.

<sup>24</sup> GAMMELTOFT-HANSEN, Thomas. Access to Asylum: International Refugee Law and the Globalisation of Migration Control. Cambridge: *Cambridge University Press*. 2011, p. 46.

<sup>25</sup> DASTYARI, Azadeh - GHEZELBASH, Daniel. Asylum at sea: the legality of shipboard refugee status determination procedures. *International Journal of Refugee Law*. 2020, Vol. 32, No. 1, pp. 1-27.

<sup>26</sup> GAMMELTOFT-HANSEN, Thomas. *Access to Asylum: International Refugee Law and the Globalisation of Migration Control*, p. 44.

<sup>27</sup> Office of the United Nations High Commissioner for Refugees. The Haitian Interdiction Case 1993 Brief amicus curiae. *International Journal of Refugee Law*. 1994, Vol. 6, No. 1, pp. 86-87.

of an individual to a country where they are at risk of being subjected to torture. In this regard, Article 3 of the CAT, stipulates state shall not return (‘refouler’) or extradite a person to another state where he would be in danger of being subjected to torture. This obligation includes a prohibition on chain refoulement, where individuals are sent to a third country,<sup>28</sup> such as Libya, where they are susceptible to torture.

Therefore, the rule prohibits indirect refoulement as well, whereby a state is barred from transferring or otherwise facilitating the transfer of individuals to a third country when it knows or should know that they would face serious harm thereafter.<sup>29</sup> Thus, a state that allows another to return people to an unsafe location may become responsible for the breach of obligations of non-refoulement, even if the state does not carry out the transfers directly.

The actions of Italy in facilitating the return of refugees and migrants to Libya, be it through direct means, indirect involvement, or under the guise of coerced voluntary repatriation, constitute a breach of the non-refoulement principle as established by the Refugee Convention, the ECHR, the CAT, and the International Covenant on Civil and Political Rights. The perilous circumstances in Libya compel refugees to feel as though they must choose to return, thereby rendering such repatriations involuntary in nature. International law unequivocally delineates that Italy’s responsibilities extend to any territory under its control, and the act of returning individuals to Libya, given its well-documented record of abuses, constitutes a clear violation of the principle of non-refoulement. Italy must consequently refrain from any actions that could facilitate such returns in order to uphold its international obligations.

## 1.2 State Responsibility and Complicity under Article 16 of ARSIWA

The ARSIWA embody the general rules indicating when states are responsible for internationally wrongful acts. Article 16 addresses the responsibility of a state that aids or assists another in committing such acts:

“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.”

Article 16 provides that a state may be responsible not only for its own conduct but also for complicity in another state’s internationally wrongful acts. The responsibility is derivative in that it flows from a contribution to another state’s unlawful behaviour. The elements of this rule are primarily the aid or assistance in the form of supplying materials, financing, logistics, or politics which helps in accomplishing a wrongful act.<sup>30</sup> Second, knowledge of the circumstances of the act in question which makes it international-

<sup>28</sup> MALEK, Dalia. “In Any Manner Whatsoever”: Deconstructing Indirect Violations Beyond “Constructive Refoulement”. *International Journal of Refugee Law*. 2025.

<sup>29</sup> KRITZMAN-AMIR, Tally. Asylum-Seekers are Not Bananas Either: Limitations on Transferring Asylum-Seekers to Third Countries. *Michigan Journal of International Law*. 2022, Vol. 43, No. 1, p. 699.

<sup>30</sup> MARTY ERIKSSON, Johanna. Responsibility for Aiding or Assisting in the Commission of a Wrongful Act: Examining State Responsibility under Article 16 ARSIWA. 2024.

ly wrongful.<sup>31</sup> Finally, the act would also have amounted to a breach of international law if done by the assisting state itself.

The International Court of Justice, in the *Bosnia and Herzegovina v Serbia and Montenegro* explained that a state becomes responsible when it offers its assistance knowing that the conduct of the recipient is unlawful.<sup>32</sup> Even as the International Court of Justice applied this principle to genocide, it confirmed the general rule that knowledge and substantial contribution are good enough to trigger responsibility under Article 16. The International Law Commission (ILC) commentary further notes that for responsibility to be triggered under Article 16, assistance need not be essential to the wrongful act, it is enough that it significantly contributes to the act's commission.<sup>33</sup>

Article 16 is thus applicable in the context of migration control when one state supports another through practices that amount to a violation of human rights or humanitarian norms. Any training, funding, or operational support lent by one state to another's authorities, who proceed with arbitrary detention, torture, or collective expulsion, it may amount to facilitating internationally wrongful acts.<sup>34</sup> This would be especially so when an assisting state does so knowing such abuses are systematic and well-documented, as in the case with Libya's treatment of migrants.

### 1.3 Interaction Between Non-Refoulement and State Complicity

The principles of non-refoulement and state responsibility for aid or assistance are related but not identical. A state that cooperates with another in the context of border or migration control, when such cooperation is foreseeably leading to violations of non-refoulement, may be responsible under both regimes. In particular, when a state indirectly facilitates returns to a country where individuals face serious risks of harm, it also contributes to a breach of the obligations on non-refoulement and as aiding and assisting in an internationally wrongful act.

For Italy, this interaction between the two bodies of law is at the core. Its cooperation with the Libyan authorities through funding, equipment, and joint maritime operations takes place in full knowledge of the continuous human rights abuses occurring in Libya.<sup>35</sup> Italy's actions establish a distinct connection between its assistance and Libya's unjust actions towards migrants, thereby fulfilling the criteria for complicity as outlined in Article 16 of ARSIWA. Given that both states are bound by international human rights obligations, the abuses occurring in Libya are indeed actionable against Italy. Italy possessed

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<sup>31</sup> Ibid.

<sup>32</sup> International Court of Justice (ICJ). Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment. 26. 2. 2007. ICJ Reports 2007, p. 43.

<sup>33</sup> MOYNIHAN, Harriet. Aiding and Assisting: The Mental Element under Article 16 of the International Law Commission's Articles on State Responsibility. *International & Comparative Law Quarterly*. 2018, Vol. 67, No. 2, pp. 455–471.

<sup>34</sup> BITAR, Mohammad – BENARJI, Chakka. "Enforced Disappearances in Iraq: Attribution of Accountability to Government Under International and Domestic Legal Framework." *LUMS Law Journal*. 2024 Vol. 10, No. 1, p. 65.

<sup>35</sup> VARI, Elisa. Italy-Libya memorandum of understanding Italy's international obligations. *Hastings International & Comparative Law Review*. 2020, Vol. 43, p. 105.

a comprehensive understanding of the abuses taking place within Libyan detention facilities, thereby fulfilling the requisite knowledge criterion. Italy's strategic facilitation of Libya's operations, even in the absence of explicit intent, plays a significant role in these violations. Consequently, Italy holds accountability for its involvement in the human rights violations occurring in Libya as stipulated by Article 16. These actions amount to a breach of its independent undertakings of non-refoulement under international human rights and refugee law.

## II. DETENTION AND ITALY'S COOPERATION

Libya has remained in a state of political fragmentation and long-running conflict since 2011, and is divided into zones of control by competing administrations and their armed groups, while state institutions remain weak and often subordinated to local militias.<sup>36</sup> In such an environment, Libya has turned into one of the main transit routes for migrants and asylum seekers who attempt to reach Europe. In such a situation, the absence of effective governance has facilitated the widespread exploitation of migrants both by state and non-state actors.

### II.1 Migrants in Libya

The situation of migrants and asylum seekers in Libya has become very desperate, as most of them have been detained under conditions that flagrantly violate fundamental human rights. Outdated laws that existed in the country since the Gaddafi regime have imposed extremely stiff punishments on foreigners without proper documentation. These laws criminalise unauthorized entry, stay, and exit with imprisonment, fines, and forced labour.<sup>37</sup> A particular cause of concern is that in Libya, there is indefinite detention of immigrants, with no indication in its legal system of the maximum period it should last and mentioning only that afterward, there needs to be deportation.<sup>38</sup> Moreover, the absence of any formal procedure allowing detainees to seek the assistance of lawyers or to appeal against detention results in arbitrary detention, a patent violation of international law.<sup>39</sup>

Migrants apprehended on Libyan territory or at sea are regularly sent to detention in official and unofficial facilities operated by the DCIM, the LCG, and affiliated militias. In its regular reporting, the United Nations Support Mission in Libya (UNSMIL), along with the Office of the United Nations High Commissioner for Human Rights (OHCHR), noted that these facilities are characterised by overcrowding, a lack of proper sanitation,

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<sup>36</sup> MEARSHEIMER, John J. Bound to fail: The rise and fall of the liberal international order. *International Security*. 2019, Vol. 43, No. 4, pp. 7–50.

<sup>37</sup> BITAR, Mohammad – CHAKKA, Benarji. Responsibility for Violation of Rights of Migrants in Libyan Detention Centre. *Mizan Law Review*. 2023, Vol. 17, No. 2, pp. 315–342.

<sup>38</sup> Libya. Art 6 of Law No.10 of 2010 provides that “unauthorised migrants are to be detained and then deported after they serve their sentences. Additionally, the detained do not have avenues to challenge the grounds of their detention or deportation decisions.”

<sup>39</sup> ALKHATEEB, Ali. *Libyan Detention Centers: Libya's Legal and Regulatory Framework on Migration. Masterm Thesis*. Umeå: Department of Law, Umeå University, Faculty of Social Sciences, 2019.

scarcity of food and water, and a systematic ill-treatment regime.<sup>40</sup> Those detained are frequently subjected to torture, forced labour, sexual violence, and extortion at the hands of the guards and traffickers, who operate with absolute impunity.<sup>41</sup> Reports by UNSMIL, OHCHR, Human Rights Watch, and Amnesty International have consistently identified such atrocities and human rights violations against migrants in Libyan detention facilities. These findings have been recognized by the European Court of Human Rights in *Hirsi Jamaa* as a basis for holding that Libya is not a safe destination for migrants who are returned there.

These conditions are accentuated by Libyan domestic law. Legislation from the Gaddafi era criminalises irregular entry and residence, legally justifying the mass detention of migrants without judicial review. Libya is not a party to the 1951 Refugee Convention or its 1967 Protocol, and has not developed any asylum procedure as a means of distinguishing refugees from other migrants. All detained persons are treated alike, regardless of the required protection. In practice, the absence of a functioning legal framework means both official and unofficial detention take place in an arbitrary and indefinite manner.

## II.2 Italy's Association with Libya

Cooperation between Italy and Libya on migration control has a long history, which began in the early 2000s with bilateral arrangements to stem irregular migration.<sup>42</sup> It culminated in the 2008 Treaty of Friendship, Partnership, and Cooperation, providing for joint patrols and financial assistance.<sup>43</sup> The latter was suspended during the 2011 conflict, Italy renewed its cooperation through new frameworks that gradually aligned with EU migration policy.<sup>44</sup>

In February 2017, Italy and Libya formalized their collaboration through a MOU aimed at addressing the challenges posed by irregular migration and human trafficking.<sup>45</sup> It was reestablished in 2020 and remains effective to this day.<sup>46</sup> In accordance with this agreement, Italy committed to providing technical, logistical, and financial assistance to Libyan institutions engaged in border management, particularly the DCIM and the LCG. The assistance provided encompasses the provision of patrol vessels, the maintenance and repair of naval equipment, the training of personnel within the Libyan coastguard, and financial support for the administration of detention centres.

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<sup>40</sup> UN General Assembly (No. 2).

<sup>41</sup> AL-DAYEL, Nadia – AARON Anfinson – GRAEME, Anfinson. Captivity, migration, and power in Libya. *Journal of Human Trafficking*. 2023, Vol. 9, No. 3, pp. 280–298.

<sup>42</sup> PAOLETTI, Emanuela. Power relations and international migration: the case of Italy and Libya. *Political Studies*. 2011, Vol. 59, No. 2, pp. 269–289.

<sup>43</sup> MENZ, Georg. The promise of the principal-agent approach for studying EU migration policy: The case of external migration control. *Comparative European Politics*. 2015, Vol. 13, No. 3, pp. 307–324.

<sup>44</sup> De CESARI, Chiara. Memory as border work: The 2008 Italy-Libya Friendship Treaty and the reassembling of Fortress Europe. In: DEMETRIOU, Olga – DIMOVA, Rozita. *The political materialities of borders*. Manchester: Manchester University Press, 2018, pp. 36–55.

<sup>45</sup> KRUBALLY, Kumba. *Saving Lives or Protecting Borders? An Analysis of EU Policies Towards Irregular Migration in Libya and Niger from 2015 to 2020*. United Kingdom: Canterbury Christ Church University. 2022.

<sup>46</sup> CUSUMANO, Eugenio – RIDDERVOLD, Marianne. Failing through: European migration governance across the central Mediterranean. *Journal of Ethnic and Migration Studies*. 2023, Vol. 49, No. 12, pp. 3024–3042.

Meanwhile, the European Union Emergency Trust Fund for Africa (EUTF), established in 2015, has allocated a significant sum of money to Libya.<sup>47</sup> Italy has consistently acted as a conduit between Libyan authorities and EU institutions, playing a notably pivotal role in the formulation and implementation of these initiatives.<sup>48</sup> Collectively, these initiatives have created a framework whereby migrants departing from Libya via maritime routes are apprehended by Libyan authorities and subsequently transferred to detention facilities within Libyan borders.

The global community has persistently recognized that Libya fails to meet the standards for a secure disembarkation point, nevertheless, since 2017, the LCG has apprehended tens of thousands of refugees and subsequently returned them to detention.<sup>49</sup> With the objective to respond to distress calls and coordinate actions with Libyan authorities, interceptions are frequently coordinated with the Italian Maritime Rescue Coordination Centre (MRCC) in Rome.<sup>50</sup> Under Operation Nauras, Italian navy troops have also been sent to Tripoli, allegedly to offer technical support but to enable direct operational support for the LCG.<sup>51</sup>

These actions are part of the operational framework in Libya, that had been employed to carry out internationally unlawful activities, even when they are formally portrayed as humanitarian and capacity-building projects. Given the extensive and well-documented transgressions in Libya, the extent and character of Italy's financial and logistical cooperation create an important legal challenge about whether such support qualifies as aid or assistance under Article 16 of the ARSIWA. This establishes the connection between Italy's factual behaviour and its possible legal responsibility, which guides and supports the analysis that follows.

### II.3 Awareness of Human Rights Violations

Despite considerable public evidence of human rights abuses against migrants in Libyan captivity, Italy has persisted in its cooperation with Libya. Numerous reports from the European Parliament, UNSMIL, and the UN Security Council both before and after the 2017 MOU attested to the systematic nature of the violations.<sup>52</sup> It had been established by the Hirsi Jamaa ruling that Italy was aware of the dangers faced by refugees returning to Libya. The IOM and the UN High Commissioner for Refugees have frequently briefed Italian and EU officials on circumstances within detention facilities, highlighting that forced labour, sexual assault, and torture are widespread.<sup>53</sup>

<sup>47</sup> KIPP, David. From exception to rule: the EU Trust Fund for Africa. *SWP Research Paper*. 2018, No. 13.

<sup>48</sup> CECCORULLI, Michela. *Triangular migration diplomacy: The case of EU-Italian cooperation with Libya*, p. 328–345.

<sup>49</sup> OKPANACHI, Eyene - KAUNERT, Christian. Migrants in the throes of multiple crises: fragmented state authority, informal networks and forced (im)mobilities in Libya. *Third World Quarterly*. 2024, Vol. 45, No. 17–18, pp. 2391–2409.

<sup>50</sup> CUSUMANO, Eugenio - VILLA, Matteo. Over troubled waters: Maritime rescue operations in the central Mediterranean. 2020.

<sup>51</sup> MORENO-LAX, Violeta. The architecture of functional jurisdiction: unpacking contactless control-on public powers, *SS and others v. Italy*, and the “operational model”. *German Law Journal*. 2020, Vol. 21, No. 3, pp. 385–416.

<sup>52</sup> NYIRONGO, Rachael. The Libyan slave trade: a study on the responsibility of the Libyan government and relevant regional and international bodies based on international standards. 2019.

<sup>53</sup> UNHCR, IOM and Mixed Migration Centre. *On This Journey* (No. 7).

This is confirmed by official statements from Italy and the EU as a whole. The European Commission and the European External Action Service have expressed concern that the overall human rights situation in Libya is alarming, and conditions in detention facilities are unacceptable.<sup>54</sup> Similarly, the Italian Ministry of Foreign Affairs has described the grave humanitarian conditions migrants are subjected to in Libya.<sup>55</sup> This proves that the Italian government was not only aware of abuses, but has also accepted that they are continuous and systematic in nature.

Nevertheless, Italy has continued and increased its cooperation with Libyan authorities. Italian officials have justified the policy as necessary to combat human trafficking, as well as to prevent loss of life at sea. This does not, however, change the legal character of those acts facilitated. By providing the means and capacity for Libyan actors to intercept migrants and return them to conditions amounting to torture and arbitrary detention, Italy has engaged in conduct that satisfies the elements of aid or assistance under Article 16 of ARSIWA.

It is equally important to examine the potential responsibility of the EU, given that the institutional decisions and policy frameworks under the Union define the general architecture within which the member states, including Italy, act. The EU's influence does not stop at coordination, but it is regulatory, financial, and strategic, forming a whole in determining the nature and scope of migration control measures.<sup>56</sup> In this sense, the role of the EU becomes crucial not only for the completeness of any such review of Italy's cooperation with Libya, but also to account for the fact that supranational action may produce different or shared duties and responsibilities under international law.

The evidence reveals a clear and ongoing trend, individuals apprehended by Libyan authorities often suffer severe violations of their human rights, encompassing torture, forced labour, and arbitrary detention. Both Italy and the EU possess a comprehensive understanding of these thoroughly documented practices. Italy persists in its support, provision of arms, and collaboration with Libyan authorities, despite the consistent findings that their actions contravene international law.<sup>57</sup>

The circumstances present a critical legal inquiry central to Italy's international commitments, whether Italy's continuous financial, logistical, and operational collaboration with Libyan authorities, fully cognizant of the pervasive violations of migrants' human rights in Libya, constitute aid or assistance? This will necessitate a transition from detailing the factual findings to interpreting how Italy's actions and omissions correspond

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<sup>54</sup> Euractiv. MSF accuses EU of fuelling migrant abuses in Libya. In: *Euractiv* [online]. 8. 9. 2017 [2025-11-06]. Available at: <https://www.euractiv.com/news/msf-accuses-eu-of-fuelling-migrant-abuses-in-libya/>.

<sup>55</sup> Ministry of Foreign Affairs and International Cooperation. Joint Statement on the Situation in Libya. In: *Ministry of Foreign Affairs and International Cooperation* [online]. 27. 11. 2025 [2025-11-30]. Available at: [https://www.esteri.it/en/sala\\_stamp/archivionotizie/comunicati/2025/11/dichiarazione-congiunta-sulla-situazione-in-libia/](https://www.esteri.it/en/sala_stamp/archivionotizie/comunicati/2025/11/dichiarazione-congiunta-sulla-situazione-in-libia/). See also Ministry of Foreign Affairs and International Cooperation. Libya: Italy is committed to improving humanitarian conditions in reception centres. In: *Ministry of Foreign Affairs and International Cooperation* [online]. 14. 11. 2017. [2025-11-30]. Available at: [https://www.esteri.it/en/sala\\_stamp/archivionotizie/comunicati/2017/11/libia-italia-lavora-per-migliorare/](https://www.esteri.it/en/sala_stamp/archivionotizie/comunicati/2017/11/libia-italia-lavora-per-migliorare/).

<sup>56</sup> CHEBEL D'APPOLLONIA, Ariane. EU migration policy and border controls: from chaotic to cohesive differentiation. *Comparative European Politics*. 2019, Vol. 17, No. 2, pp. 192-208.

<sup>57</sup> KOS, Maarten. *Italy's Responsibility Under International Law for Human Rights Violations of Migrants Intercepted at Sea and Returned to Libya by the Libyan Coast Guard with the Support of Italy*. Master thesis.

with or contradict its pertinent obligations under international refugee and human rights law, particularly regarding the principle of non-refoulement and the prohibition of complicity in internationally wrongful acts.

### III. THE APPLICATION OF ARTICLE 16 ARSIWA TO ITALY'S COOPERATION WITH LIBYA

The international responsibility of Italy cannot be fully determined without analysing Italy's cooperation with Libyan authorities under the prism of Article 16 of the ARSIWA. The latter provides the preconditions under which a state will be held internationally responsible for aiding or assisting another state in the perpetration of an internationally wrongful act.

The financial, logistical, and operational support Italy has provided to Libya, especially in the practice of maritime interceptions and detentions within the framework of migration control, raises complex questions relating to possible indirect responsibility for conduct inconsistent with international human rights and refugee law. These practices are examined under Article 16 ARSIWA to assess whether Italy provides internationally wrongful assistance or acts within the bounds of lawful cooperation.

#### III.1 Aid or Assistance in the Commission of a Wrongful Act

Article 16 of ARSIWA stipulates that a state is internationally responsible when it aids or assists another state in the commission of an internationally wrongful act, provided that such assistance is given with knowledge of the circumstances of the act and the latter is internationally wrongful if committed by the aiding or assisting state itself.<sup>58</sup> The first element to be assessed is therefore whether Italy's acts amount to aid or assistance in internationally wrongful acts committed by Libya against migrants.

Assistance or aid in international law is defined as any type of material, financial, logistical, or political support given to another state that helps the latter to engage in an unlawful act.<sup>59</sup> Article 16 explains that assistance need not be indispensable for the commission of the wrongful act, it merely needs to be significantly contributing to the occurrence of the act.<sup>60</sup> Likewise, in the *Bosnia and Herzegovina v Serbia and Montenegro* case, the International Court of Justice maintained that the supply of resources, logistic aid, or encouragement establish the nexus between the conduct of the aiding state and the principal state's wrongful act by a causal link, even if the said aid or assistance is not the sole or determining cause.<sup>61</sup>

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<sup>58</sup> SAHLIN, Ida. Concepts in Collusion-Clarifying and comparing the legal obligations of third states and international organizations, and their right to take countermeasures in response to violations of international law. 2025.

<sup>59</sup> JØRGENSEN, Nina H. B. State responsibility for aiding or assisting international crimes in the context of the Arms Trade Treaty. *American Journal of International Law*. 2014, Vol. 108, No. 4, pp. 722–749.

<sup>60</sup> MARTY ERIKSSON, Johanna. *Responsibility for Aiding or Assisting in the Commission of a Wrongful Act: Examining State Responsibility under Article 16 ARSIWA*.

<sup>61</sup> MILANOVIĆ, Marko. State responsibility for genocide. *European Journal of International Law*. 2006, Vol. 17, No. 3, pp. 553–604.

The application of such standard to Italy's cooperation with Libya evidently demonstrates that Italy's extensive material and logistical support has significantly facilitated the commission of serious human rights violations against migrants. Pursuant to the 2017 MOU and its renewal in 2020, Italy provided the LCG with vessels, maintenance services, technical equipment, and training, as well as direct financial assistance. Italian navy force in Tripoli coordinated maritime operations and maintained and repaired Libyan patrol boats.<sup>62</sup> Libya's capacity to apprehend migrants at sea and send them back to detention facilities where numerous reports of torture, forced labour, and sexual assault have been made possible by these actions.

The tactical consequences of such cooperation make the causal connection between Italy's assistance and Libya's internationally wrongdoings evident. Tens of thousands of individuals have been detained after being caught by the LCG since 2017, according to the UNHCR.<sup>63</sup> Without Italy's technical and logistical assistance, interceptions would not have been feasible. Thus, Italy's assistance has been essential to the continuation of a system that amounts to torture, arbitrary detention, and non-refoulement, all grave breaches of international law.

The assistance retains its legal status regardless of its form or intent. The ILC Commentary clearly acknowledges that accountability can be applied even when aid is provided for purportedly humanitarian or legal reasons when it really aids in a violation of law.<sup>64</sup> In this context, the International Court of Justice has said that once an assisting state's actions have significantly contributed to actions that are illegal internationally, it cannot claim benign intentions.<sup>65</sup> For the foregoing reasons, Italy's defence of cooperation with Libya with the aim of preventing loss of life at sea or combating human trafficking are not admissible while establishing whether such assistance facilitated internationally wrongful acts.

The jurisprudence of Europe joins this reasoning when, in the case of *Hirsi Jamaa and Others v Italy*, the European Court of Human Rights found Italy's interception and return of migrants to Libya in breach of Article 3 of the ECHR, despite arguments from Italy that its actions were humanitarian in nature. The court concluded that responsibility is determined by effective control and foreseeable consequences, and not the stated purpose of the assisting state. By extension, Italy's continued funding, training, and equipping of the LCG and other Libyan entities, despite well-documented patterns of abuse, amount to a form of indirect participation in internationally wrongful acts.

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<sup>62</sup> GERAY, Leoni Anna. *Fortress Europe: Analysing the Human Rights Impact of EU Border Externalisation in Third Countries since 2015*. Diss. 2024.

<sup>63</sup> IFEDI, Francisca - EZECHI, Kingsley. *Refugee, Migrant and Human Rights Crisis in Africa: The Libyan Experience*. 2019.

<sup>64</sup> TRAMPERT, Joëlle A. *State responsibility for complicity in and other contributions to international crimes and serious human rights violations*. Diss. 2024.

<sup>65</sup> International Court of Justice (ICJ). *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment. 26. 2. 2007. ICJ Reports 2007, p. 43.

### III.2 Italy's Knowledge of the Wrongful Acts

Under Article 16 of the ARSIWA a state's accountability for providing aid or assistance is contingent upon its knowledge that such support will contribute to the commission of an internationally unlawful act. The establishment of responsibility requires the deliberate provision of aid and assistance to facilitate and actively contribute to the unlawful action.<sup>66</sup> Consequently, accountability arises only when the assisting state's actions are directly linked to the unlawful act performed by the aided state, and the assisting state is aware of this connection.<sup>67</sup>

The principle of actual knowledge was emphasized in the Genocide case, where the International Court of Justice determined that complicity in genocide requires the aiding state to be aware of the genocidal intent of the primary perpetrator.<sup>68</sup> The knowledge element was further explained by the International Court of Justice in the case *Bosnia and Herzegovina v Serbia and Montenegro*, wherein the Court explained that knowledge presupposes awareness of the specific circumstances in which the act of a state is internationally wrongful.<sup>69</sup> While the Court scrutinized Serbia's awareness of the perpetrators' genocidal intent and reiterated that for a state to bear responsibility for aiding or assisting in an internationally wrongful act, it must possess knowledge of the circumstances rendering the conduct wrongful, and cannot claim positive intention to avoid the international responsibility, when the act resulting is unlawful.<sup>70</sup> ILC commentary also confirms this interpretation suggesting that knowledge may be actual or it may be inferred from the surrounding circumstances where the state furnishing the aid is perfectly aware of what is happening and in what situation its aid will be used.<sup>71</sup>

There is disagreement among scholars over whether the knowledge requirement calls for actual or constructive awareness. James Crawford interprets Article 16 narrowly to require evidence that the assisting state knew of the facts that made the principal act wrongful.<sup>72</sup> Others, such as Gammeltoft-Hansen and Hathaway, offer a more expansive understanding, suggesting that states should be considered to know when they could not reasonably be unaware of the wrongful character of the acts at issue, particularly where

<sup>66</sup> KHALIL, A. – KRISHNA RAJ, SA. Deployment of Autonomous Weapon Systems in the Warfare: Addressing Accountability Gaps and Reformulating International Criminal Law. *Balkan Social Science Review*. 2024, Vol. 23, p. 261.

<sup>67</sup> UN General Assembly. Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001). DOCUMENT A/56/10, Part One, Chapter IV.

<sup>68</sup> JØRGENSEN, NHB. Complicity in genocide and the duality of responsibility. In: Bert Swart and others (eds.). *The Legacy of the International Criminal Tribunal for the Former Yugoslavia*. Oxford: Oxford University Press, 2011, pp. 247–274.

<sup>69</sup> SEVO, Olivera. The Concept of Knowledge as a Subjective Element in the Criminal Offense of Crimes against Humanity. *Glasnik Bar Ass'n Vojvodina*. 2021, p. 332.

<sup>70</sup> *International Court of Justice (ICJ). Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment*. 26. 2. 2007. *ICJ Reports 2007*, pp. 419–420, p. 422.

<sup>71</sup> MOYNIHAN, Harriet. Aiding and Assisting: The Mental Element under Article 16 of the International Law Commission's Articles on State Responsibility. *International & Comparative Law Quarterly*. 2018, Vol. 67, No. 2, pp. 455–471.

<sup>72</sup> CRAWFORD, James. *State Responsibility: The General Part*. Cambridge: Cambridge University Press, 2013, pp. 406–407.

violations are public, systematic, and well-documented.<sup>73</sup> In light of the widespread availability of information in modern international system, this broader standard represents a better fit with object and purpose of Article 16 in preventing states from feigning ignorance of severe violations.

In the case of Italy, actual and constructive knowledge is evidently established. Both before and after the signing of the 2017 MOU with Libya, numerous reports from credible international organizations demonstrated the patterns of systematic ill-treatment by the Libyan authorities against migrants.<sup>74</sup> Those same reports were publicly available and have been widely mentioned several times in debates both at the European Parliament and the Italian Chamber of Deputies.<sup>75</sup> Moreover, the European Court of Human Rights had previously held that Libya could not be considered a safe country for the return of migrants, explicitly warning Italy of the risks of inhuman and degrading treatment.<sup>76</sup>

Italian and EU authorities themselves have acknowledged these situations. In many official declarations, the European Commission, the European External Action Service, and the Italian Ministry of Foreign Affairs have characterized the conditions in Libyan prison facilities as intolerable and extremely alarming. IOM and the United Nations High Commissioner for Refugees have routinely briefed Italian authorities on persistent breaches. It is clear from these admissions that Italy had ongoing, thorough awareness of the violations taking place.

Furthermore, Italy's support for Libya's migration management apparatus is not limited to financial transfers. Italian naval staff deployed in Tripoli within Operation Nauras have liaised directly with Libyan officials, overseen maritime operations, and offered technical support.<sup>77</sup> Such close cooperation implies continued knowledge as to the way Libyan agencies have operated and the foreseeability of the ensuing abuses cannot be doubted. Even assuming Italy did not desire its assistance to be used for unlawful purposes, its continued support fully cognizant of the situation in Libya meets the knowledge element required under Article 16.

Some scholars and states adopt the view that the knowledge element should be understood more narrowly, restricting responsibility to actual or constructive awareness by the assisting state of the particular internationally wrongful act being committed.<sup>78</sup> The more stringent understanding has been favoured by authors including Vera Gowlland-Debbas and Miles Jackson, who argue that constructive knowledge or generic suspicion is not enough.<sup>79</sup> However, even under this threshold, however, Italy's knowledge is clear-

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<sup>73</sup> GAMMELTOFT-HANSEN, Thomas - HATHAWAY, James C. Non-Refoulement in a World of Cooperative Deterrence. *Columbia Journal of Transnational Law*. 2015, Vol. 53, pp. 235–284.

<sup>74</sup> BEŞER, Mehmet Enes - ELFEITORI, Fatimah. *Libya detention centres: A state of impunity*. Ankara: Migration Policy Center, 2018.

<sup>75</sup> VARI, Elisa. *Italy-Libya memorandum of understanding Italy's international obligations*.

<sup>76</sup> *European Court of Human Rights. Hirsi Jamaa and Others v. Italy, Application No. 27765/09. 23. 2. 2012.*

<sup>77</sup> MORENO-LAX, Violeta. *The architecture of functional jurisdiction: unpacking contactless control-on public powers, SS and others v. Italy, and the "operational model"*.

<sup>78</sup> GOWLLAND-DEBBAS, Vera. The Responsibility of States for Aid or Assistance to the Commission of Internationally Wrongful Acts. In: James Crawford – Alain Pellet – Simon Olleson – Kate Parlett (eds.). *The Law of International Responsibility*. Oxford: Oxford University Press, 2010, p. 424.

<sup>79</sup> JACKSON, Miles. *Complicity in International Law*. Oxford: Oxford University Press, 2015.

ly established. The ongoing reports of UN and Non-Governmental Organizations, the judgment in Hirsi Jamaa, and official Italian acknowledgements of conditions in Libya reveal that Italy had actual, not inferred, knowledge of the context in which its assistance functioned.

The standard of knowledge under Article 16 should not be interpreted so narrowly as to reward deliberate ignorance. In the *Corfu Channel* case, 1949 the International Court of Justice stated that states are presumed to have knowledge of facts that are widely known or open to the world.<sup>80</sup> In light of the widespread and constant documentation regarding the treatment of migrants by Libya, cooperation by Italy cannot be described as unconscious. It amounts to conscious assistance provided despite knowledge of a substantial risk that such support would contribute to serious violations of international law.

Accordingly, Italy fulfils the knowledge requirement under Article 16 ARSIWA. Its continued cooperation with Libya, after unambiguous judicial findings and public acknowledgments, in addition to broad international condemnation, reveals that it provided aid and assistance with full knowledge of both the foreseeable and ongoing wrongful acts. Another significant issue that arises in this context is whether the internationally wrongful acts have been committed by Italy itself.

### III.3 Assessing Unlawfulness of Acts if Committed by Italy

One of the key determinations of state responsibility for aid or assistance is the nature of the underlying conduct. It is not enough that a state support another, the assisted conduct must be conduct falling within the scope of that has been prohibited for the assisting state itself under international legal framework.<sup>81</sup> It follows from a basic principle of coherence and fairness in the international legal order, that responsibility cannot be wider than the obligations of the given state.

The third element under Article 16 of the ARSIWA is that the conduct assisted has to be such that, if committed by the assisting state itself, it would be internationally wrongful. It ensures that a state can be held responsible only for aiding and assisting acts that are contrary to its own international obligations. In other words, complicity arises only where the assisted conduct infringes duties already binding upon the assisting state.<sup>82</sup>

Italy is bound by the extensive normative framework of international human rights and humanitarian law treaties, including the 1951 Refugee Convention and its 1967 Protocol, the International Covenant on Civil and Political Rights (ICCPR), the CAT, and the ECHR. All these treaties forbid torture, inhuman or degrading treatment, arbitrary detention, as well as refoulement. These prohibitions are reaffirmed by customary inter-

<sup>80</sup> DEL MAR, Katherine. The International Court of Justice and standards of proof. In: Karine Bannelier – Théodore Christakis – Sarah Heathcote (eds.). *The ICJ and the Evolution of International Law*. London: Routledge, 2012, pp. 98–123.

<sup>81</sup> MARTY ERIKSSON, Johanna. *Responsibility for Aiding or Assisting in the Commission of a Wrongful Act: Examining State Responsibility under Article 16 ARSIWA*.

<sup>82</sup> MacKENZIE-GRAY SCOTT, Richard. State Responsibility for Complicity in the Internationally Wrongful Acts of Non-State Armed Groups. *Journal of Conflict and Security Law*. 2019, Vol, 24, No. 2, pp. 373–407.

national law, while in the case of torture<sup>83</sup> and refoulement,<sup>84</sup> they are also considered peremptory norms, *jus cogens*, from which no derogation is allowed.

Clearly, Libya's treatment of migrants in detention centres, acts of torture, sexual violence, forced labour, and indefinite arbitrary detention, violate these basic norms. If such acts were directly committed by Italy itself would amount to grave violation of obligations under Articles 3 and 5 ECHR, Articles 7 and 9 ICCPR, Article 3 CAT, and Article 33 of the Refugee Convention. In the case of *Hirsi Jamaa*, the European Court of Human Rights clarified that returning migrants to Libya, where they faced a real risk of torture and inhuman treatment, violated Article 3 ECHR and the principle of non-refoulement. The Court stressed that such obligations are absolute and apply wherever a state exercises effective control, including extraterritorially.

Furthermore, Italy cannot escape responsibility on the arguments that Libya, as the territorial state, has the primary obligation. Article 16, in express terms, states that assistance is illegal where it contributes to acts that would be wrongful if performed by the assisting state itself. In the ILC commentary, it is emphasized that an assisting state cannot do through another what it could not do itself.<sup>85</sup> This principle therefore articulates the wider rule stated by the International Court of Justice in the *Bosnia* case that complicity arises when there is a link between a state's conduct and violations of obligations binding upon it, whether acting directly or indirectly.

In this regard, the acts thus assisted, such as the interception and forced return of migrants to a place where they would be exposed to a risk of torture and inhuman treatment, would be unquestionably unlawful if carried out by Italy itself. These actions are in violation of treaty-based and customary obligations of refoulement and ill-treatment. The absolute and non-derogable character of such prohibitions underlines their peremptory nature, in that no justification, whether it be a policy objective, national security, or any cooperation agreement, justifies the failure of a state to comply with them.

The International Court of Justice, along with other international bodies, has consistently reiterated that peremptory norms create obligations *erga omnes*, owed to the international community as a whole.<sup>86</sup> In questions relating to the obligation to prosecute or extradite, in *Belgium v Senegal*, the International Court of Justice reaffirmed that the prohibition of torture creates obligations towards all states, further solidifying that assisting another in acts of torture or refoulement breaches obligations of the highest order.<sup>87</sup> This view is supported by the Committee against Torture, which has explained that diplomatic or operational arrangements that expose indi-

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<sup>83</sup> COSTELLO, Cathryn - FOSTER, Michelle. *Non-refoulement as custom and jus cogens? Putting the prohibition to the test. Netherlands Yearbook of International Law 2015: Jus Cogens: Quo Vadis?* The Hague: TMC Asser Press, 2016, pp. 273–327.

<sup>84</sup> BRUIN, Rene - WOUTERS, Kees. Terrorism and the Non-derogability of Non-refoulement. *International Journal of Refugee Law*. 2003, Vol. 15, No. 1, pp. 5–29.

<sup>85</sup> KINNEAR, Meg. ARSIWA, ISDS, and the process of developing an investor-State jurisprudence. *ICSID Reports*. 2022, Vol. 20, pp. 3–12.

<sup>86</sup> TANAKA, Yoshifumi. The legal consequences of obligations *erga omnes* in international law. *Netherlands International Law Review*. 2021, Vol. 68, No. 1, pp. 1–33.

<sup>87</sup> Questions relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment. ICJ Reports 2012, p. 422.

viduals to a real risk of torture violate Article 3 of the CAT, irrespective of the motives of the assisting state.<sup>88</sup>

Applying this framework, Italy's financial, technical, and operational support to Libyan authorities, along with its knowledge of the foreseeable consequences, meets the third element of Article 16 ARSIWA. The acts being assisted of torture, arbitrary detention, and refoulement are not only wrongful but amount to serious violations of peremptory norms binding on Italy. Thus, Italy's conduct would be unlawful if performed directly, and its facilitation of Libya's actions engages derivative responsibility under Article 16 of ARSIWA. The three cumulative elements of Article 16, aid or assistance, knowledge, and wrongfulness of the act thus stand fulfilled. Italy's cooperation with Libya through sustained material and operational support comprises aid or assistance, having knowledge of abuses being committed, and those abuses would be internationally wrongful if committed by Italy itself. As the legal consequences Italy bears responsibility for aiding and assisting internationally wrongful acts committed by Libya in violation of international human rights and refugee law.

#### IV. ATTRIBUTION OF RESPONSIBILITY TO EU UNDER THE ARIO

The EU plays an integral role in the development of migration control policies in Libya and in their implementation. The scale of EU's financial, technical, and political support raises the possibility that it might share responsibility under the ARIO, adopted by the ILC in 2011. The provisions mirror the principles outlined in the ARSIWA in setting out the conditions on which international organisations may be held responsible for internationally wrongful acts, including when providing aid or assistance to states in such acts.

##### IV.1 The EU's Role in Libya

Since 2015, the EU has channelled substantial resources into migration management in Libya through the EUTF and various operational initiatives. The European Border and Coast Guard Agency (Frontex), the European External Action Service (EEAS), and the European Commission have jointly supported programmes to strengthen the LCG and the DCIM.<sup>89</sup> In addition, the EUNAVFOR MED Operation Sophia and its successor Operation Iriini have provided maritime surveillance, intelligence-sharing, and logistical support related to migration control.<sup>90</sup> These activities are closely coordinated with Italy, which has acted as the primary implementing partner for EU projects in Libya.

<sup>88</sup> MARIÑO MENÉNDEZ, Fernando M. Recent jurisprudence of the United Nations Committee against Torture and the international protection of refugees. *Refugee Survey Quarterly*. 2015, Vol. 34, No. 1, pp. 61–78.

<sup>89</sup> REYHANI, Adel-Naim - GOMEZ DEL TRONCO, Carlos - MAYER, Matthias Nikolaus. Challenging the Externalised Obstruction of Asylum-The Application of the Right to Asylum to EU Cooperation with Libyan Coast Guards. In: *SSRN* [online]. 1. 5. 2019 [2026-03-17]. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3361889](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361889).

<sup>90</sup> JUHÁSZ, Krisztina. Evaluating Hungary's Participation in the European Union's Common Security and Defence Policy. *Polski Przegląd Politologiczny. [Polish Political Science Review]*. 2021, Vol. 9, No. 1, pp. 45–64.

Conditions in Libyan detention facilities have been repeatedly recognized as deplorable by EU institutions.<sup>91</sup> Special reports of the European Parliament, the European Ombudsman, and the European Court of Auditors all called attention to the fact that EU funding might lead indirectly to human rights violations. Nevertheless, the EU continued its support to Libyan authorities, prioritizing border control capacity building over compliance with international protection standards and implementation of the normative framework of international law.

#### IV.2 Aid or Assistance by International Organisations

Several intricate issues about the accountability under international law have been brought up by the increased involvement of international organizations like the EU in security, migration management, and humanitarian operations. International organizations' institutional accountability is hidden when they operate in collaboration with member states. The coherence of the international legal system depends on determining whether an organization is accountable for helping or abetting the illegal actions of states. Therefore, when an international organization aids or assists a state in committing an internationally wrongful act, Article 14 ARIO allows for the attribution of responsibility to that organization as long as the organization acts with knowledge of the circumstances of the act and the act would be wrong if committed by that organization itself. It follows the parallel provision in Article 16 ARSIWA in precluding international organizations from using member states to engage in conduct that would otherwise be prohibited under international law.

Applying the rule analogically to the EU's activities in Libya implies shared or parallel responsibility with its member states, including Italy. The financial and technical support provided by the EU, through the EUTF and maritime operations, has materially contributed to the Libyan capacity to intercept and detain migrants in conditions that violate international law.<sup>92</sup> The EU and its institutions have long been aware of these abuses through official monitoring, public reports, and parliamentary debates.<sup>93</sup> For the purpose of Article 14 ARIO, the knowledge requirement is thus also satisfied.

However, the unique structure of the EU makes attribution more difficult. In accordance with Article 6 of the ARIO, the conduct of an organ or agent of an international organisation is attributable to that organisation when it acts in an official capacity.<sup>94</sup> In practice, distinguishing between the actions of the EU and its member states can be challenging because operations such as Sophia and Irini are jointly staffed and financed. The EU remains responsible for its own institutional decisions, however, including financial allocations and policy design enabling or facilitating human rights violations.

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<sup>91</sup> CAPASSO, Matteo, et al. Libya country report. EU-LISTCO Country Report. 2019.

<sup>92</sup> OTHMERDING, Fabian. Third Country Capacity-Building as a Means of Extraterritorial Migration Control: A Doctrinal Analysis of the European Union's Support for the Libyan Coastguard in Light of the Human Right to Leave and the Obligation of Non-Refoulement. *BLR*. 2021, p. 226.

<sup>93</sup> FABBRINI, Sergio. The European Union and the Libyan crisis. *International Politics*. 2014, Vol. 51, No. 2, pp. 177–195.

<sup>94</sup> WHITE, Nigel D. Responsibility of international organisations. In: *The law of international organisations*. 3<sup>rd</sup> edition. Manchester: Manchester University Press, 2020, p. 231–250.

### IV.3 Shared Responsibility

Under international law, the principle of shared responsibility acknowledges that a single wrongful outcome could well be contributed to by more than one actor.<sup>95</sup> In the present context, Italy and the EU contribute to and benefit from Libya's externalised border enforcement system. As André Nollkaemper observes, shared responsibility arises when multiple entities contribute through cooperative conduct to the same harmful result.<sup>96</sup> The EU's actions could therefore, in concert with Italy's operational support, give rise to overlapping legal responsibility for aiding and assisting Libya in the commission of internationally wrongful acts.

Although the precise attribution of responsibility between Italy and the EU remains subject to determination through legal analysis, it is clear that both actors have provided significant material support to Libyan authorities despite full awareness of ongoing abuses. The principles contained within the ARIO and the ARSIWA applied in tandem ensure that neither states nor international organisations can circumvent accountability for human rights violations carried out through cooperative schemes.

## V. COMPARATIVE JURISPRUDENCE

State responsibility for aid or assistance and prohibition of refoulement has been examined in several international and national jurisdictions. Comparative analysis of these cases demonstrates consistent trend that states cannot avoid responsibility for human rights violations through outsourcing migration control or in an absence of territorial jurisdiction. Courts and tribunals have routinely reaffirmed that effective control, knowledge, and foreseeability of harm are determining factor in attributing legal responsibility.

### V.1 International Jurisprudence

The most authoritative precedent on the extraterritorial application of human rights obligations in the context of migration control remains the landmark decision in *Hirsi Jamaa and Others v Italy*. The European Court of Human Rights decided that Italy had breached Article 3, prohibition of torture and inhuman treatment, and Article 4 of Protocol 4, prohibition of collective expulsion, of the ECHR, through its navy intercepting migrants on the high seas and returning them to Libya.<sup>97</sup> The Court pointed out that Italy exercised effective control over the people on board, hence extending the application of the Convention beyond Italian territory. Italy's claim to have carried out lawful rescue operations was also dismissed and it reiterated that the foreseeability of inhuman treatment upon return outweighs other factors.

Subsequent regional and international frameworks ultimately corroborated this analogous interpretation. In its decision in *A.S. v. Italy*, the Human Rights Committee

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<sup>95</sup> NOLLKAEMPER, André, et al. Guiding principles on shared responsibility in international law. *European Journal of International Law*. 2020, Vol. 31, No. 1, pp. 15–72.

<sup>96</sup> NOLLKAEMPER, André. Concerted adjudication in cases of shared responsibility. *NYUJ International Law & Politics*. 2013, Vol. 46, p. 809.

<sup>97</sup> *European Court of Human Rights. Hirsi Jamaa and Others v. Italy, Application no. 27765/09. 23. 2. 2012.*

affirmed the principle of non-refoulement, asserting that it is relevant whenever a state exercises authority over individuals, regardless of their physical location.<sup>98</sup> The Committee against Torture reiterated this principle by asserting that Spain violated Article 3 of the CAT in the case of *J.H.A. v. Spain* by deporting migrants to Mauritania, exposing them to a substantial risk of torture.<sup>99</sup> When considered collectively, these examples illustrate that jurisdiction and accountability are governed by control and knowledge rather than mere territorial boundaries.

Similar reasoning has been adopted by the International Court of Justice in cases dealing with aid or assistance. In *Bosnia and Herzegovina v. Serbia and Montenegro*, the Court reached a finding of state responsibility where there had been knowledge of the circumstances relating to the illegality of the recipient's conduct.<sup>100</sup> The Court's conclusion that Serbia was in a position to exercise considerable influence over the Bosnian Serb forces supported such a finding, in the process reinforcing the view that a state cannot disassociate itself from internationally unlawful acts being committed with its support or acquiescence. In this way the approach taken by the International Court of Justice has largely reflected the framework established under Article 16 of the ARSIWA.

## V.2 National Jurisprudence

National courts have also followed similar reasoning, reflecting the implementation of these international legal principles within national systems. Most recently, the United Kingdom Supreme Court in *Rahmatullah v. Ministry of Defence* addressed whether the United Kingdom could be held responsible for the unlawful detention of a person captured by United Kingdom forces and then transferred to the custody of the USA. The court accepted that responsibility could be attributed to the United Kingdom either when it had effective control over the person or when it had knowingly contributed to the wrongful act, demonstrating how the principle of complicity operates even in complex multinational operations.<sup>101</sup> Comparable findings have been expressed in Italian domestic jurisprudence, including the 2021 decision of the Tribunal of Rome holding that cooperation with Libyan authorities may engage Italy's international responsibility.<sup>102</sup>

Altogether, these findings constitute a cogent body of case law that confirms states are responsible for the consequences of their cooperative migration control policies. The courts have, in all instances, given greater weight to the substance of the control and knowledge rather than the formal elements of jurisdiction or territory. The comparative view certainly boosts the perspective that the assistance afforded by Italy to Libya, aware

<sup>98</sup> Human Rights Committee. *A.S., D.I., O.I. and G.D. v. Italy*. Communication No. 3042/2017, Views adopted 4. 11. 2020. CCPR Centre.

<sup>99</sup> United Nations Committee Against Torture. *J.H.A. v. Spain*. CAT/C/41/D/323/2007, Refworld, 10. 11. 2008.

<sup>100</sup> *International Court of Justice (ICJ). Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment*. 26. 2. 2007. ICJ Reports 2007, p. 43.

<sup>101</sup> *Rahmatullah v. Ministry of Defence*. [2017] UKSC 1. Supreme Court of the United Kingdom.

<sup>102</sup> Van BRUNNERSUM, Sou-Jie. Italy responsible for migrant pushback, Rome court rules. In: *Infomigrants* [online]. 26. 3. 2025 [2025-11-30]. Available at: <https://www.infomigrants.net/en/post/63623/italy-responsible-for-migrant-pushback-rome-court-rules#:~:text=In%202021%2C%20after%20a%20merchant,apply%20for%20asylum%20in%20Italy.>

of the real and foreseeable risks involved, squarely qualifies under Article 16 ARSIWA and consequently violates the principle of non-refoulement under international law.

## VI. RESPONSES BY THE STATES

Some common defences have thus been advanced by Italy and other States involved in cooperative migration control against potential responsibility for aiding or assisting Libya's internationally wrongful acts, including but not limited to the humanitarian purposes of the cooperation, lack of control over the Libyan authorities, legality of the bilateral agreements, and the fulfilment of due diligence obligations, all of which call for legal analysis.

Italy's invocation of humanitarian purposes was already rejected in relevant jurisprudence and does not affect the legal assessment under Article 16 ARSIWA.<sup>103</sup> Moreover, the attribution of responsibility under Article 16 does not require effective control over Libyan authorities, it is sufficient that Italy's assistance substantially contributed to the illegality of these acts with knowledge of their nature.

### VI.1 Legitimacy of Bilateral Agreements

Italy claimed that its collaboration with Libya is legal under valid bilateral agreements, such as the 2017 MOU and previous treaties, providing a legal basis for cooperation to address irregular migration. However, the legality of an international agreement does not protect a state against international responsibility for violations of peremptory norms (*jus cogens*). Under Article 53 of the Vienna Convention on the Law of Treaties (VCLT), a treaty that conflicts with a peremptory norm is void. Agreements that result in refoulement, torture, or arbitrary detention are therefore incompatible with Italy's higher international obligations.

Additionally, Article 26 of the VCLT provides that treaties are to be performed in good faith and in conjunction with other international legal obligations. Cooperation agreements may not be legally enforceable in a way that results in the breach of fundamental human rights. Therefore, the bilateral agreements of Italy with Libya does not exempt it from responsibility for their illegal consequences.

### VI.2 Compliance with Due Diligence Obligations

Another counterargument raised is that Italy has discharged due diligence duties in terms of monitoring the use of assistance by Libya and encouraging human rights safeguards. International law, however, demands more than general oversight. According to the Committee against Torture, General Comment No. 4, 2017, states are obligated to ensure through concrete measures that transferred or assisted persons are not exposed to a substantial risk of torture.<sup>104</sup> The European Court of Human Rights has also ruled

<sup>103</sup> PIJNENBURG, Annick. From Italian pushbacks to Libyan pullbacks: is Hirsi 2.0 in the making in Strasbourg? *European Journal of Migration and Law*. 2018, Vol. 20, No. 4, pp. 396–426.

<sup>104</sup> Committee against Torture. General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22. UN Doc. CAT/C/GC/4. 9. 2. 2018, para. 5.

similarly in cases where awareness of systemic abuses obliges states to suspend cooperation until sufficient guarantees of protection are established.<sup>105</sup>

Italy's sustained assistance cannot be regarded as vigilant given the ongoing abuses in Libya and the absence of reliable controls, rather, it amounts to reckless disregard for predictable outcomes. Instead of relying on monitoring after the fact, the due diligence requirement requires proactive measures to prevent the harm.

### VI.3 Responsibility Restricted to Libya

Although it is undisputed that Libya bears primary responsibility under international law for crimes that take place within its territories, it would be inappropriate to construe the legal framework as exclusive. Article 16 ARSIWA provides that the state giving help takes derivative responsibility together with the principal actor upon which the aiding happened.<sup>106</sup> Multiple levels of accountability for wrongdoing are permitted by international law. The ILC asserts that each responsible state is accountable under international law for its own contribution, and that an assisting state's obligation does not in any way relieve the primary State.<sup>107</sup>

Therefore, Italy cannot avoid its derivative responsibility by citing Libya's sovereignty or independent commission of unlawful activities. Given their cooperation ties and Italy's knowledge of these transgressions, it clearly falls under the purview of Article 16, ARSIWA. Despite being often put out, these counterarguments are not acceptable for examination under international law. Minimum due diligence is insufficient in cases when abuse patterns are well-known, interstate agreements cannot supersede peremptory rules, humanitarian reasons do not absolve guilt, and lack of control does not exclude cooperation. Italy's continued collaboration with Libya under circumstances where it was aware of the violations that would ensue thus meets the legal threshold for aid or assistance under Article 16 ARSIWA and violates the principle of non-refoulement under international refugee and human rights law.

## VII. ITALIAN DOMESTIC LAW

The Italian domestic legal system has increasingly been confronted with the legal ramifications of its cooperation with Libyan authorities. While the Italian government maintains that such conduct is a lawful exercise of migration management, Italian courts and scholars have more recently challenged the alignment of such cooperation with Italy's constitutional and international obligations.

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<sup>105</sup> M.S.S. v. Belgium and Greece, App. No. 30696/09. European Court of Human Rights, 21. 1. 2011.

<sup>106</sup> MOLNÁR, Tamás. EU Member States' Responsibility Under International Law for Breaching Human Rights When Cooperating with Third Countries on Migration: Grey Zones of Law in Selected Scenarios. *European Papers-A Journal on Law and Integration*. 2023, Vol. 2, pp. 1013–1035.

<sup>107</sup> United Nations General Assembly. Article 47: Responsibility of States for Internationally Wrongful Acts. General Assembly, sixty-third session, Supplement No. 10 (A/63/10). 2001.

## VII.1 Judicial Engagement

Following on from the reasoning of the Court in *Hirsi Jamaa*, Italian courts have increasingly examined the legality of continued cooperation with Libyan authorities. In 2021, the Tribunal of Rome issued an order concerning the provision of coordinates from Italian maritime authorities to the LCG that led to the interception and forced return of migrants.<sup>108</sup> The court held that such conduct could be considered as constituting a violation of Italy's obligations under international and constitutional law, insofar as it leads foreseeably to arbitrary detention or ill-treatment.<sup>109</sup> While the Tribunal concluded that the state had not been directly responsible, it did hold that the operational support provided to Libya facilitates violations of the principle of non-refoulement and of Article 10 of the Italian Constitution, which regulates the incorporation of international human rights norms into domestic law.<sup>110</sup>

In situations involving the accountability of private players, such as shipowners or nonprofit groups working with state agencies, Italian administrative and civil courts have also provided answers to relevant questions. These rulings acknowledge that indirect involvement in migration control activities may have legal repercussions under both domestic and international law, reflecting a progressive broadening of accountability in Italian jurisprudence.

## VII.2 Academic Debate

Italian legal scholars have engaged in a robust debate regarding the interpretation of Italy's obligations in such situations. Certain scholars, such as Francesca De Vittor and Chiara Favilli, argue that Italy's partnership with Libya constitutes constructive refoulement, as it effectively allows for the repatriation of migrants to situations of torture and inhumane treatment.<sup>111</sup> Some, such as Francesca Ippolito, emphasize that Italy's extraterritorial actions should be assessed through the lens of effective control as delineated by *Hirsi Jamaa*.<sup>112</sup> They argue that Italy remains duty-bound to honour its human rights commitments, particularly when it significantly influences the circumstances of migrants.

<sup>108</sup> PIJNENBURG, Annick - VAN DER PAS, Kris. Strategic litigation against European migration control policies: the legal battleground of the Central Mediterranean migration route. *European Journal of Migration and Law*. 2022, Vol. 24, No. 3, pp. 401–429.

<sup>109</sup> Tribunale di Roma. Ruling No. 22917/2019, in case 5615/2016. In: ASGI [online]. [2025-11-30] Available at: <https://www.asgi.it/wp-content/uploads/2020/08/sentenza-22917.pdf>. See also: ASGI. Right of asylum's historic victory: illegally rejected back to Libya, today five Eritrean citizens have an entrance visa to seek protection. In: ASGI [online]. 30. 8. 2020. [2025-11-30]. Available at: <https://en.asgi.it/right-of-asylums-victory-entrance-visa-to-seek-protection/>.

<sup>110</sup> Di NUNZIO, Paola. The Italy-Libya Memorandum: stripping away the right of asylum in the Italian legal system. *UNIO-EU Law Journal*. 2023, Vol. 9, No. 2, pp. 4–12.

<sup>111</sup> De VITTOR, Francesca. Diritti Umani e Diritto Internazionale. [States and the European Union Responsibility for the Conclusion and the Execution of Extraterritorial Migration Control "Agreements"]. 2018, No. 1. In: *RivisteWeb*. [2025-11-30]. Available at: <https://www.rivisteweb.it/doi/10.12829/89679>. See also: FAVILLI, Chiara. [L'Unione che protegge e l'Unione che respinge. Progressi, contraddizioni e paradossi del sistema europeo di asilo]. *Questione Giustizia*. 2018, No. 2.

<sup>112</sup> IPPOLITO, Francesca. Migration and Asylum: The External Dimension. In: Steven Blockmans – Adam Łazowski (eds.). *The EU and Its Neighbours: A Legal Appraisal*. The Hague: T.M.C. Asser Press, 2016, pp. 375–402.

Certain scholars argue that the absence of a formal transfer of custody diminishes the likelihood of precise attribution, thereby rendering Italy's actions a nebulous domain within the framework of international accountability.<sup>113</sup> Nonetheless, a consensus among scholars indicates that Italy's continued involvement with Libya presents significant challenges in relation to ARSIWA. In general, a significant number of scholars agree that Italy cannot evade responsibility by operating through another state, particularly when the consequences, including systematic incarceration and torture, are both foreseeable and avoidable.

### VII.3 Constitutional and Normative Implications

Article 10 of the Italian Constitution bestows the right of asylum within the Republic's territory to those who have been deprived of democratic freedoms in their countries of origin. When viewed alongside international law, the provision affirms Italy's duty to refrain from returning individuals within its territory or under its control to a nation where they may face the denial of their fundamental rights.

Furthermore, the Italian Constitutional Court has frequently articulated that Italy's domestic legal framework encompasses international human rights obligations. Consequently, the protections enshrined in the constitution may also be undermined by state actions that promote or tolerate violations in other contexts. When a state's actions bear extraterritorial consequences, Italian law increasingly recognizes that the principles of human dignity and non-refoulement extend beyond its borders.

## CONCLUSION

The intricate challenges surrounding sovereign authority and humanitarian responsibility often emerge from the multifaceted interplay of migration governance, the safeguarding of human rights, and the principles of state accountability under the law. An intriguing illustration of how externalized migration strategies challenge the limits of legitimate state conduct under international law is Italy's engagement with Libya. In this context, a series of systematic violations that provoke questions of accountability are established and perpetuated through governmental support, rather than stemming from an isolated incident.

The material support provided by Italy to Libyan authorities, encompassing financial, logistical, and operational dimensions, has culminated in interception, custody, and return protocols that have precipitated instances of torture and inhumane treatment. The derivative responsibility of Italy for its role in aiding and facilitating actions deemed internationally unlawful is activated upon the fulfilment of the cumulative criteria outlined in Article 16 ARSIWA. These criteria encompass a substantial contribution, awareness, and the inherent wrongfulness of the conduct in question. The simultaneous involvement of the EU underscores the broadening of collective responsibility within cooperation agreements that externalize the management of migration.

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<sup>113</sup> MORENO-LAX, Violeta. *The architecture of functional jurisdiction: unpacking contactless control-on public powers, SS and others v. Italy, and the "operational model"*.

The recent advancements in Italian jurisprudence, exemplified by the Tribunal of Rome's acknowledgment of potential breaches of international and constitutional obligations, indicate a notable trend towards greater conformity with these global standards within the domestic legal framework. Counterarguments rooted in humanitarian considerations, lack of oversight, or mutual consent are untenable. The intent becomes inconsequential when assistance enables unlawful actions. Furthermore, fundamental principles such as the bans on torture and refoulement cannot be overridden by consent or delegation. Italy's experience clearly outlines the boundaries of legitimate collaboration in migration governance, emphasizing that the enforcement of absolute prohibitions necessitates that States and international organizations refrain from actions that could reasonably expose individuals to significant harm. The necessity of accountability in cooperative practices is paramount for upholding the integrity of international law and safeguarding human dignity in the context of transnational border management.