The Borders of Responsibility

Migration Control in the Mediterranean Sea

KIRI OLIVIA SANTER

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Responsibility

Global and Insurgent Legalities

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and Jonathan Goldberg-Hiller

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Cover art: Migrants are rescued off the coast of Lampedusa, Italy,
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This book is dedicated to all those who have taken to the sea in search of a better life, and to those who struggle with them for equal rights and safe routes of flight across and around the Mediterranean.

Contents

UNIVERSITY
PRESS

Abbreviations

AICS	Agenzia Italiana per la cooperazione allo sviluppo (Italian Agency for Development and Cooperation)
AIS	automatic identification system
ASGI	Associazione per gli studi giuridici sull'immigrazione (Association for Juridical Studies on Immigration) (Italy)
AVR	assisted voluntary return
DCIM	Directorate for Combatting Illegal Migration (Libyan Ministry of the Interior)
DG DEVCO	Directorate General for International Cooperation Development (EU; now DG International Partnerships)
DG Home	Directorate General for Migration and Home Affairs (EU)
DG NEAR	Directorate General for Neighborhood and Enlargement Negotiations (EU)
ECDIS	Electronic Chart Display and Information System
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDF	European Development Fund
EEAS	European External Action Service
EEZ	Exclusive Economic Zone
ENP	European Neighborhood Policy

EP	European Parliament
EUBAM	EU Border Assistance Mission
EUNAVFOR Med	European Union Naval Force Mediterranean
EUTF	European Union Emergency Trust Fund for Africa
FOIA	Freedom of Information Act
GACS	General Administration for Coastal Security (Libya)
GISIS	Global Integrated Shipping Information System
GLAN	Global Legal Action Network
GNA	Government of National Accord (Libya)
IBM	integrated border management
ICMPD	International Centre for Migration Policy Development
IDP	internally displaced person
IMO	International Maritime Organization
INGO	international nongovernmental organization
IO	international organization
IOM	International Organization for Migration
ITMRCC	Italian Maritime Rescue Coordination Center
JRCC	Joint Rescue Coordination Center (Tripoli)
LMRCC	Libyan Maritime Rescue Coordination Center
LYCG	Libyan Coast Guard
MAECI	Ministero degli affari esteri e della cooperazione internazionale (Italian Ministry of Foreign Affairs and International Cooperation)
MRCC	Maritime Rescue Coordination Center
MSF	Médecins sans Frontières
NGO	nongovernmental organization
NIEO	New International Economic Order

OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OpCom	operational committee
PD	Partito Democratico (Italy)
RHIB	rigid-hulled inflatable boat (aka zodiac)
SAR	search and rescue
SDC	Swiss Agency for Development and Cooperation
SEM	State Secretariat for Migration (Switzerland)
SOLAS	International Convention for the Safety of Life at Sea
SRR	Search and Rescue Region
TAR	Tribunale amministrativo regionale (regional administrative court)
UNCLOS	UN Convention on the Law of the Sea
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
VHR	voluntary humanitarian return

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ITALY

ROME

BRUSSELS

TUNIS

MALTA

TUNISIA

LAMPEDUSA

MEDITERRANEAN SEA

TRIPOLI

N

LIBYA

0   100km

MAP 1. The Central Mediterranean Sea
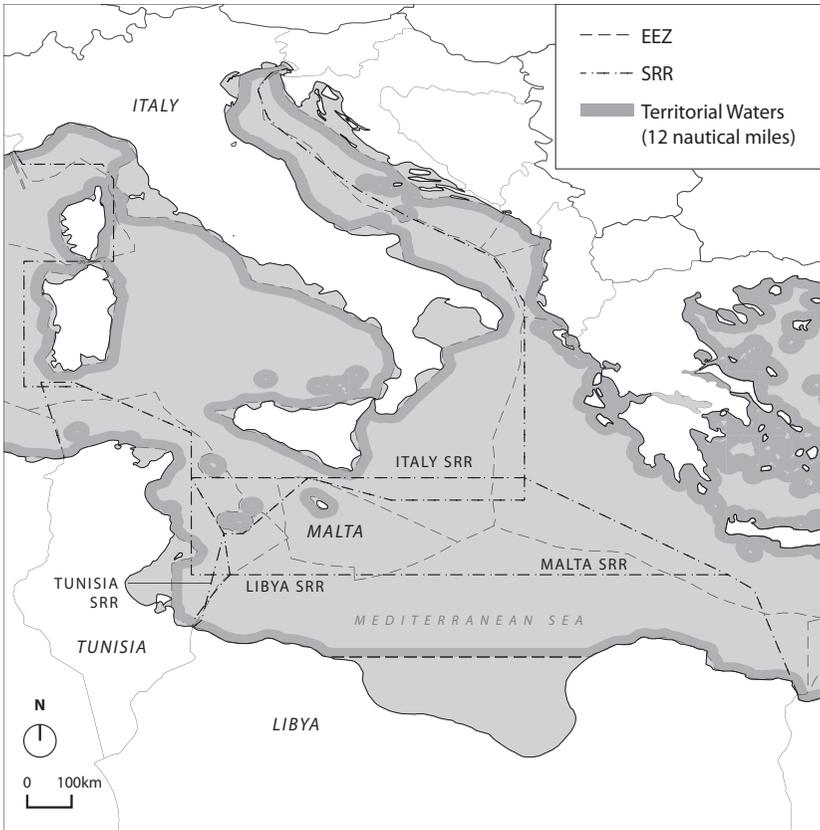
MAP 2. Legal zones of the sea, including Exclusive Economic Zones (EEZs) and Search and Rescue Regions (SRRs), as provided by UNCLOS, the UN Convention on the Law of the Sea.

ITALY SRR

MALTA SRR

LIBYA SRR

ITALY

MALTA

Mediterranean Sea

0   50km

LIBYA
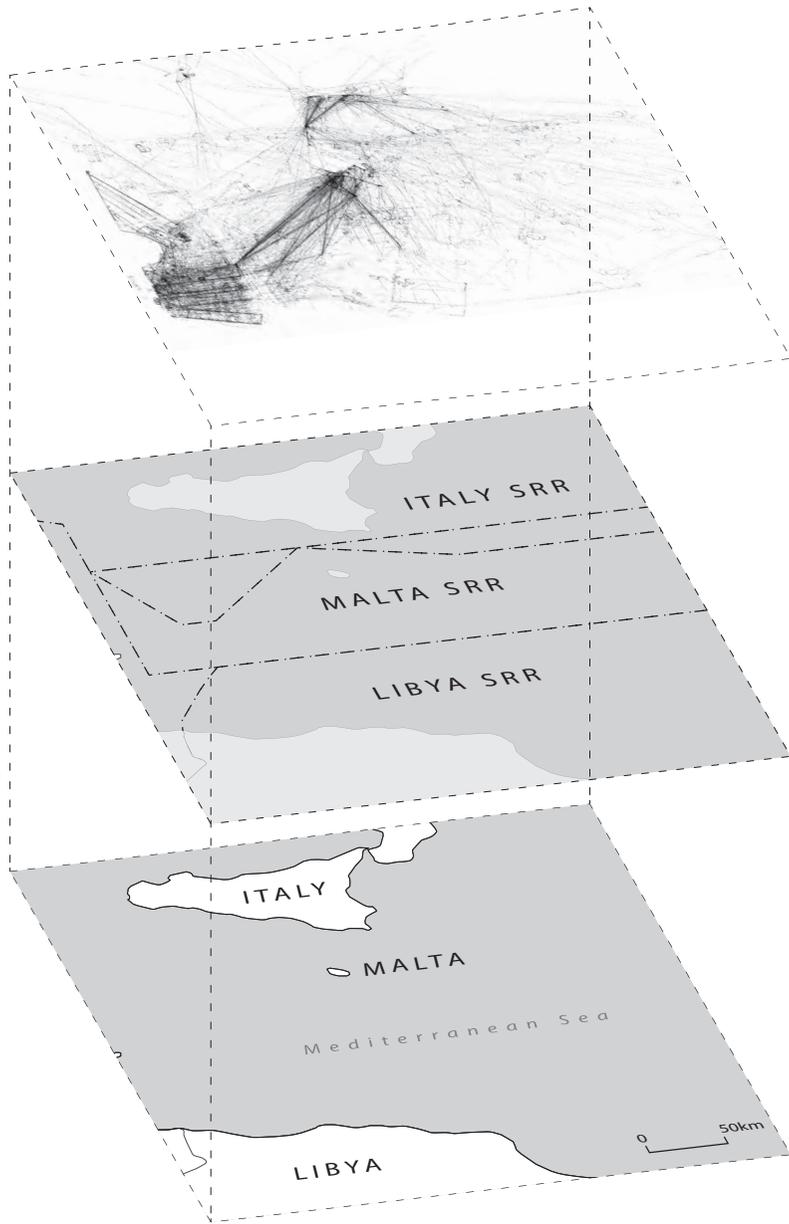
MAP 3. The top layer shows the Frontex drone search pattern and tracks between May 2021, when it started operating, and June 2022. Flight tracks have been accessed and analyzed by Border Forensics and published in 2022 in a report with Human Rights Watch. The axonometric view shows the disproportionate presence of official European actors in the skies above the Libyan SRR during the time when they have gradually pulled their naval assets away from these waters.

Introduction

As I squinted to adjust to the darkness, I could see the flames of the Bouri oil field burning in the distance.[1] It was an arresting sight for someone like me who had never been anywhere close to an oil platform, let alone seen one from a ship. It was around midnight, and we had been at sea for several days. The tall gas flare tearing through the darkness reminded me that we were not far from Libyan shores. Our boat had in fact stopped some one hundred kilometers off the coast of Libya. It was October 2018, and I was standing on the bridge of the *Aquarius*, a rescue vessel run by the non-governmental organizations (NGOS) SOS Méditerranée and Médecins sans Frontières (MSF). It felt lonely there on the black water, which stretched out all around us.

Our boat had been at a halt for some time. I tore my gaze away from the hypnotic flame, unsticking my forehead from the glass of the bridge's front window, and turned around. In front of me, alongside the ship's steering controls, the navigation map was sprinkled with little dots flashing with the signals of boats close by. The map showed several supply vessels making their way to and from Sabratah, the closest Libyan port. Gas would soon be pumped into their large hulls and they would be on their way again. Some would be heading north to Malta, others elsewhere, crossing the path of other oil tankers on their way. It struck me that the loneliness induced by the black blanket of obscurity around us and the velvet tranquility of the waves was illusory: We were certainly not alone. Cargo ships and fishing vessels surrounded us. We were, after all, still in the middle of the Mediterranean, one of the busiest and most surveilled stretches of sea in the world.

A voice crackled through the radio and interrupted my thoughts, bringing me abruptly back to the immediate situation on the bridge. Alongside me was the chief officer of the rescue ship, Vassilis,[2] and the captain, Hans. A maritime patrol aircraft reported that somewhere in our vicinity was a rubber boat with around a hundred people on board who needed rescuing. The

plane informed us that the Maritime Rescue Coordination Center (MRCC) in Rome had tasked a supply vessel—the *Emerald Blue*—with carrying out the rescue of the vessel in distress. However, the aircraft reported that the supply vessel could no longer be located and asked whether the *Aquarius* had had any contact with it. "Negative, sir," replied our captain. Then Vassilis shouted, "Someone call Jim!" Jim was the ship's search and rescue (SAR) coordinator. There was a clear division of labor on the *Aquarius*. The maritime staff looked after the ship and its upkeep and cleanliness and made sure it complied with official regulations and safety requirements.[3] The rescue team employed by SOS Méditerranée consisted of a dozen people (predominantly men) in charge of carrying out the rescues when a boat in distress was spotted or reported by other communication channels. At the head of this team was the SAR coordinator. There was also a medical team from MSF that included a head of mission, two nurses, a doctor, a humanitarian affairs officer, and a communications officer. And I was there, as research and evidence officer. As it was becoming clearer that our ship might be required to support a rescue operation, Jim was needed on the bridge to evaluate the situation, to communicate with maritime authorities (usually Italian, Maltese, Libyan, or Tunisian, but sometimes also other national authorities) or other "assets" in the vicinity,[4] and to give orders on when and how to proceed with advancing toward a boat in distress.

I went to fetch Jim. He came up to the bridge to join me, the captain, and the second mate. Jim stood behind the captain where the nautical charts were laid out. He reached for the phone to call the Italian Maritime Rescue Coordination Center (ITMRCC) for instructions: "Good evening, sir, this is *Aquarius*. We have been informed by maritime patrol aircraft *Albatros 3* that there is a boat in distress close to Sabratah oil fields. We would like to know what your instructions are for us. We have a medical crew ready to assist and a professional team of rescuers." Jim was gruff and in his thirties. He had previously served in military operations and had been working in the SAR world in the Mediterranean for several years. His formal training had given him formidable skills in communicating with authorities, and my time on the ship had taught me that he expected professionalism in return. So it surprised me when, after a few seconds on the phone I heard him stutter "Sir, I . . . , sir . . . , in all due respect sir. . . ." The person on the other end of the line was seemingly not letting him finish his point. His tone got colder: "Sir, we have tried contacting the Joint Rescue Coordination Centre Tripoli multiple times, via VHF,[5] via radio, via phone, via email these past four days to request coordination for SAR operations! This has all been

without success. We are requesting the coordination of ITMRCC as the best-suited authority in this area. We will now alter our course toward the given position." He hung up and angrily announced, "ITMRCC say they cannot coordinate this SAR event."

Over the course of the next few hours, the crew and I monitored the radar, poring over maps and standing by the radio. An hour or so later, the Italian MRCC called to inform us that a rescue had been performed by the Libyan Coast Guard. Jim asked pointedly if the person on the phone could give him a reference number for the rescue and the position of the rescued boat. The Italian authorities were unable to do so. Jim hung up with a look of disgust on his face: "You wonder if they might even be capable of lying about these things nowadays," he spat.

We remained on the edge of our seats, dependent on whatever information trickled into the bridge by whatever channel. The captain could not move the ship any closer to where the aircraft told us the boat was; I looked at the screen of the ECDIS (Electronic Chart Display and Information System) and could distinctly see the dotted line indicating the perimeter that delimited the security zone around the oil rig. A few minutes later, a crackling voice erupted from the radio. It was *Emerald Blue* calling *Verita Cinque*, another supply vessel in the area. We clearly heard the former communicating to the latter: "There are migrants on board."

The Libyan Coast Guard remained unreachable on channel 16,[6] despite the SAR coordinator's repeated attempts to contact it. Jim called the Italians back. He informed them that a merchant ship either was in the process of rescuing or had rescued people close by: "Either the information you provided us earlier was inaccurate, or there is a second rescue under way," he added stonily. "Sir, we have medical teams onboard and a vessel equipped for rescues. The *Aquarius* remains ready to assist at any time if needed." He put the phone down and tried to call the Libyan Coast Guard again, to no avail. Then he called the merchant ship over the radio again: "*Emerald Blue, Emerald Blue*, this is *Aquarius*, can you hear me?"

Two minutes later, a male voice came through the ship's radio. He thanked the *Aquarius* for its offer of collaboration but assured us that his crew had it all under control. He added that they would be in touch if there was any need. It was unclear what would happen to the rescued people on board the *Emerald Blue*, but there was a definite risk that they would get pushed back to Libya. Our forlorn crew started making their way to bed one by one, and I eventually followed suit, wondering if I would be able to sleep or whether we would get called on during the night to assist with another rescue.

The next morning, after a short but at least uninterrupted night of sleep, I sat back at the computer station on the bridge and was joined shortly by Jim and François, the head of MSF operations. We examined the radar data from the previous night and tried to piece together what may have happened to *Emerald Blue*. After some difficulty, we managed to spot its radar signal among all the other luminous dots. The recorded data was patchy; although this is not technically allowed, some ships turn their AIS (automatic identification system) signal on and off to remain discreet.[7] The *Emerald Blue's* AIS signal thus flickered on and off while we fast-forwarded through the data from the night before. On the screen, we watched *Emerald Blue* move into the vicinity of the oil platform. It lingered there for several hours. And suddenly, at around 2 a.m., it headed south, toward the Libyan coast. The icon finally disappeared a few miles off Az-Zawiyyah, a city on Libya's northwestern coast.

Exclusion, Maritime Controversy, and the Crafting of Non/Influence

Over the past two decades, the Mediterranean Sea has become the locus of a huge controversy. People seeking to secure their lives, livelihoods, freedom, or the well-being of their children leave the shores of northern Africa or Turkey in makeshift boats. They launch themselves into these treacherous waters, aware that they may face death but pulled forward by the hope that a better life awaits them on the other side, if they make it. They will either reach their desired destination by their own means, be rescued by a bigger ship that will bring them to Europe, be intercepted and brought back to where they started from, or drown. The controversy that has developed involves the outcome of their voyage. It plays out across landscapes of law where various actors—not all of them present in the seascape themselves—try to influence the triad of rescue, interception, and death. Perhaps nowhere is this controversy so stark as in the Central Mediterranean—regularly referred to as the world's deadliest border. A few years ago, in 2013, when a series of deadly shipwrecks took place off the shores of Lampedusa, there was general uproar. The media flocked to the area. The pope called it a disgrace. Politicians called for international cooperation to stop it from happening again. Since then, the shipwrecks have not stopped. Rather, the border has become harsher, and the technologies of control of migrant lives more sophisticated. Worse yet, a state of affairs has become normalized in which

thousands of Black and brown people perish every year in avoidable trag-edies off the coasts of Europe.[8]

Death is thus omnipresent in this border zone. Other declinations of violence, specific to migration control technologies, are too. From the perspective of the rescue boat on which I was a crew member, I witnessed how migrants fleeing Libya and finding themselves in distress were "res-cued" by a supply vessel and "pulled back" to Libya.[9] The *Aquarius* was made to stand by while all this took place, even though the ship's crew had expertise in the dangerous enterprise of rescuing overfilled rubber din-ghies and the equipment and personnel needed to do so: specially adapted small, inflatable rescue rafts and medical staff on board. After the event, I was never able to clarify whether the people who had needed rescuing close to the Bouri oil platform were handed over to the Libyan Coast Guard or whether the *Emerald Blue* itself brought them back to Libya. What is clear, however, is that they were returned to the place they had been trying to escape from.

The opening episode of this book took place after the summer of 2018, which had been a turbulent one in the Central Mediterranean. Italy's interior minister Matteo Salvini had announced that civil fleets conduct-ing rescues off Libya would no longer be granted authorization to dis-embark their passengers in Italian ports.[10] Around the same time, the Libyan Search and Rescue Region (SRR) was declared,[11] after European actors, spearheaded by Italy, provided the Libyan Coast Guard with a large amount of technical support and training to enhance its capacities. In ef-fect, this enabled European governments to legitimize interventions from the Libyan Coast Guard and turn these so-called pushbacks of migrant boats to Libya, which is not a signatory of the 1951 Refugee Convention, into pullbacks.[12] The enhanced powers gained by the Libyan Coast Guard, along with the efforts to criminalize rescue vessels, have changed the face of search and rescue operations in the Central Mediterranean, further reducing the chances that people attempting to flee Libya will reach the shores of Europe.

This book is about the crafting of the mass pullback policy that has emerged in the Central Mediterranean. It asks, How are transnational and often contested policies of externalized migration control managed and negotiated by bureaucrats and policy makers? What are the outcomes of these policies? How do they materialize, and what do they produce at the border, where the movements of migrants rub against the sovereign will to

keep them out of a national polity? And, relatedly, what does this tell us about the double bind of international legal structures that both contain the potential for articulating the harm that occurs to migrants as a result of these exclusionary policies, and simultaneously host the very instruments enabling that violence? It shows in detail how legal constraints combined with dominant narratives and policy rationales around migration needing to be securitized have shaped zones of purported noninfluence such as the Libyan SRR. What this zoning of the sea concretely means is that the EU is able to delegate the pushback of people fleeing from Libya and avoid responsibility for rights violations and deaths that occur as a result of their policies. While they provide the enabling conditions of such a practice to exist, they can claim "noninfluence" over it. "Non/influence" might thus better capture the contradictory relations that are simultaneously at play here: influence and noninfluence sit together uneasily in attempts of delegated migration control. This book explores the careful layering of sovereignty and hierarchization of legal frameworks involved in the fragmentation of responsibility for migrants who fall victim to violent border control while on their quest to reach safe havens. I argue that this crafting of non/influence is necessary for violent indirect control to be exercised without hegemonic states of the Global North having to renounce principles and institutions of liberal constitutionalism or norms enshrined in international law.

This specific endeavor of zoning of the sea has significance beyond its regional specificities. Indeed, the equipping and legitimizing of the post-2011 Libyan Coast Guard is symptomatic of trends relating to migration "management" that can be observed around the globe. States of the Global South are increasingly carrying out policing and interceptions of migrants on behalf of the Global North. Migration deals such as the 2016 EU-Turkey arrangement or Italy's 2017 Memorandum of Understanding with Libya or the agreement between the United States and Panama signed in July 2024 have offered money, development aid, and technical support to third states to deport or bar would-be asylum seekers and migrants from accessing protection procedures or places of relative safety.[13] These deals have enabled states from the Global North to avoid having to formally revoke international or regional treaties that codify universal fundamental rights and protections regardless of the nationality of the rights-holder. This outsourcing insulates them from key legal obligations, since other states carry out the contentious work for them. Clearly, the borders of nation-states are not just territorial. They are also dynamic and mobile borders of jurisdiction that limit the applicability

of rights and of law itself. The setting of the opening vignette and the central field site of this book, the Libyan SRR, is a space where various kinds of borders overlap and where zones of influence and noninfluence are crafted. Zoning cuts or modulates the relations between the EU, migrants wishing to reach its territory, and the agents to whom control is delegated. This tension between control and responsibility in a legally plural and interconnected world, where borders define so much of how obligations, accountability, and rights are distributed, lies at the heart of this book.

The policies of migration and border control that are of concern to this book are inscribed within the broader deterrence paradigm of *non-entrée* measures that have proliferated since the 1980s.[14] These measures are designed to prevent the arrival of people on the move into states in the Global North and include visa regimes, carrier sanctions, extraterritorial border patrols, accelerated removal procedures, "safe third country" devices, and deportations (Moreno-Lax 2017a). These measures are also what has led to the "enclosure of the skies" (Walters 2021, 130; see also Shaw 2017); let us also not forget that the "border spectacle" (De Genova 2013, 1181) that has rendered forced migration highly visible in the Central Mediterranean is in part due to the racialized web of control and ways by which air travel has been restricted to prevent people seeking refuge from doing so by taking to the skies. And this, in an era when air travel is ubiquitous. In the Central Mediterranean, a sophisticated variant of the deterrence paradigm has emerged. It is a form of outsourcing of control from the EU that involves "orchestrated forms of consensual and proactive containment" of migratory flows on the part of Libyan authorities (Moreno-Lax and Giuffré 2017, 84). Maritime interdiction or "interdiction at sea" designates specific extraterritorial measures taken by states that aim to "prevent, interrupt or stop" the movement of migrants at sea (Deftou 2021).[15] Interdiction's main effect is the exclusion of non-EU citizens from territory and rights.

Centrally, this is about delegated control. I speak of "delegated interdiction" more specifically to describe this recent intensification of EU border externalization that involves the emergence of a mass pullback policy performed by the Libyan Coast Guard (LYCG) on behalf of European actors.[16] "Delegated" interdiction is interdiction by proxy; it is thus not an equal collaboration between two parties. It is more ominous than that. The delegated nature of control exercised on migrants and refugees fleeing via the Central Mediterranean route is a form of outsourced control whose aim is the barring of entry to European soil of migrants fleeing via the sea. It thus curtails

their very right to leave while erecting a smokescreen around who is responsible for the curtailment.[17]

Delegated Control and the Politics of (Ir)Responsibility

My case study of delegated control focuses on how dynamics of exclusion at Europe's external maritime border were transformed with the emergence of a regime of systematic, delegated pushbacks and how legal constraints shaped zones of purported non/influence.[18] The book centrally explores how law and policy produce and normalize a situation of rightlessness or "organized irresponsibility" (Veitch 2007). The creation of irresponsibility and the unaccountable outcomes of delegated control can be understood on several levels.

First, from the perspective of rights, the establishment of the Libyan SRR brought about a regime of unaccountability where systematic rights violations (nonassistance at sea, threats to physical integrity during interceptions, pullbacks to Libya) were carried out on migrants. This was a zoning strategy aimed at modulating relations between migrant subjects and their rights (Opitz and Tellmann 2012), enabled through a complex set of policies and funding mechanisms. Existing legal frameworks and categories for "legal responsibility, legal liability and the different legal conceptualizations of participating in, enabling or failing to prevent suffering" (Eckert 2018b, 376) jarred against the complex, transnational policy assemblage that was, despite its fragmented nature, instrumental in setting up the very conditions that enabled the violations to occur. Second, deterrence policies and their inscription in transnational dialectics (Mann 2013) have increasingly been designed to eclipse precedents generated by successful litigation challenging them, and their entangled arrangements tend to blur questions of liability and responsibility. The assembling of the Libyan SRR was a reaction to shifting political and legal realities: It was both a reaction to a changed political situation in Libya, which had been an important partner for Italy and the EU for the patrolling of the sea border since the mid-2000s, and to past historical legal judgments, such as the *Hirsi Jamaa and others v. Italy* case, which condemned Italy for collective expulsion when migrants were handed over directly to the Libyan Coast Guard on the high seas.[19] What this book shows is that the architecture of the policy assemblage of delegated interdiction reflected the need to adapt to the *Hirsi* judgment, which in turn, points toward the EU's dilemma of responding to its own constitutional requirements while simultaneously seeking to reduce so-called irregular entries at

its external border.[20] Finally, the actual doctrinal design of international law itself contributes to the limiting of responsibility for the plight of migrants at sea. Itamar Mann (2018) argues that the "maritime legal black holes" that migrants experience when in distress at sea reveal something more about the predicament of rightlessness that anyone excluded from a political community faces, as Arendt (1951) pointed out some time ago. Mann uses this trope to describe how migrant drownings in the Mediterranean take place in a space beyond states' jurisdiction, arguing that their loss of life is therefore not due to a de facto violation of an existing de jure duty. Rather, he argues that rightlessness at sea is the product of the very structure of international law, which limits the distribution of responsibilities between states and individuals on land and fails to encompass the rights of those at sea.

Accountability in political systems that profess their commitment to the rule of law is intimately linked to the idea that law has the capacity of holding powerful actors to account (Berger and Lake 2018). It carries a slightly more technical connotation than the notion of "responsibility," as well as a different relationship to time. Responsibility denotes an ongoing duty or obligation, whereas accountability entails a requirement to justify actions or decisions. The notion of responsibility relating to refugees is heavily influenced by the norms embedded in the post–World War II liberal legal order, including human rights. The 1951 Convention Relating to the Status of Refugees and, in particular, the nonrefoulement principle, which has gained the status of customary law, shape the idea that, in a globalized world, states have responsibilities toward individuals who have fled their state of origin, have been displaced, or who are stateless.[21] This gives rise to the idea that these individuals are, theoretically at least, all rights-holders. Accountability for human rights in migration control entails the proposition that, when states violate these obligations, the rule of law should provide instruments for victims to appeal for redress. There is widespread criticism of the Refugee Convention's inability to respond to the contemporary challenges of the global world, including the distinction it makes between refugees and migrants, thereby erecting a boundary between "legitimate" seekers of protection and "illegitimate" (economic) migrants. But the definitional intricacies are, in any case, currently eclipsed by the fact that many refugees or migrants cannot access the very procedures that would define their status in the first place. The ongoing proliferation of containment policies that impede refugees and migrants from reaching the Global North forces us to think through the issue of responsibility and accountability on a variety of levels, and not just in legal terms.

Approaching the Border Assemblage

Exclusionary migration policies that focus on the external, extraterritorial aspects of migration include diplomatic deal making and memorandums of understanding, but also involve a host of actors, organizations, and legal frameworks to bring them into being and then implement them. Studying their design and operation empirically presents specific challenges. How should one go about studying the process of constructing and maintaining an instrument of exclusion like delegated interdiction across its diverse sites of influence? This methodological question inevitably leads to a second, more analytical one: How are regimes of extraterritorial control and exclusion assembled and stabilized through fragmentary policy processes?

I found these questions to be best answered by an approach that sees the border as an assemblage. In recent migration scholarship, the EU border regime has often been described as an assemblage or an apparatus. These terms capture the myriad actors, rationales, practices, and levels of governance and decision making that shape it. A "migration apparatus," as Feldman (2011b) has conceived it, is a device that is not centrally controlled "but rather instantiated in different parts at the level of 'tactics,' or the specific actions that technical experts make to control the object of regulation" (16). Although assemblages and apparatuses bear many resemblances to each other in the ways they have been used to describe complex governmental interventions and policy formations, there are some small distinctions to be made between the two. The term *apparatus* is more Foucauldian, whereas *assemblage* comes out of Deleuze's writing. An apparatus is a device in which knowledge and power are articulated in strategic ways for control or management (Rabinow 2003, 43). Assemblages denote something similar but include relations of affect and desire that can have disruptive potentials. I have chosen to privilege the term *assemblage* in describing the EU border regime or, rather, to describe the advent of delegated interdiction across it because assemblages are more fluid and emergent and denote a live quality. The term also connotes the active work needed to *assemble* heterogeneous elements so as to stabilize a form of governmental intervention, which is what I describe in this book. Assemblages have an open and rhizomatic quality that the Foucauldian *apparatus* somewhat lacks.[22] Another difference between assemblages and apparatuses that Rabinow (2003, 56) has spelled out concerns time: Assemblages are less stable than apparatuses; they are like prefigurative versions of the latter. With hindsight, the assemblage of delegated interdiction may by now have merged into a more "stabilized" apparatus.

Indeed, the neighboring Tunisian SRR, declared in the summer of 2024, could be seen as a new "controlled variation" (Rabinow 2003, 56) of the initial experiment of the Libyan SRR. Far from wanting to reify what is perhaps a false dichotomy, I simply choose to characterize this particular governmental formation as an assemblage because, at the time I was researching it, it was permeated by uncertainty: Could it be contested through legal challenges? Would the LYCG keep playing the EU's game? Would it become a hegemonic technology of control or not?

As many anthropologists have written before me, studying policy processes with attention to their empirical and ethnographic context of design and implementation requires rethinking the "field" as a geographically bounded space with participant observation as the primary method of choice (Wedel et al. 2005; Gupta and Ferguson 1997; Feldman 2011a). The Libyan SRR provided me with a field site that became my starting point for studying "up down and sideways" (Nader 1997). Then, to trace the controlling processes and the nature of the connection between those working for or within the EU on deterrence policies and those it sought to exclude, I met with informants across many sites and collected and analyzed information from a variety of sources, from court documents to meeting minutes. My engagement was "polymorphous" (Gusterson 1997, 116) and multiscalar (Glick Schiller and Çağlar 2016) as necessary to adequately capture the nature of the social relations connecting, mediating, and holding different parts of the border assemblage together (Feldman 2011a). In this form of "non-local ethnography" (Feldman 2011a), the choice of sites and objects of research developed through the iterative process of my inquiry; my choice of sites then became shaped by my research activities as I tried to establish the links between different parts of the assemblage.

I started by conducting fieldwork on the NGO ship *Aquarius*.[23] While at sea, transnational authority seemed to stretch out, enveloping the ship and molding the conduct of actors involved in search and rescue activities. Political decisions, policies, and manifestations of the border affected many of the ship's activities. A close and aggressive encounter with the Libyan Coast Guard profoundly shook the crew and me (I describe it in more detail in chapter 1.) There was a weeklong standoff off the coast of Malta when survivors of various rescues we had conducted and with whom we had been cohabitating on board the *Aquarius* were forced to wait to be assigned a port where they could disembark. The ship was also stripped of its flag while we were at sea. When I stepped off the aft deck of the *Aquarius* in Marseille at the end of the mission, I remember thinking how, while these experiences

and events had been composed of a complex matrix of decisions and forces from different levels of governance, the EU itself had been gapingly invisible while we were at sea. Nevertheless, it was evident that our experiences had been structured beyond the MRCCs, beyond the encounter with the LYCG militia, beyond the Maltese patrol boat that finally came to pick up the people who had been rescued from their overcrowded dinghy. The extraterritorial maritime space of strategic importance that we had patrolled to carry out rescues *depended* on what went on elsewhere.

To then understand how these experiences at sea had in fact been structured by the geographical and juridical zoning for delegated control, I took seriously the idea that contingent encounters "of different logics of action" are located "in situations structured by historical figurations" (Eckert 2016, 243–44). As Julia Eckert (2016) points out, a situation-based approach is not about tracing an ever expanding chain of relations of interdependency, but rather about identifying where these are "cut."[24] Thus, one of the methodological challenges of this book was to find a way to describe the relations mediating between seemingly disconnected processes that were not always directly observable. The deterritorialized nature of Europe's external border (Andrijasevic 2010) and the delocalization of border management (Walters 2006) meant that my ethnography of delegated interdiction had to reckon with a lack of geographic and institutional fixity (Trouillot 2001, 135). I chose a methodological and conceptual approach that allowed me to focus both on individual agency / pure contingency and on structural determinism; in other words, an approach that would allow me to examine causal relations on different scales at once. I was interested in how these instances of rescue or interception—the material outcomes of policies of exclusion—were situations (in Boltanski's [2009] sense) that could shed light on macrorelations. Combining microscopic attention to encounters at sea with an analytical focus on what the new zoning of the Central Mediterranean's rescue regions enabled on different scales gave me the framework to see processual entanglements—or what Eckert (2016) has called "structured contingency"—of delegated interdiction. Ferguson and Gupta (2002) argue that states produce spatial and scalar hierarchies. "Spectacular examples" of state intervention—which in the Central Mediterranean also include *non*intervention—can illustrate how the EU's external border is spatialized through a specific form of policing and how a hierarchy of lives worth saving takes on social reality through practices of rescue coordination (which includes, again, decisions *not* to coordinate). In my exploration of the changing facets of the maritime border, I attempted to maintain within the

same analytical picture both these dramatic moments *and* the bureaucratic embodiment of these operations, moving between the "migratory frontline" (Andersson 2014, 13) and Europe's migration policy–making machine. This is vital because the security politics relating to the management of the EU's external borders cannot be understood solely through the lens of either crisis *or* routine, but only by considering them both and relating them to specific practices (Jeandesboz and Pallister-Wilkins 2016).

Tracing my way away from the NGO rescue ship into the courts and boardrooms, I followed the trail of texts and threats experienced at sea to the policies and decisions that fed into the making of a situation in which certain laws could be sidelined to the benefit of others. Each of the various sites where I carried out fieldwork shed some light on how delegated interdiction was assembled and what its outcomes were. Different *scales* of action became tangible across the different *sites* I studied. This multiscalar and multisited approach provided insights into how various logics of action on different scales may have their own specific sets of causal relations that seem unrelated to other scales, with their own distinct logics of action, if they are studied separately. My methodology put these different logics of action into discussion with one another to show the transversal logics in terms of coordinated outcomes. I followed George and Bennett (2004, 48), whose notion of "process tracing" attempts to "trace links between possible causes and observed outcomes." Process tracing places great importance on thick descriptions (generated through close observation) of a specific case study and the (historical) context in which it has emerged. My version of process tracing involved the microanalysis of macrorelations, where I tried to capture causal relations "on different scales at the same time" (Boltanski quoted in Eckert 2016, 244).

My first chapter thus offers a thick description, in the Geertzian sense (Geertz 1973),[25] of rescue and interception operations in the newly declared Libyan SRR. The aggressive encounters with the LYCG I experienced while on board the *Aquarius*, and the pullbacks of migrants to Libya that happened around us while we were at sea (and which continue today), were masked by procedural obligations. I therefore chose to examine the relationship between that violence and the web of policies that had enabled the Libyan Coast Guard to regain operational capacities after the country's collapse into civil war in 2014. To do this, I pored over European Commission documents and declarations concerning the solving of "crises" in the Mediterranean. A second site in the assemblage of delegated interdiction soon became clear. The European Union Emergency Trust Fund (EUTF) for Africa

was a multidonor fund that had been established at the EU-Africa summit on migration in Valetta in November 2015. This fund was huge, totaling 5 billion euros[26] spread across three regional "windows"—the Horn of Africa, Sahel–Lake Chad, and the North of Africa—and dedicated to eradicating the root causes of migration. The projects gathered under the North of Africa regional umbrella were mostly dedicated to migration management and focused less on the development concerns of their target "beneficiaries" than on strengthening government structures in countries with direct access to the Mediterranean.[27] Through interviews with European Commission project managers and bureaucrats in Brussels and diplomatic staff from states that had contributed to the EUTF, I delved into projects on border management reform to be implemented in third countries (part of so-called integrated border management [IBM][28]) in order to understand how they had been designed, debated, and approved and, in particular, how they would be funded. I also cross-referenced this data with the minutes of meetings in which projects relating to the North of Africa funding window were approved and relevant documentation produced by the Commission. Traveling to Tunisia, I met with EU officials who had relocated their offices from Libya and who oversaw some of the projects funded by the EU. I sought to understand the connection between the decision makers in the European Commission and the chain of command that led from funding boards to project coordinators and, ultimately, to the people who would be brought back to Libya by the coast guard that had "benefited" from these decisions. I attempted to understand funding regulations and how they were bound to principles of "do no harm" for donors intervening in state-building activities and conflict zones. This "polymorphous engagement" (Gusterson 1997, 116) was fitting, not because I was inherently fascinated with the life-worlds of EU bureaucrats but because, through my process tracing, I wanted to understand how "some people's actions asymmetrically affect other people's lives" (Hertz 2016, 64).[29]

As my work progressed, I realized that some relations of causality were precisely unfindable and perhaps even part of the architecture of the policy I was studying. This realization took me to my third research site. Because the Libyan SRR functioned as a kind of legal "cut" (Strathern 1996), limiting EU member states' responsibility for pushbacks and rights violations of migrants fleeing Libya, I decided to investigate the effects of this "cut" on issues of accountability in migration control in and around the Central Mediterranean. I spent six months in Rome following the Sciabaca and Oruka project of the Associazione per gli Studie Giuridici sull'Immigrazione (ASGI) and

its members.[30] This was a project run mostly by a group of lawyers based at a law firm in Rome who had started developing strategic litigation against the detrimental effects of externalization policies on fundamental rights. I was able to follow them in the daily tasks involved in case building for the litigation they were pursuing. Their quest for information had a different purpose from mine, as they were trying to prove certain causal relations or breaches of do-no-harm commitments in development cooperation funding in order to build profiles of responsibility. But as I spent time in the office with them and followed the various challenges they pursued through legal avenues, parts of the assemblage became clearer through the documents they were granted access to. I came to see how the "contactless" element of the policy, the difficulties of tracing causal relations, was a built-in adaption to past expulsion practices that had been condemned in the *Hirsi* judgment at the European Court of Human Rights (ECtHR).[31] Somehow, the policy assemblage became both a question of empirics (what I could observe) and methods (how I could observe it). And again, my overarching methodological question loomed large: How could I describe a genealogy of domination when the rule itself consisted of fragmented parts?

The methodological decisions I made throughout my research were also shaped by the type of access I was granted to people, places, and documents. As I traced the connections from the sea back to the offices where decisions were made that shaped the maritime interdiction landscape, I encountered various difficulties. The challenge of studying the multilevel and multiactor policies that characterize Europe's (securitized) governance of borders is exacerbated by the secrecy or at least opacity surrounding policy making and enactment. This makes a clear overview of the mechanisms of governance impossible. Unsurprisingly, accessing European and Italian bureaucrats involved in the North African IBM projects funded by the EUTF in Africa proved to be difficult. Emails I sent went unanswered. I was made to wait at front desks for meetings to end and for busy state officials to whisk me up for a quick talk before their next conference call. I was told that a particular office had no time to meet me in person and that I should write back several weeks later, only to do so and be told the same thing again, three times in total.

Moreover, I had experiences similar to those Belcher and Martin (2019, 37) encountered, who observed that the US immigration enforcement and military officials they approached as part of their research were often skillful and seasoned professionals with a sharp appreciation of the politics of recorded statements. My voice recorder was therefore often viewed with

suspicion, and sometimes I simply resorted to taking notes during the interviews, to avoid too stiff an atmosphere. However, I came to understand that these difficulties had their own analytical value. Throughout my fieldwork, offices were regularly reshuffled as people moved easily from Brussels, to Tunis, back to the administrations of the state they represented, or even went from working for the EU to working for an international organization. This made it difficult to track the influence of individuals over specific projects, but these movements were also a sign of how dynamic this field of transnational policy making was and attested to the rhizomatic and fragmented relations between different parts of the assemblage. In any case, my sights were not set on unveiling some kind of organized logic of governance: As Abrams (1988, 82) noted famously, "The state is not the reality which stands behind the mask of political practice. It is itself the mask which prevents our seeing political practice as it is." There wasn't much that was Machiavellian about the European Commission, the operational committee of the EUTF that approved the IBM project in support of the LYCG, or the politicians who voted to renew the financing of the Italian military missions in Libya, including the further support of the coast guard in July 2020 (see Camilli 2020). These were actions and decisions embedded in a specific history in which delegated interdiction had become an acceptable solution to the "threat" of irregular migration by sea. My interest lay in how that acceptability had been constructed and produced through the banalization of law and policy.

To attend to these access challenges, I applied multiple methodological strategies to triangulate data across my field sites: I combined document analysis with interviews and participant observation in an attempt to understand how the different elements of the assemblage fit together. For example, I analyzed the process of accessing information through freedom of information requests made by the lawyers I followed in Rome in order to better understand logics of transparency and secrecy relating to the Italian Ministry of the Interior's involvement in the EUTF IBM projects in Libya.[32] What linked these groups of people and members of a certain ruling class with the legal efforts of the lawyers in Rome who were challenging collective expulsions at sea, and Jim's demands on board the *Aquarius* that the Italian MRCC respect the law of the sea, was a conflict over legality.[33] Each party had a specific idea of which laws should trump others; each side justified its actions on the basis of a certain idea of humanity or community it was seeking to defend. These conflicts were moments of "friction" (Tsing 2005, 5) that take place when global connections rub against one another, producing new arrangements of culture and power in the process. I examined

these moments of friction in order to see into the functioning of the assemblage of delegated interdiction that could help me understand how, despite its fragmentary nature, its dynamic and shape-shifting form enabled a regime of exclusion to prevail. They were privileged moments for observing how, in the legally plural environment of the external maritime border, certain norms trumped others and the rule of interdiction could continue to be implemented. Ethnographic descriptions of these conflicts shed light on the "sticky materiality" (Tsing 2005, 1) of assembled transnational regulations and norms that, at particular moments of friction, would contract to produce an event in which specific sets of power relations intensified or became visible.

Janus-Faced Law in the Workings of International Governance

The opening vignette provides an insight into a crucial aspect of how interdiction is carried out in practice in the contemporary maritime space of the Central Mediterranean. The actions of the *Aquarius*, *Emerald Blue*, and, as I show in the following chapters, the Libyan Coast Guard are the material outcomes of law, regulations, and decisions enacted and made elsewhere. In a situation like the one with which I start this book, interpretations of law collide in a contested space. During my time at sea, I saw Jim appeal to a recognized authority—the Italian MRCC—imploring it for permission to coordinate unfolding distress cases. Meanwhile, the Italian MRCC was communicating with the Libyan Coast Guard in parallel, and the *Aquarius* had no access to these conversations. In every moment when the authority of these maritime agencies was sought out and hierarchies of authority rehearsed, the SAR coordinator and the teams on the *Aquarius* demanded the correct application of the maritime conventions and international laws. They stated that rescue is a duty of any vessel that encounters people in distress at sea and they invoked the rule that rescued people have to be brought to a port of safety—which, by current international consensus, could not be in Libya.[34]

This jarring fact—that Libya was so clearly not a safe country to which people fleeing by the sea could be brought back to—also shaped the assemblage of delegated interdiction in particular ways. If there was one country in the European neighborhood with which such cooperation could highlight the contradictions of Europe's liberal foundations, it was Libya. In 2011 a NATO coalition intervened and toppled the regime of Muammar Gaddafi, under the international principle of the responsibility to protect. The regime

had apparently lost its claim to sovereignty, given that it could no longer control its territory or provide "effective protection to its entire population" (Asad 2015, 408). Indeed, the discretionary executive action, sanctioned by the UN Security Council, was carried out with the goal of protecting civilian populations.[35] Since then, the state of the country's security has been turbulent and the situation for migrants transiting through the country on their way to Europe has been catastrophic. For the EU, a delicate balance has needed to be struck, at least on paper. This has involved, on one hand, propping up Libyan sovereignty to help the country regain control of its borders, the latter having become too porous for the liking of its European neighbor. On the other hand, since delegated interdiction involves the return to Libya of people on the move, work has to be put into improving their condition there. This is true, at least, to the extent that Europe still seems to care somewhat about its self-professed adherence to principles of human rights and humanitarianism.

Delegated interdiction thus marks a regional struggle over "whose lives count." It is "world-making" (Kahn 2018, 255) in the sense that it makes new things acceptable (the subcontracting of migration control to militias, for example), on the back of the widespread idea that aliens have to be prevented from entering Europe at all costs. In the following chapters, the "costs" of the European Union's contemporary version of liberal sovereignty are made clearer by following the dialectical movement between acceptability and exclusion. Contemporary liberal rule—marked by discourses of "good governance" and "rule of law" imperatives—seeks to render certain political and legal connections irrelevant while emphasizing the moral validity of others. Therefore, a close examination of how delegated control is assembled provides key insights into the workings of sovereignty and liberalism in contemporary Europe. Upstream border management reform needs many different actors working at different levels of government— from domestic budgetary decisions for foreign expenditure to the supranational legal order of international institutions—and produces political outcomes of significance for the heart of Europe's liberal constitutional order.[36] The monetary and legal relations that link the EU and its member states to international organizations such as the UNHCR and the International Organization for Migration (IOM) that are present at disembarkation points in Libya, and the dynamics between the EU's various agencies over the approval and management of IBM projects, tell us something more than just how the contemporary external border "works." It gives us insights into key characteristics of contemporary international governance.

The Central Mediterranean is a dynamic laboratory of governance that reveals the contours of the "constitutive dilemma at the heart of liberal democracies" (Benhabib 2004, 2) that the EU currently faces. This dilemma sees the deep roots of the sovereign will to self-determination collide with the pull toward a more universal justice, often framed as a question of the adherence to principles of human rights (Benhabib 2004). Interceptions and denied rescues in the Central Mediterranean encapsulate these basic contradictions of the liberal political order. This tension or contradiction permeates the entire assemblage that enables what might at first seem like wholly momentaneous or localized events to continue to take place through a more or less organized refoulement policy. In the European border assemblage, law connects a variety of locations, acting as a kind of spatial architecture (D'Arcus 2014) or infrastructure that links together the EU community and its institutions and defines their reach. It is thus the focus on law not only in its doctrinal dimensions but also in the actual practices needed to uphold the EU border regime that shed light on the role of law in contemporary governance, especially with regard to the production of unaccountability.

The governance of the maritime space between Libya (and Tunisia) and Europe, especially in terms of the regulation of rescue, the delegitimization of nonstate rescue actors, and the establishment of procedural imperatives for how life itself can be biopolitically managed, is fundamentally connected to *existing* norms that are employed in accordance with the needs of the sovereign. Interdiction lies on a continuum between exception and control (Moreno-Lax 2017b, 2). The Libyan SRR is a work of legal representation in which the norm is struggling to overtake the exception (Johns 2005). It is not "isolated and distanced from the ambit of routine legality," and it is not severed from the "prevailing legal order" (620, 621).[37] Rather, delegated interdiction takes places within a framework of global legal pluralism: It functions and is regulated across domestic, international, and transnational legal orders. We might think of it as a dynamic machine whose purpose is to bar aliens from entering European territory via the maritime route. Following this metaphor, not only do the different "cogs" enable it to function across different jurisdictions, but when migrants are intercepted on the high seas and brought back to Libya, various (and potentially conflicting) legal frameworks might also be triggered at different moments in time and depend on where the travelers are situated geographically when they call for help and are intercepted. Delegated interdiction is assembled across different transnational legal orders that are in conflict with one another (Halliday and Shaffer 2015):[38] On one hand, there is the externalization order, which

includes bilateral agreements between Libya and Italy and various policies, such as integrated border management, that are regulated by EU law but also involve the legislation of partner states such as Libya. On the other hand, there is the international legal order of human rights and refugee law. People, money, and documents interact with and between these orders.

Holding both the assemblage of delegated interdiction and its outcomes on accountability within the same analytical picture provides key insights into the ways law functions within transnational and international situations of governance. Derrida's (1992) conception of law sees it as marked by a double bind:[39] It is both the means through which the state inhibits the possibilities of justice and the channel through which people and society can try to get closer to it. States and international institutions of governance rely on law to carry out their activities of governing, and law provides them with a language for the justification of their operations. In a contemporary twist of Derrida's idea, law across delegated interdiction is a language and toolbox that can be played or orchestrated to produce new exclusions that prevent participation in the liberal promise it simultaneously continues to uphold.

Chapter Outline

The book's central quandary pivots on how fragmented policy assemblages blur and complicate the question of state accountability for extraterritorial rights violations. To address it, six chapters plunge into different nodes of the EU border assemblage, teasing out the perspectives of the characters animating, passing through, and operating the exclusionary machine. Rescuers, coast guards, migrants, humanitarians, policy makers, and lawyers all contribute to the shaping of delegated interdiction and the irresponsibility it produces. In chapter 1, I provide a situational description and analysis of the on-site functioning of the Libyan SRR. By means of my fieldwork at sea with an NGO rescue boat in the (then) newly created Libyan SRR, I show how law is used selectively by EU authorities to produce a regulated space where interpretations of "law at sea" differ and are contested, depending on who is speaking. Procedure is important for EU coast guards, who stress they are complying with principles of sea law and sovereignty by alerting the Libyan Coast Guard. Meanwhile, civil rescue parties reaffirm the legitimacy of their reading of the law, that is, by bringing fleeing people to a place of safety that is not Libya. The analysis of which laws prevail, which are sidelined, and when this happens reveals a spatial element of indirect rule alongside a temporal one.

I then contextualize the historical terrain on which the SRR was assembled. I take into account the history of the regulation of movement of people and exclusion in the Central Mediterranean and Libya (in interplay with the emergence of the EU's external border), highlighting the continuities between Italy's colonial rule of Libya and the two countries' deal making concerning the containment of migratory movements. The contingent nature of Libya's sovereignty—which, as a Third World form of sovereignty (Achiume and Bali 2021, 1397), can be alternatively discarded or propped up according to the terms set by First World nation-states—determines the terrain on which delegated control is assembled.[40]

In chapter 3, I show how the strategic layering of law in the legally plural context of transnational governance enables EU and Italian authorities to avoid responsibility for the plight of migrants at sea. I argue that the rendering rightless of migrants at sea is not inevitable and is not just the result of the structure of international law: It is also the product of a specific hierarchization of legal orders linked to a regulatory "community" (Cotterrell 2018) that supports it. Through the eyes of a retired Italian coast guard official, we glimpse how security interests took precedence over humanitarian concerns for migratory movements at sea.

In chapter 4, I combine the analysis of what goes on at sea with what happens on land before people leave the Libyan shore. I argue that the rendering of migrant bodies into economic and political currency through delegated control agreements has produced a detention economy in Libya. The mass introduction of European funding for the "bettering" of detention centers in Libya has also created a marketplace for international NGOs and organizations involved in providing humanitarian assistance to migrants who have disembarked following interceptions by the LYCG. This chapter shows again how the outsourcing of migration control takes place on several levels. It also discusses how humanitarianism contributes to the diffusion of responsibility by deflecting attention away from the outsourcing of migration control as a key political cause of suffering.

Chapter 5 zooms in on the constitution and architecture of the EU Emergency Trust Fund for Africa, one of the main funding complexes that provided material and instructional support to the Libyan Coast Guard, under the UN-recognized (EU-backed) Libyan Government of National Accord (GNA). It provides a "vertical cross-section" of the EUTF North of Africa funding window, showing how practices of assemblage (Li 2007a) within the window participated in the containment of (reputational) risk that upstream migration management projects present for liberal government.

Moreover, I argue that it is precisely because of the diversity of governance objectives and discourses on development and humanitarianism within the EUTF that critique of such a sensitive project could be contained and presented as a technical issue.

In the final chapter, I show that the outcome of delegated interdiction is a type of incontestable rule that subjects a certain category of people to a particular regime of unaccountability for the violence and death they suffer. In a description of the struggles of lawyers attempting to address Italian and EU responsibility for crimes committed by the Libyan Coast Guard and injustices endured by migrants, I document the difficulties and barriers involved in their referring cases to various courts (national administrative courts, the European Court of Human Rights, the European Court of Auditors) by means of interviews, court document analyses, and participant observation in the preparation of complaints. I end by pointing out that only specific parts of the political-legal assemblage of the Libyan SRR can be addressed in court, while the rule of delegated control remains untouchable.

Finally, in the conclusion, I outline the main contributions that emerge from the discussions in the various chapters. I argue that delegated migration control is a key mediating relation between the First and Third worlds, contributing to the continued subordination of the latter to the former. I outline the types of responsibility diffusion—from legal to political to historical—that emerge from the particular way that delegated interdiction participates in the severing of the links between Europe and migrants from the South who wish to reach its shores. I end with a discussion of the analytical possibilities offered by my study of the Central Mediterranean as a contemporary laboratory of governance for European politics of exclusion.

Notes

1. The Bouri oil terminal is an offshore oil and natural gas extraction site in the Mediterranean Sea, off the northern coast of Libya.

2. Names and personal information have been changed to ensure anonymity.

3. The maritime staff were not directly employed by either of the NGOs operating the ship, but were hired by the owner of the *Aquarius*.

4. The term comes from military jargon to describe a piece of noncivilian infrastructure, which can be anything from weaponry to transport devices. At sea, the word *asset* was often used to describe state or military vessels or aircrafts.

5. Very high frequency radio, used for ship-to-ship communication.

6. In radio communications at sea, channel 16 is the distress and safety frequency.

7. A satellite emission and detection system that gives unique identification information on ships at sea (such as name, position, course, speed), AIS emits signals that are fed into publicly available online maps such as vesselfinder.com and marinetraffic.com that enable users to visualize maritime traffic more or less in real time.

8. As Sabine Broeck and P. Khalil Saucier (2016) have highlighted, the current situation of crisis in the Mediterranean is one of *longue durée*. This is also behind the term *Black Mediterranean* that other writings have referred to. The racialized character of migrant deaths in the Mediterranean needs to be put in context with the entire project of European modernity, which included empire, colonial conquest, and transatlantic slavery (Di Maio 2012; Danewid 2017).

9. Throughout this book I use the terms *refugee*, *migrant*, *people on the move*, and sometimes *traveler* interchangeably. I do so with the awareness that the use of some of these categories in contemporary scholarship has been critiqued for reifying forms of violence and Othering that critical scholarship precisely seeks to deconstruct (Cabot 2019, 268). Indeed, "irregular migrant," "undocumented migrant," and "asylum seeker" are constructed categories that racially hierarchize people on the move who are the targets of technologies of control. There is also a long-standing debate in international refugee law about the distinction between migrants and refugees (see Crépeau and Atak 2021). A vast literature in anthropology problematizes bounded categories that fail to reflect the complexity of the lived experience of displacement and highlight the problem of the migrant-nonmigrant binary (Malkki 1995; Ramsay 2020; Salazar and Schiller 2013). People move for complex reasons and are faced with

varying constraints, and therefore the dichotomy made between "forced" and "voluntary" migration does not hold empirically (Turton 2003). Nevertheless, I have chosen to use the above terms interchangeably as a sign that these are not fixed categories corresponding to experience but rather that they correspond to a particular way of constructing mobility as a "problem" in need of attention. My work seeks to show how vulnerabilities linked to these categories are produced through law and policy.

10. Salvini's right-wing Lega Nord party and the Five Star Movement formed a coalition government following the Italian elections of March 2018. The coalition government (Conte I cabinet) was led by Giuseppe Conte, an independent. It eventually collapsed in August 2019 (Horowitz 2019).

11. I sometimes also refer to the Libyan SRR as the Libyan SAR zone.

12. *Pushback* is the term used to describe the forced return of a refugee or migrant over a border. When migrants or refugees are pushed back, they are not given the possibility to apply for international protection, nor are their individual circumstances taken into consideration by the authority conducting the forceful return. Pushbacks violate a number of legal provisions, including the 1951 Convention and Protocol Relating to the Status of Refugees (Art. 33, Prohibition of Expulsion or Return ["Refoulement"]), the 1984 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1984 (Art. 3), and the European Convention on Human Rights (Protocol No. 4, Art. 4, Prohibition of Collective Expulsion of Aliens). The term *pullbacks* is used to designate measures from third countries (in the service of the European Union, for example) that prevent refugees and migrants from entering other States' borders (for a legal commentary on maritime pullbacks, see Markard 2016). Pushbacks and pullbacks have been described as two sides of the same coin (Deftou 2021). I employ both terms quasi-synonymously since they have similar effects on migrants and refugees who, through such actions, are violently returned to where they were fleeing from.

13. The EU's New Pact on Migration and Asylum, presented by the European Commission in September 2020, also announced a series of policies to affect the external dimension of migration, including partnerships with third countries of origin and transit.

14. The expression "politics of non-entrée" appeared for the first time in Hathaway's 1992 article "The Emerging Politics of Non-Entrée."

15. Moreno-Lax (2021) distinguishes between three types of interdiction that take place at sea: direct interdiction, which involves "contact-based measures of detention, seizure, boarding, and apprehension of the persons concerned for their repatriation or forcible transfer to areas within government control" (493); indirect interdiction, which involves measures taken from a distance, the deflection of international responsibilities to third countries, and pullbacks by proxy; and, finally, the interdiction-by-omission paradigm, which involves "the negation of rescue through outright abandonment at sea" (497). The following chapters mostly discuss the construction and consequences of the indirect modality.

16. Regarding the pullback policy, for an overview of arrival numbers from Libya to the EU since 2014, see the IOM's *Missing Migrants: Tracking Deaths Along Migratory Routes—Central Mediterranean Route*, accessed October 25, 2021,

https://missingmigrants.iom.int/region/mediterranean?migrant_route%5B%5D=1376. The practice and appropriation of counting border deaths by an intergovernmental organization such as the IOM has long been critiqued by civil society and activist organizations (see also Heller and Pécoud, 2017). Throughout this book I refer to the Libyan Coast Guard and not to the "so-called Libyan Coast Guard," as some SAR NGOs and human rights observers have started to do. The latter designation serves to highlight the LYCG's failure on multiple occasions to abide by its duties under the SAR Convention and its lack of professionalism and responsiveness.

17. For an extensive legal commentary on the right to leave by sea from the perspective of international human rights and refugee law, see Markard 2016.

18. Collecting data on attempted, failed, and successful maritime crossings in the Central Mediterranean is challenging because the Libyan authorities do not publicly disseminate details of the interceptions they carry out and because it is difficult to estimate the number of departures from North African shores. Following a slight decrease in 2018 from the 15,358 interceptions carried out in 2017 (International Rescue Committee 2021), migrant interceptions by the LYCG have increased ever since. Amnesty International (2021) reported at least 9,225 returns in 2019, at least 11,891 returns in 2020, and nearly 15,000 for the first six months of 2021. IOM Libya (2022) reported a total of 24,684 migrants intercepted and returned to Libya in 2022. The *Libya Observer* reported on January 9, 2025, the IOM numbers of 17,190 interceptions in 2023 and 21,762 interceptions in 2024. Beyond the numbers, though, I speak of a regime of "systematic" delegated pushbacks because this is what the creation of the Libyan SRR enabled: the establishment of a legitimate agency that European authorities could activate when cases of migrant distress were declared in that region that would systematically organize for migrants to be brought back to Libya.

19. Hirsi Jamaa and others v. Italy, ECtHR judgment of February 23, 2012 [Grand Chamber], no 39473/98.

20. It is always important to remember that under the 1951 Geneva Convention, there is no such thing as an undocumented or illegal asylum seeker.

21. International refugee law includes other sources of law such as international humanitarian law, the law of the sea, international migration law, and international human rights law.

22. David-Ménard (2008) makes the essential distinction that an "apparatus" describes a delimited mechanism whereas assemblages have an affinity with the infinite because of their rhizomatic ability to connect on to other assemblages.

23. In total, I spent six weeks aboard the *Aquarius*, two of which were spent at sea. The rest of the time, the ship was docked in the port of Marseille.

24. On how property rights perform this function of cutting through networks of social relations, see Strathern 1996.

25. This includes the description, not only of material practices but of "the nuances, affects, multiple codes of meaning, silences, jokes, and so on, that accompany them" (Gibson-Graham 2014, 148).

26. "State of Play and Financial Resources," EUTF, accessed February 28, 2025, https://trust-fund-for-africa.europa.eu/our-mission_en.

27. Libya has in fact been the biggest beneficiary of the EUTF, with a total of 465 million euros having so far been spent on programs there. See "EU Support on Migration in Libya," EU Emergency Trust Fund for Africa North of Africa Window, March 2022, https://enlargement.ec.europa.eu/system/files/2022–03/EUTF_libya_en .pdf.

28. The European Commission first introduced IBM in 2002. It is a key policy objective inscribed in the Lisbon Treaty. Its central components include the Schengen Borders Code and operational cooperation between member states (and Frontex) (Moreno-Lax 2011). IBM, which emphasized information exchange, risk analysis, mobile border controls, and principles of "good governance," rapidly became a model to be exported outside the EU (Le Chêne 2017). IBM is an integral aspect of the EU's strategy of externalizing border control. Elements of IBM include the detachment of liaison officers from EU member states to third states of migration origin and transit, information exchange, readmission agreements, and, crucially, the transfer of knowledge and border management techniques through the training of officials from third states (Le Chêne 2017, 121). As part of the multiannual financial framework running from 2021 to 2027, the EU has set up a new Integrated Border Management Fund. In December 2020, the EU Parliament and Council agreed that the size of the fund should be 6.241 billion euros (European Parliament 2020). The agreement was later endorsed by the Council in June 2021 and approved by the Parliament in July of the same year.

29. I spent a total of three weeks in Brussels, split into two trips in February and September 2019. I spent six months in Tunisia, from January to August 2018, where I had initially started studying the international politics of Security Sector Reform efforts in the postrevolutionary context. I eventually shifted my research to focus more specifically on the governance of the maritime border in the Central Mediterranean. The interviews I conducted with European bureaucrats and staff members of international organizations involved in supporting the Tunisian government's effort to reform their national security sector gave me important contextual knowledge about the concerns of the international and European donor community around border management reform in North Africa. During these six months, I participated in a workshop on Frontex (the European Border and Coast Guard) and Operation Seahorse that took place at the Ministry of Foreign Affairs in Tunis with EU and Tunisian officials. I also carried out participant observation at a "Community border management" training session for Ben Guerdane community leaders (Tunisia-Libya border), organized by the Danish Refugee Council and the Danish Demining Group in Zarzis, Tunisia. I came back to Tunis in March 2019, where I was able to conduct several interviews with European embassy officials and EU Border Assistance Mission (EUBAM) and International Centre for Migration Policy Development (ICMPD) staff, thanks to the contacts I had established in the capital the previous year. I conducted thirty-eight semistructured interviews of international staff members, EU officials, and national representatives who were involved in integrated border management efforts in Libya as project managers, policy advisers, or representatives of donor states.

30. This fieldwork was interrupted in March 2020 by the COVID-19 pandemic. I was nonetheless able to continue to follow their work and attend meetings online. I conducted ten semi-structured interviews with the lawyers and project managers of Sciabaca & Oruka, supplemented by many informal discussions over the course of the participant observation.

31. Hirsi Jamaa and others v. Italy, ECtHR judgment of February 23, 2012 [Grand Chamber], no 39473/98, accessed October 25, 2021, http://www.asylumlawdatabase.eu /en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509. For an extensive commentary on the case, see Den Heijer 2013. The judgment was historically progressive because of its extraterritorial scope. I detail this further in chapter 6.

32. As Larsen and Walby (2012, 1) have noted concerning the use of freedom of information requests in the social sciences (a research method that they have mostly used and studied in Canada), access regimes emerge as sites of contestations between "the public pursuit of transparency" and the "culture of secrecy in government."

33. I follow Engle Merry and others (Engle Merry 2006; Levitt and Engle Merry 2009), who study the socially mediated character of legality rather than conduct a close study of institutions producing legal judgments.

34. Libya is currently not considered a safe third country for the disembarkation of migrants (see UNHCR 2020a). The UN High Commissioner for Refugees issued a position paper on returns to Libya in September 2018 (UNHCR 2018), which replaced earlier positions, from 2014 and 2015. Each of these position papers stated that Libya was not a safe third country and was therefore unfit for disembarkation following rescues at sea.

35. As per the principle-cum–international norm of responsibility to protect, which has been applied to date in an infamously selective manner (see Orford 2011).

36. When I use the term *liberal constitutionalism*, I am referring broadly to political systems that hinge on "a written constitution that includes an enumeration of individual rights, the existence of rights-based judicial review, a heightened threshold for constitutional amendment, a commitment to periodic democratic elections, and a commitment to the rule of law" (Ginsburg et al. 2018, 239).

37. Several scholars have made similar critiques of characterizing the United States' infamous extraterritorial detention site Guantanamo Bay as being "outside the law," showing instead the multiple legal geographies and representations in which the site is embedded (Johns 2005; Reid-Henry 2007; Gregory 2006).

38. According to Halliday and Shaffer (2015), a transnational legal order has the following characteristics: It produces order in a domain of social activity that relevant actors have constituted as a "problem"; it is legal "insofar as it has a legal form, is produced by or in connection with a transnational body or network, and is directed toward or indirectly engages national legal bodies; and it is transnational because it orders social relationships that transcend the nation-state" (20).

39. I borrow this formulation from Rosalind C. Morris (2007).

40. Here and throughout this book, I follow postcolonial legal scholars who use *Third World* as a counter-hegemonic discursive practice to designate the "territories and peoples that Europeans colonized primarily between the mid-eighteenth and

twentieth centuries" (Achiume 2019, 1513). Rajagopal (1998, 3) reasserts the expression's continued relevance in the post–Cold War era because "it clearly reveals the hierarchical ordering of the international community at both the statal and non-statal level." Achiume (2019) acknowledges that some may find the term anachronistic and tainted with a negative connotation but reaffirms Rajagopal's counterhegemonic use of the term as useful for legal theory.

1. TENSE RESCUES AND DOUBLE STANDARDS

Parts of the material used in this chapter were first published in Kiri Olivia Santer, "Governing the Central Mediterranean Through Indirect Rule: Tracing the Effects of the Recognition of Joint Rescue Coordination Centre Tripoli," *European Journal of Migration and Law* 21, no. 2 (2019): 141–65, https://doi.org/10.1163/15718166–12340045.

1. In the EU the Dublin Regulation defines the first country of entry of an asylum seeker as responsible for treating that claim. Hence, first-arrival countries like Italy, seeking to reduce the number of arrivals on their shores, have an extra incentive not to disembark people on their territory so as not to have to officially register them.

2. In 2017, the Italian Interior Ministry, led by Marco Minniti, tried to impose a code of conduct on rescue NGOs, which was widely criticized for being legally unclear and for imposing obligations on NGOs while leaving out the responsibilities of the Italian state (Papanicolopulu 2017). The code emphasized, among other things, the obligation of a shipmaster to immediately notify the competent authorities of the flag state once a rescue is conducted in a zone where there is no official SRR. The code of conduct was issued before the declaration of the Libyan SRR. It illustrated the Italian government's push to involve other states in the contentious issue of disembarkation of rescued people by trying to the establish a link of responsibility through the flag state. For an overview of the repressive legal frameworks that successive Italian governments since 2017 have used to target civil society organizations' search and rescue activities, see Alagna and Cusumano 2023.

3. Panama delivers "flags of convenience," giving foreign-owned vessels the right to fly its flag for comparatively low registration and annual fees and taxes (Bernaerts 2006, 104–5). Flags of convenience are popular amongst shipping companies precisely because they enable them to avoid taxation and to benefit from far less stringent inspections and regulations than are required under, for example, European flags (Khalili 2020).

4. The *Iuventa*, a ship belonging to the association Jugend Rettet, was seized in 2017, and individual members of the crew were put under investigation by the Italian authorities. Criminalization and administrative pressures have increased ever since. During the summer of 2020, the ships *Aita Mari*, *Alan Kurdi*, *Ocean Viking*, *Open Arms*, and *Sea Watch 3* and *Sea Watch 4* were all repeatedly required to carry out a procedure to verify their compliance with safety rules and regulations (called "Port State Control"), which has resulted in a steady increase in the administrative detention of rescue ships.

5. The integration of the Libyan SRR in the global search and rescue plan was officialized when the coordinates of the zone and communication details of the Joint