

Aristotle University of Thessaloniki
**European Master's Programme in Human Rights and
Democratisation A.Y. 2025/2026**

**Assessing Italy's International
Responsibility for Human Rights violations
and Trafficking Risks under the Italy-Libya
Memorandum of Understanding**

A case of Nigerian Women

Author: Marta Torres Valente

Supervisor: Vasileios Kourtis

Word Count Declaration: 28 610

Abstract

The externalization of migration control has become one of the most recurrent strategies that European countries use to manage irregular migrant flows. Through cooperation agreements with third countries, States transfer to external authorities the search and rescue operation that, if carried out directly, would generate accountability under international human rights law. The Memorandum of Understanding, concluded between Italy and Libya in 2017, constitutes an example of this tendency: by funding, equipping and coordinating the Libyan Coast Guard, Italy has created a system that systematically pushes migrants back to Libya before they are able to reach Italian territory. This agreement has serious and documented consequences for Nigerian women, who constitute one of the biggest groups of potential victims of trafficking for sexual exploitation among the migrants that try to reach Italy. The recent decision of the European Court of Human Rights in the case *S.S. and Others against Italy* delivered in June 2025, by declaring the complaint of survivors of this system inadmissible due to a lack of Italy's jurisdiction, raised questions about the capacity of international law to hold a State accountable for deliberately externalizing its protection obligations. The present thesis is situated within this context. By adopting a doctrinal approach that articulates human rights international law, refugee law, law of the sea and anti-trafficking law, this thesis seeks to contribute to the debate about States' international responsibility in the context of externalization of migration management policies, highlighting the specific accountability of States under anti-trafficking documents and the impact of this agreement on Nigerian women victims of trafficking for sexual exploitation.

Acknowledgments

The process of writing this thesis was one of my biggest challenges I faced and I could not have done it without the support of many people.

First of all, I want to express my deepest gratitude to my supervisor Vasileios Kourtis for the constant availability throughout this journey and for all the feedback at each stage of this work.

Second, to my family, I thank for the unconditional support and for the constant encouragement to follow my dreams.

To Pedro, a special thank you for your constant support, even from a distance, and for your generosity in dedicating your time to help me review my work, especially grammar.

Finally, to my friends from EMA and Thessaloniki, I thank you for walking alongside me on this journey, for the constant encouragement and, above all, for the moments of relaxation, good mood and laughter we shared. You were the people that gave me strength to finish this thesis.

Table of Abbreviations

ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
ASGI	Associazione per gli Studi Giuridici sull'Immigrazione
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COE	Council of Europe
CPT	Committee for the Prevention of Torture
DCR	Dutch Council for Refugees
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECTHR	European Court of Human Rights
EU	European Union
GNA	Government of National Accord
GNS	Government of National Stability
GNU	Government of National Unity
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
IMO	International Maritime Organization
IOM	International Organization for Migration
LCG	Libyan Coast Guard
MOU	Memorandum of Understanding
MRCC	Maritime Rescue Coordination Centre
NGO	Non-Governmental Organization
SAR	Search and Rescue
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNC	United Nations Charter
UNHCR	United Nations High Commissioner for Refugees
UNSMIL	United Nations Support Mission in Libya
UNTOC	United Nations Convention against Transnational Organized Crime

USA

| United States of America

Table of Contents

Abstract	1
Table of Abbreviations	4
Introduction.....	9
1. Migration and Trafficking in the Central Mediterranean	11
1.1. Migration Routes in the Central Mediterranean	11
1.2. Trafficking of Nigerian Women.....	12
1.2.1. Definition of Trafficking	12
1.2.2. Structure of Trafficking Networks	13
1.2.3. Recruitment in Nigeria	15
1.2.4. <i>Juju</i> Rituals as a Mechanism of Control	16
1.2.5. Trafficking along the Migration Routes	18
1.3. Libya as a Key Context for Trafficking.....	19
1.3.1. Political and Institutional Context.....	20
1.3.2. Migrant Detention System.....	21
1.3.3. Human Rights Violations in Detention	22
2. Italy-Libya Cooperation	26
2.1. Early Cooperation Agreements.....	26
2.2. The Treaty on Friendship, Partnership and Cooperation	29
2.2.1. Historical and Political Context.....	29
2.2.2. Structure and Content of the Treaty.....	30
2.2.3. Push-back Operations and its Implications	32
2.3. <i>Hirsi Jamaa and Other v. Italy: The Condemnation of Push-Back Operations</i>	33
2.3.1. Legal Issues	34

2.3.2. The Violation of the Article 3° of ECHR	35
2.3.3. The Violation of Article 4° of the ECHR Protocol and Article 13° of ECHR	36
2.3.4. Impact and relevance for the Analysis of the Italian Responsibility	37
2.4. Memorandum of Understanding of 2017	37
2.4.1. From the Hirsi Jamaa Case to the Memorandum: A new Externalization Strategy	37
2.4.2. Legal Form and Nature of the MoU	38
2.4.3. Structure and Content of the MoU	39
2.4.4. Analysis of MoU	40
2.5. Operational Cooperation	41
2.5.1. Financial Support.....	41
2.5.2. Equipment and Training of the Libyan Coast Guard	43
2.5.3. Libyan SAR Zones.....	44
2.5.4. Cooperation with Tribes and Militias	45
3. International Legal Framework	46
3.1. International Human Rights Instruments.....	47
3.1.1. Universal Declaration of Human Rights	47
3.1.2. International Covenant on Civil and Political Rights	48
3.1.3. Convention against Torture.....	49
3.1.4. Convention on the Elimination of All Forms of Discrimination against Women ..	50
3.2. European Human Rights Instruments	51
3.3. Principle of non-Refoulement	52
3.4. Law of the Sea and Obligation to Rescue.....	54
3.5. International Anti-Trafficking Instruments	56
3.6. European Union Anti-Trafficking Instruments	58

4. State Responsibility and Indirect Responsibility	61
4.1. The Articles on Responsibility of States for Internationally Wrongful Acts	61
4.2. Relevant Jurisprudence	63
4.3. S.S. and Others v. Italy	64
5. Assessing Italy's International Responsibility	67
5.1. Italy's contribution to Human Rights Violations in Libya	67
5.2. Italy's Specific Responsibility Regarding Trafficked Nigerian Women	71
5.2.1. Italy's prior knowledge of the vulnerability of Nigerian women	72
5.2.2. Incompatibility of the MoU with the Anti-trafficking Obligations.....	75
5.2.3. Violation of Obligation of Due Diligence.....	80
5.3. The Specific Vulnerability of Nigerian Women and the Concrete Impact of the Italy-Libya Cooperation	83
5.4. Conclusion: To What Extent can Italy be Considered Internationally Responsible? ...	85
Conclusion	87
Bibliography.....	90

Introduction

In the last decades, European States have been recurring to externalization policies to control migration by celebrating agreements of cooperation with transit countries, with the purpose of preventing the arrival of irregular migrants to their borders. The Memorandum of Understanding celebrated between Italy and Libya in 2017 constitutes one of the examples of this trend. Through this agreement, Italy committed to finance, equip and train the LCG and delegate to them the SAR operations in the Central Mediterranean. Consequently, the number of migrant arrivals in Italy has decreased drastically, but the number of Nigerian women who used to reach Italian territory and could access protection mechanisms, are now being returned to Libya, where they are subjected to sexual exploitation, forced prostitution, violence and risk of re-trafficking. It is within this context that the present dissertation is situated.

The main question of this thesis is the following: to what extent can Italy incur in international responsibility for the violations of human rights in Libya and for the risks of trafficking that Nigerian women are exposed to because of the Italy-Libya MoU of 2017? This question is relevant for multiple reasons. First of all, the recent decision of the ECtHR in the case *S.S. and Others* against Italy in 2025, which declared inadmissible a complaint of survivors of a shipwreck that happened in the Central Mediterranean, by lack of Italy's jurisdiction under ECHR, raised questions about the capacity of international law to hold States accountable for the externalization of their protection obligations. Secondly, the Italy-Libya agreement is being replicated by other European countries, making the analysis of its legal implications urgent and relevant for the future of migration management in Europe. Lastly, the specific focus on Nigerian women, which constitute the main group of potential victims of trafficking for means of sexual exploitation among the migrants that arrive in Italy by the Central Mediterranean, allows us to demonstrate the actual human consequences of these policies and demonstrate that Italy's possible responsibility is not just an abstract international law question, but rather a set of decisions that have a real impact on people's lives.

From a methodological point of view, the present thesis adopts a predominantly doctrinal approach, based on the analysis of primary sources, including international treaties, jurisprudence, decisions of treaty supervisory bodies and international organizations reports, and based on secondary sources, such as academic doctrine in the matters of international human rights law,

refugee law, law of the sea and anti-trafficking law. The reports from NGOs and international organizations that document the human rights situation in Libya and the specific vulnerability of Nigerian women are equally used to establish a factual basis on the legal analyzes.

Furthermore, this dissertation is structured in 5 chapters. Chapter 1 presents the factual context, examining the Nigerian women profile as trafficking victims and the conditions that they face along the Central Mediterranean route. Chapter 2 analyzes the framework of the bilateral cooperation between Italy and Libya, from its origins until the MoU of 2017 and its subsequent renewals. Chapter 3 identifies the applicable international legal framework, encompassing human rights instruments, the principle of non-refoulement, law of the sea and anti-trafficking instruments. Chapter 4 examines the mechanisms of State responsibility under international law, with particular attention to ARSIWA and relevant jurisprudence, including the S.S. decision. Finally, chapter 5 applies this framework to the present case of the Italy-Libya cooperation, assessing Italy's responsibility and the concrete impact of this cooperation on Nigerian women.

1. Migration and Trafficking in the Central Mediterranean

1.1. Migration Routes in the Central Mediterranean

The Central Mediterranean route is considered one of the main means of irregular entry in Europe, connecting a series of African countries to Italy, Greece and Malta through Libya and Tunisia. This route dates back to the 1990s, where, every year, thousands of people cross the Mediterranean Sea to seek asylum or search for a better life.¹

According to the Joint Annual Overview for 2024 of IOM and UNHCR, of the 127 604 migrants and refugees who attempted to reach Europe through the Mediterranean Sea, only 68 257 succeeded, while the rest were intercepted or rescued in North Africa.² However, Italy continues to be the main country of arrival, receiving in 2024 63 122 persons, mainly from Libya (67%).

This route stands out, not only for the significant number of people who use it, but also for its danger. In 2024, 2500 migrants and refugees died or have gone missing along the Mediterranean route, with 70% of the deaths being at sea.³ Nevertheless, crossing the sea is only the final step of the journey and, sometimes, the real danger is having to go through a conflict zone, the desert or even the danger of being kidnapped and trafficked along the way.⁴

Traditionally, Libya has been playing the central role as a country of origin and destination, but mainly playing a role of transit for the migrants from North Africa and Sub-Saharan Africa. According to the Migrant Report 58 of IOM, during May and July of 2025, 894 890 migrants arrived in Libya, mostly from North Africa and Sub-Saharan Africa. Migrants and refugees who arrive in Libya originate mainly from Sudan, Niger, Egypt, Chad and Nigeria.⁵ These people leave their country mainly because of financial hardship and security concerns.⁶

¹ International Organization for Migration, *Missing Migrants Project: Mediterranean* «<https://missingmigrants.iom.int/mediterranean>» accessed 11 March 2026.

² IOM and UNHCR, *Migrant and Refugee Movements through the Central Mediterranean Sea: Joint Annual Overview 2024* (UNHCR/IOM 2025) 2 «<https://data.unhcr.org/en/documents/details/119012>» accessed 11 March 2026

³ *ibid* 8

⁴ UNHCR, *Desperate Journeys: Refugees and Migrants Arriving in Europe and at Europe's Borders* (UNHCR 2019) «<https://www.unhcr.org/desperatejourneys/>» accessed 11 March 2026

⁵ International Organization for Migration, *DTM Libya Migrant Report Round 58 (May–July 2025)* (IOM 2025) 5–6 «[Libya — Migrant Report 58 \(May – July 2025\) | Displacement Tracking Matrix](#)» accessed 11 March 2026

⁶ *ibid* 13

Before arriving in Libya, migrants and refugees travel long distances, frequently passing the Sahara Desert, facing dehydration and heat stroke because of the long time they take to cross the desert. This journey is often facilitated by smuggling networks that organize the crossing of borders in exchange for a payment, which may also intersect with trafficking dynamics.⁷

Once they arrive in Libya, a lot of migrants and refugees remain there for long periods of time before attempting to cross the sea, being frequently detained in detention centers, where the conditions are reportedly precarious⁸.

Finally, the final stage of this route is to cross the Mediterranean Sea in the direction of Italy. It is normally organized by smugglers who use improvised vessels, such as inflatable boats. During this stage, it can occur interceptions by maritime authorities or SAR operations⁹. But, nevertheless, it is in this stage that a lot of people lose their lives.

1.2. Trafficking of Nigerian Women

1.2.1. Definition of Trafficking

Trafficking of Human Beings is defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, better known as the Palermo Protocol, adopted in 2000. In its article 3, it defines trafficking in persons as the “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.¹⁰ Furthermore,

⁷ UNODC, *Global Report on Trafficking in Persons 2024* (UN 2024) ch 2 «https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_Chapter_2.pdf» accessed 14 March 2026

⁸ UNHCR (n 3); Human Rights Watch, *'No Escape from Hell': EU Policies Contribute to Abuse of Migrants in Libya* (HRW 2019) «<https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya>» accessed 12 March 2026

⁹ Amnesty International, *Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants* (Amnesty International 2017) 18 «<https://www.amnesty.org/en/documents/mde19/7561/2017/en/>» accessed 12 March 2026

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol) art 3(a)

trafficking can encompass forms of exploitation, such as sexual exploitation, forced labor or services, slavery, servitude or the removal of organs.

This definition is, essentially, reproduced by the Council of Europe Convention on Action against Trafficking in Human Beings, which adopts a definition substantially similar to the Palermo Protocol, only adding the definition of the concept of “victim”¹¹. Regarding the EU level, the Directive 2011/36/EU, follows the same structure, widening, however, the range of forms of exploitation, including begging and exploitation of criminal activities¹². The EU Directive 2024/1712, which alters the previous Directive, amplified even more this range, adding exploitation of surrogacy, forced marriage and illegal adoption¹³.

The methods of carrying out trafficking, such as recruitment, transportation, transfer, accommodation of people under coercion, abuse of a vulnerable situation and other forms of enforcement, are, therefore, common to the three instruments. These differ essentially in the scope of the state obligations they impose and the implementation and monitoring mechanisms they establish, as will be better discussed in Chapter 3.

This study will focus on the sexual exploitation of Nigerian women through the Central Mediterranean route.

1.2.2. Structure of Trafficking Networks

The trafficking of Nigerian women for means of sexual exploitation is a structured process that begins in Nigeria and extends through the migration route until its final destination in Europe. This process involves a number of actors and mechanisms of control which aim to guarantee the submission of the victims, being, therefore, fundamental to analyze it as an organized system, rather than a set of isolated acts.

¹¹ Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature 16 May 2005, entered into force 1 February 2008) CETS 197 (Anti-Trafficking Convention).

¹² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L101/1

¹³ Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU [2024] OJ L 2024/1712.

This trafficking is a transnational network, since it operates across multiple countries. The process typically begins in Nigeria and continues through countries of transit such as Niger, Chad or Sudan, consolidates in Libya and often ends in Italy.¹⁴ Each country is a different phase of this process: Nigeria is where the recruitment phase begins, normally with *Juju* rituals. Although the transportation phase can be conducted in Niger, Chad and Sudan, the main transit country is Niger, through the Sahara Desert. Before heading to Europe, these women are held in Libya for weeks or even months under the control of trafficking networks, being held in precarious conditions while awaiting to cross the Mediterranean Sea. Consequently, their stay in Libya increases their dependence and vulnerability. Finally, although the final destination may be other countries in Europe, Italy is the main point of entry and, in many cases, the first place of exploitation.

In this network, there are a lot of actors who play different roles in different phases. First of all, in Nigeria, the recruiters are the ones who are responsible for identifying and enticing potential victims, often targeting women in situations of vulnerability attracted by false promises of employability and better conditions abroad. To have control over the victims, they commonly use *Juju* rituals, a ritual associated to religion traditions and used mostly as a sanction for bad social behavior¹⁵.

During their migration journeys, the victims may encounter various actors. Traffickers can have connections with smugglers, criminal organizations or armed groups. Smugglers are intermediaries who facilitate the crossing of the migration route. Although they are different from traffickers, traffickers need to cross Niger, Libya and the Mediterranean Sea, relying on smugglers, who may also take the opportunity to exploit the victims¹⁶. In other cases, trafficking is connected to an organized criminal group. These organizations operate transnationally, establishing relations between different actors through the migratory route.¹⁷ Additionally, armed groups and militias

¹⁴ Sarah Adeyinka, Ine Lietaert and Ilse Derluyn, 'It Happened in the Desert, in Libya and in Italy: Physical and Sexual Violence Experienced by Female Nigerian Victims of Trafficking in Italy' (2023) 20(5) *International Journal of Environmental Research and Public Health* 4309 «<https://doi.org/10.3390/ijerph20054309>»

¹⁵ Sarah Adeyinka, Ine Lietaert and Ilse Derluyn, 'The Role of Juju Rituals in Human Trafficking of Nigerians: A Tool of Enslavement, But Also Escape' (2023) 13(4) *SAGE Open* 1 «<https://doi.org/10.1177/21582440231210474>»

¹⁶ UNODC (n 7) ch 2

¹⁷ *ibid*

that control strategic territory, may play a role in shaping migration routes by facilitating the trafficking and benefiting from it.¹⁸

Furthermore, a key actor within trafficking networks are the *madams*. Although they can be a part of the initial recruitment of the victims, they play a more significant role in the later phases of the process, assuming the control of the victims in the place of destination, overseeing their sexual exploitation and ensuring the payment of the debts.¹⁹

1.2.3. Recruitment in Nigeria

The recruitment of Nigerian women into the human trafficking network normally occurs in contexts marked by significant socio-economic vulnerabilities.

Reports have shown that a large number of Nigerian women trafficked in Italy are from Edo State, mainly from Benin City, which has been identified as a key hub for recruitment.²⁰ This recruitment works because of the existence of well-established human trafficking networks in this region, but also socioeconomic conditions that increase the vulnerability of these women.

The vulnerability of these women stems from different factors, but the crucial factor is poverty. In some regions of Nigeria there is still a preference for a male heir. Since there is a lack of inheritance distributed to women, it can result in poverty. Also, because of this, parents see women as not worthy of the investment in education. Without education, there are not as many opportunities, leading them to unemployment. This makes women desperate to find a job to help support their family. Consequently, these women become victims of false promises of employment, professional training, education or better conditions of living²¹.

Recruitment does not rely on physical coercion, but rather on relationships of trust, which are later reinforced by mechanisms of control. The victims are normally informally approached by

¹⁸ *ibid*

¹⁹ Human Rights Watch, “‘You Pray for Death’: Trafficking of Women and Girls in Nigeria’ (27 August 2019) <<https://www.hrw.org/report/2019/08/27/you-pray-death/trafficking-women-and-girls-nigeria>> accessed 24 February April 2026.

²⁰ US Department of State, *2021 Trafficking in Persons Report: Nigeria* (US Department of State 2021) <<https://www.state.gov/reports/2021-trafficking-in-persons-report/nigeria>> accessed 15 March 2026

²¹ Tim Braimah, *Sex Trafficking in Edo State: Causes and Solutions* (2013) 13(3) *Global Journal of Human Social Science* 17, 18 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2273039> accessed 25 March 2026.

family, friends or acquaintances, building a false sense of trust lured by false promises, leading them to believe that migrating is a legitimate opportunity for a better life²².

The recruitment process is accompanied by the imposition of a debt, corresponding to the travel costs. It is this debt that holds these women in a dependent position in relation to the traffickers. The debt is usually high and it can reach 50 000 euros if the final destination is Europe.²³ In this context, with the pressure to fulfill the obligation, the sexual exploitation frequently arises as the only viable way to ensure the payment of the debt, reinforcing the cycle of control and exploitation. As an example, IOM reports that women are approached with false promises of a job and, when they arrive at the final destination, the traffickers take away their passports and make them pay a debt through sexual exploitation.²⁴

As previously mentioned, the *madams* are also involved in the recruitment. They are women who were also trafficked, but stayed in the trafficking network and now occupy one of the highest positions in the hierarchy of the network. In many cases, the *madams* organize recruitment and may even do it themselves. They arrange the victims' travel and maintain connections with the intermediaries along the route, making sure that they arrive at the final destination. Furthermore, they exercise direct control over the victims, supervising their sexual exploitation and ensuring the payment of the debt.²⁵

Moreover, in some cases, this process of recruitment is reinforced by practices of a ritual nature, used to fortify the victims' submission, as it will be analyzed in the next section.

1.2.4. *Juju* Rituals as a Mechanism of Control

In the trafficking of Nigerian women for sexual exploitation, the *Juju* rituals constitute one of the most frequent mechanisms of recruitment and control documented. However, it is important to underline that these rituals are not universal, neither are the only control mechanism used in the

²² Adeyinka, Lietaert and Derluyn, 'The Role of Juju Rituals' (n 15)

²³ International Organization for Migration, '*Voodoo' Curses Keep Victims of Trafficking Under Bondage* (IOM 2016) <<https://www.iom.int/news/voodoo-curses-keep-victims-trafficking-under-bondage>> accessed 17 March 2026

²⁴ *ibid*

²⁵ Adeyinka, Lietaert and Derluyn, 'The Role of Juju Rituals' (n 15)

trafficking network. Nevertheless, it is highly used when it comes to the trafficking of these women and it is pointed out as one of the distinctive elements of this trafficking²⁶.

The *Juju* rituals are practices of a spiritual and traditional nature, realized before the departure of the victims. Traditionally, these rituals are used as a sanction for social behavior. In this case it is used to manipulate and control the victim²⁷.

These rituals involve an oath taking before a spiritualist or a so-called *Juju* doctor. The women are taken to shrines where they vow to never reveal the identity of the trafficker and to pay a debt to repay the costs of the travel. Therefore, the ritualists take the women's personal items, such as underwear, pubic hair, nails, hair, blood, etc. They believe that the person that holds the women's items has their aura, meaning that they hold control over that person.²⁸ During the ritual, women can also be obliged to eat the heart of a chicken or other unknown things.²⁹

The main objective of these rituals is to create fear to control the women. The traffickers accomplish that because the women believe that after taking the oath, if they ever break it, it can result in serious consequences. The ritualists tell them that a breach of the oath can result in death or serious disease to them or their families, infertility or even madness³⁰. It is with this fear that traffickers can ensure silence and obedience from the victims. Consequently, the victims see their autonomy be significantly limited, as well as their capacity to resist or escape.

From a legal point of view, these rituals have particular importance because they constitute psychological coercion that limits the autonomy of the victims.³¹ This kind of rituals fit in the concept of abuse in a vulnerable situation, as it is predicted in article 3 of the Palermo Protocol³².

²⁶Sandra Eke and others, 'African Traditional Religion and "Juju" in Human Trafficking' (2016) 17(1) *Journal of International Women's Studies* art 1 <<https://humantraffickingsearch.org/wp-content/uploads/2017/06/African-Traditional-Religion-and-Juju-in-Human-Trafficking.pdf>> 7 accessed 20 March 2026

²⁷ Adeyinka, Lietaert and Derluyn, 'The Role of Juju Rituals' (n 15)

²⁸ibid

²⁹ibid

³⁰ Ngozi Msuya, 'Traditional "Juju Oath" and Human Trafficking in Nigeria: A Human Rights Perspective' (2019) *De Jure* <https://scielo.org.za/scielo.php?script=sci_abstract&pid=S2225-71602019000100007> 1 accessed 3 June 2026.

³¹ European Union Agency for Asylum, *COI Report – Nigeria: Sex Trafficking of Women* (EUAA 2022) <<https://www.euaa.europa.eu/publications/coi-report-nigeria-sex-trafficking-women>> accessed 20 March 2026

³² UNODC, *Issue Paper: Abuse of a Position of Vulnerability and Other 'Means' within the Definition of Trafficking in Persons* (UN 2012) 72

Consequently, and according to article 3 (b) of the same protocol, any initial consent by the victims is legally irrelevant³³.

Finally, it is important to also refer that, in 2018, Oba Ewuare II, considered the King of Benin, issued a public declaration condemning the utilization of *Juju* rituals for human trafficking purposes. He declared that any oath taken by any person during these rituals would be considered null. This declaration represents the acknowledgement of the relevance of these practices as a control mechanism and it is an attempt to weaken their efficiency. However, although it has encouraged some women to escape the trafficking, the fear associated with juju rituals still persists in some victims, preventing them from coming forward.³⁴

1.2.5. Trafficking along the Migration Routes

The control that is held over the victims is kept during the migration route through different mechanisms adapted to the various phases of the journey. The traffickers still have control over their victims even if they are not physically present, by relying on other actors to guarantee the continuity of the trafficking network. Consequently, the substitution of different actors along the route does not interrupt the trafficking process, but rather ensures its continuity.³⁵

This control tends to reinforce itself throughout the migration route, as the vulnerability and dependence of the victims increases. The debt imposed during recruitment still pressures the victims and can be aggravated during the journey. In parallel, the fear associated with the rituals still persists, limiting their capacity to resist³⁶. To these factors is added new threats and intimidation that arise during the journey, demonstrating how dangerous the journey is and how the vulnerability of the victims aggravates³⁷.

During the journey, the victims are exposed to multiple risks, including sexual abuse, physical violence, extortion or even death. This mostly happens during the crossing of the Sahara Desert,

³³ Palermo Protocol (n 10) art 3(a)–(b).

³⁴ Adeyinka, Lietaert and Derluyn, 'The Role of Juju Rituals' (n 15)

³⁵ Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert' (n 14)

³⁶ 'Exploitation and Enslavement: Two Nigerian Migrants Take Rights Case to UN Committee' (*InfoMigrants*, 10 January 2022) <<https://www.infomigrants.net/en/post/37752/exploitation-and-enslavement-two-nigerian-migrants-take-rights-case-to-un-committee>> accessed 22 March 2026.

³⁷ Human Rights Watch, "'You Pray for Death'" (n 19) p 5

in Niger. Some reports mention scarcity of water and food, having to witness people dying, either because of the extreme environmental conditions or because they were killed, extortion, being stolen, but mostly, episodes of sexual and physical violence.³⁸ Furthermore, exploitation is also documented, which is not limited to traffickers, but is also perpetrated by actors responsible for the transportation of the victims.

Throughout the migration route, the victims often find themselves in a situation of significant dependence on the trafficking networks, not only for transportation, but also because of their subsistence. They depend on the network to have access to transportation, food, shelter and information, as they do not have other means at their disposal to continue the journey alone or even to abandon it. Moreover, some victims do not have their passports or any document of identification, they do not know the territory, nor the route, and they might not know the language, which contributes to the aggravation of the dependence and also limits their capacity to look for help or escape the trafficking network.³⁹

As they pass the Sahara Desert, they reach Libya, a country with a crucial role in the Central Mediterranean route. Libya is not only a country of transit, but also a place where migrants are frequently retained for long periods, often under the control of various actors. In this new context, the control over the victims tends to intensify, contributing to a significant dependence, especially in light of the lack to access to resources, documentation and protection. Furthermore, Libya is frequently remembered as a place with precarious conditions and widespread practices of exploitation and abuse⁴⁰.

1.3. Libya as a Key Context for Trafficking

The context previously described highlights that Libya is a critical country in the migration route. However, to better understand the intensity of the abuses and the continuation of the trafficking in this country, it is necessary to analyze the structural factors that characterize the

³⁸ Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert' (n 14)

³⁹ Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert' (n 14)

⁴⁰ HRW, 'No Escape from Hell' (n 8).

political and institutional reality of Libya. In this regard, this chapter examines the political fragmentation, the lack of protection mechanisms and the role of non-state actors, in order to demonstrate whether Libya configures an environment propitious to the occurrence of human rights violations.

1.3.1. Political and Institutional Context

Libya has been politically fragmented since the 2011 revolution and the civil war. Libya is divided between two authorities: controlling the western Libya there is the GNU, which is internationally recognized and replaced GNA in 2021; on the other hand, controlling the east territory, there is the GNS that is aligned with the Libyan National Army. This fragmentation translates into a structural incapacity of the State to exercise control over the territory, over borders and over the various armed groups that operate in the country.⁴¹

Consequently, various zones of the Libyan territory are controlled by militias and armed groups that have a significant influence and a high degree of autonomy, often surpassing official institutions. They control strategic zones, including migration routes and detention centers for migrants. These actors operate in an autonomous way, without state supervision, which facilitates their involvement in activities related to migrants, including smuggling, exploitation and abuse.⁴²

Furthermore, the lack of effective control and accountability mechanisms contributes to an environment of impunity⁴³, in which human rights violations occur without consequences. This context of fragile institutions facilitates the action of human trafficking and allows the continuation of abusive practices, making Libya a country propitious to the exploitation of migrants and victims of trafficking.

⁴¹ United Nations Office for the Coordination of Humanitarian Affairs, *Libya Humanitarian Profile 2025 (As of May 2025)* (2025) 3

⁴² UN Human Rights Council, *Detailed Findings of the Independent Fact-Finding Mission on Libya* (27 March 2023) UN Doc. A/HRC/52/CRP.8

⁴³ Ibid

1.3.2. Migrant Detention System

In Libya, migrants and trafficking victims are frequently placed in detention centers, where they remain detained for prolonged and undefined periods. Detention centers are facilities where migrants in an irregular situation are placed and deprived of liberty, while they wait for regularization, deportation processes or asylum requests⁴⁴. Formally intended to regulate migration, the centers serve as a base for identification and expulsion of the country.

However, the Libyan system is characterized by the coexistence of official detention centers, under the authority of state entities, and informal detention centers, controlled by militias or other non-state actors.⁴⁵

Moreover, the detention, in many cases, occurs arbitrarily, without any clear legal basis or access to judicial control mechanisms⁴⁶. Consequently, migrants held in Libya find themselves in a situation where there is a near-total absence of legal guarantees and institutional protection, lacking effective access to court, legal assistance or means to contest their detention. Additionally, the lack of protection is aggravated due to the fact that Libya does not have a functional asylum system, which prevents migrants from accessing mechanisms of international protection⁴⁷. Furthermore, Libya did not ratify the Geneva Convention of 1951 relating to the Status of Refugees, nor the 1967 Protocol, which contributes to the non-existence of an effective legal framework for protection⁴⁸.

On the other hand, the conditions in these detention centers are frequently characterized by overcrowding and a lack of basic resources, including access to food, water and adequate hygiene

⁴⁴ Xchange, 'Libyan Detention Centers: A Legal Analysis' (Xchange) «https://xchange.org/map/Libya_DC.html» accessed 23 March 2026

⁴⁵ OHCHR and UNSMIL, *Migrants in Libya: Victims of a Violent Business Model of Systemic Violations and Abuses* (UN 2026) «<https://www.ohchr.org/sites/default/files/documents/press/2026-02/unsmil-ohchr-business-usual-en.pdf>» accessed 25 March 2026

⁴⁶ *ibid*

⁴⁷ SIHMA, 'Libya' (*African Migration Statistics*, Scalabrini Institute for Human Mobility in Africa) <https://sihma.org.za/african-migration-statistics/country/libya> accessed 25 March 2026.

⁴⁸ UNHCR, 'Submission by the United Nations High Commissioner for Refugees for the Universal Periodic Review — Libya' (36th Session, UPR-Info, 2021) «https://upr-info.org/sites/default/files/documents/2021-04/unhcr_upr_submission_on_libya_36th_session.pdf» accessed 24 March 2026.

conditions. Furthermore, the access to medical care, in many cases, does not exist or it is extremely limited, contributing to the aggravation of the vulnerability of the detainees.⁴⁹

As previously noted, militias and armed groups perform a crucial role in the management of the detention centers, exercising a direct authority over the detainees, frequently without any supervision or institutional regulation. Beyond their control function, these actors can also be involved in practices of exploitation and abuse, as well as in trafficking networks. Therefore, their contribution in the detention centers can only demonstrate that the detention system does not work within an effective legal framework.⁵⁰

To finish, it is important to note that the detention centers in Libya can also exercise a role in exploitation activities. Deprivation of liberty, coupled with a lack of protection, creates particularly favorable conditions for exploitative practices and detainees may be treated as sources of economic value. Additionally, these places can also assume the functions of intermediation and recruitment, which means that migrants can be integrated into trafficking networks while they are staying in the centers⁵¹.

1.3.3. Human Rights Violations in Detention

In this context, the migrants detained in Libyan centers endure systematic human rights violations, as thoroughly documented by international organizations. These violations are not isolated incidents; rather, they form part of a persistent pattern of abuse occurring within an environment marked by inadequate protection and oversight⁵².

Among the main reported violations of human rights is included deprivation of liberty, physical violence, including torture and ill-treatment, as well as sexual violence and gender-based violence and forms of exploitation.

⁴⁹ OHCHR and UNSMIL, *Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya* (2018) <<https://www.ohchr.org/sites/default/files/Documents/Countries/LY/LibyaMigrationReport.pdf>>

⁵⁰ *ibid*

⁵¹ UN Human Rights Council, 'Detailed Findings of the Independent Fact-Finding Mission on Libya' (n 42).

⁵² OHCHR and UNSMIL, *Migrants in Libya* (n 45).

First of all, and as it was mentioned before, migrants are frequently subjected to arbitrary detention, without any clear legal basis, often accompanied by the confiscation of personal items, including documents, means of communication and money, which further reinforces their dependency.⁵³

Additionally, the detention centers are commonly characterized by overcrowding large spaces, where people do not have a clean space to seat and rest, where there are not enough bathrooms or other sanitary conditions, significantly undermining human dignity. The lack of adequate medical access, combined with the unhealthy conditions, contributes to the spread of diseases and to aggravating the detainee's health state. Parallely, reports indicate significant impacts on mental health problems, including symptoms of depression, anxiety and post-traumatic stress disorder.⁵⁴

Numerous reports document physical violence that, in many cases, can amount to torture or ill-treatment. Such practices include being beaten with metal bars, water pipes and sticks, being forced into uncomfortable positions, being punched, kicked and some even electric shocked. The United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has highlighted that migration-related detention, particularly where it occurs without adequate safeguards, may be incompatible with the prohibition of torture and ill-treatment. These concerns are particularly relevant in the Libyan context, where multiple reports have documented severe abuses in detention centers.⁵⁵

Finally, numerous reports document sexual violence and gender-based violence, affecting women especially. One of the violations documented by women in detention centers is the subjection to intrusive searches conducted by male guards⁵⁶, particularly in the absence of female personnel. Another violation is rape, which is committed by the guards themselves or by personnel of the center, frequently with the complicity or tolerance of the authorities.⁵⁷ Some women are even

⁵³ OHCHR and UNSMIL, *Desperate and Dangerous* (n 49).

⁵⁴ *ibid*

⁵⁵ UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (26 February 2018) UN Doc A/HRC/37/50

⁵⁶ OHCHR and UNSMIL, *Desperate and Dangerous* (n 49).

⁵⁷ Médecins Sans Frontières, *'You're Going to Die Here': Abuse in Libyan Detention Centers* (MSF 2023) «<https://www.doctorswithoutborders.org/latest/youre-going-die-here-abuse-libyan-detention-centers>» accessed 15 April 2026

forced to have sexual relations in exchange for food or freedom⁵⁸. Furthermore, there have been documented cases where women are taken from the detention centers in the middle of the night, by armed men, returning a couple of hours later or just the next day. Some women never return and the authorities do not provide any explanation about their whereabouts.⁵⁹

Besides the documented violations in the interior of the detention centers, it is also important to mention the existence of parallel structures of exploitation that operate in connection with the detention system. The so-called connection houses, houses controlled by traffickers, smugglers and armed groups, function as a place for forced prostitution where Nigerian women are subjected to sexual exploitation⁶⁰.

The seriousness of the documented violations of human rights is recognized by the UN. In 2023, the UN Independent Fact-Finding Mission on Libya concluded, in its final report, that there are substantial foundations to conclude that crimes against humanity are being committed in Libya against migrants in the context of deprivation of liberty, including murders, slavery, sexual slavery, sexual violence and rape.⁶¹

Furthermore, these conditions and practices are incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners⁶² and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders⁶³, which are the reference standards internationally recognized for the evaluations of detention conditions. These practices are also incompatible with binding international obligations, such as the Convention against

⁵⁸ Amnesty International, *Libya: Horrific Violations in Detention Highlight Europe's Shameful Role in Forced Returns* (Amnesty International 2021) «<https://www.amnesty.org/en/latest/press-release/2021/07/libya-horrific-violations-in-detention-highlight-europes-shameful-role-in-forced-returns/>» accessed 15 April 2026

⁵⁹ Office of the United Nations High Commissioner for Human Rights, *Detained and Dehumanised: Report on Human Rights Abuses Against Migrants in Libya* (13 December 2016) «[LibyaMigrationReport.pdf](#)» 47

⁶⁰ Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert, in Libya and in Italy' 8-9 (n 14).

⁶¹ UN Human Rights Council, 'Detailed Findings of the Independent Fact-Finding Mission on Libya' (n 42).

⁶² United Nations, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (adopted 17 December 2015) UN Doc A/RES/70/175 «https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf»

⁶³ United Nations, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* (adopted 21 December 2010) UN Doc A/RES/65/229, «<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial>»

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶⁴ and the International Covenant on Civil and Political Rights⁶⁵, whose legal implications will be analyzed in chapter 4.

It is in this context of documented systematic violations that the Italy-Libya cooperation must be assessed, especially the role of the Italian support to the Libyan Coast Guard in perpetuating this cycle of abuses.

⁶⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT)

⁶⁵ International Covenant on Civil and Political Rights (opened for signature 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

2. Italy-Libya Cooperation

The previous chapter demonstrated that Libya constitutes a critical environment for the occurrence of systematic violations of human rights against migrants and victims of trafficking. The political fragmentation, the lack of effective protection mechanisms and a pattern of documented abuses in detention centers, constitute the factual and contextual bases upon which the following analysis of the present chapter is built.

This chapter focuses on the cooperation established between Italy and Libya in the field of migration management. It examines the legal and political framework that rules this cooperation, with particular focus on the agreements concluded between the two parties and the operational role of the LCG. The understanding of the structure and the range of this cooperation is essential to evaluate, in the subsequent chapters, whether Italy is internationally responsible for the violations of human rights that occur within this framework of cooperation.

2.1. Early Cooperation Agreements

The Italy-Libya cooperation in matters of migration management did not emerge in isolation, but rather it is a product of a long historical, political and economic process that shaped the bilateral relations between the two countries throughout the decades. To better understand the scope and implications of the MoU, it is therefore essential to analyze the earlier cooperation instruments that established the foundation of this relation, specifically the 2000 Agreement and the 2007 Protocols.

The context that motivated Italy to establish a formal cooperation with Libya on migration matters dates back to the 1990s. Italy's accession to the Schengen Agreement, signed in 1990 and integrated in the Italian legal system and to the Amsterdam Treaty in 1997, brought new obligations with regard to external border control⁶⁶. Parallely, the massive arrival of 20 000 Albanians who ran away from the collapse of the Albanian communist regime, in 1991, constituted a turning point

⁶⁶ Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders (signed 19 June 1990, entered into force 26 March 1995) OJ L 239/19

in the Italian perception on the migration pressure originating from the Mediterranean. These two factors combined led Italy to start looking at Libya as a potential entry route of migrants, in a moment where the external borders of the European Economic Community were subject to growing scrutiny⁶⁷.

During the 1990s, the political instability in various African countries led to a significant increase in migration flows to Libya, which started functioning as a transit territory for African migrants. However, the increase of migrants in Libya created internal tensions, bringing the Libyan authorities to adopt more restrictive measures regarding migrant workers. The deterioration of the conditions to which they were subjected from Libya, ended up redirecting the flows to other North African countries and, later, to Europe, to Italy. Consequently, Libya became the main transit territory for migrants attempting to reach Italy, taking center stage on the Italian migration policy agenda.⁶⁸

The first formal instrument of the bilateral cooperation was established on the 13 of December of 2000. This agreement expressed the availability of both parties to unite forces against terrorism, organized crime, illegal trafficking of drugs and psychotropic substances and illegal immigration⁶⁹. The main mechanism consisted of the exchange of information about the illegal migration flows, the criminal organizations that facilitated illegal routes and about the operative methods used by traffickers.⁷⁰

However, the 2000 Agreement failed to meet the expectations of an efficient operational instrument. Its nature was essentially declaratory, limiting itself to state the intentions of the cooperation in an imprecise form and without any concrete implementation mechanism. One possible reason for this stalemate resides in the fact that the Agreement did not address the Italian

⁶⁷ Mathias Hatleskog Tjønn and Maria Gabrielsen Jumbert, 'Migration Across the Mediterranean: Shaping Italy-Libya Relations Over Time' in Maria Gabrielsen Jumbert and others (eds), *Externalizing Migration Management: Europe, North Africa and the Middle East* (Springer 2024) 55-56 «[Migration Across the Mediterranean: Shaping Italy-Libya Relations Over Time | Springer Nature Link](#)» accessed 28 April 2026.

⁶⁸ *ibid* 54

⁶⁹ Martino Reviglio della Veneria, 'Externalizing Migration Management through Soft Law: The Case of the Memorandum of Understanding between Libya and Italy' (2019) 20 *Global Jurist*, 4

⁷⁰ Agreement on Collaboration in the Fight against Terrorism, Organised Crime, Illegal Trafficking of Drugs and Psychotropic Substances and Clandestine Immigration (Italy-Libya, 2000) art 2

colonization of Libya, something that Gaddafi expected as a previous condition for any collaboration between these parties⁷¹.

In the face of persistence and the lack of concrete results from the previous agreement, Italy and Libya signed two new cooperation instruments in Tripoli, in December of 2007. These Protocols emerged from a specific political context: Gaddafi's regime had instrumentalized the control of migration flows as a negotiation tactic, exploring the growing migration pressure to obtain counterparts from Italy and the EU⁷², especially the lifting of economic sanctions imposed since 1986 (following the involvement of Libyan secret services in the attack of Lockerbie and the oil exploitation activities in the Mediterranean) and a financial compensation for the colonial period⁷³.

The first Protocol aimed to implement and operationalize what had been established in the 2000 Agreement, giving it legal and operational substance⁷⁴. Its most significant element was joint maritime patrols in the Central Mediterranean, to which Italy supplied to Libya six vessels, in which there would be operating personnel from both countries. These operations covered not only the control of irregular routes, but also SAR missions, both in Libyan and international waters. The Protocol also contemplated the possibility of involving the EU in the reinforcement of the Libyan land and sea borders surveillance capacity, through European financing⁷⁵.

The second instrument, the Technical-Operational additional Protocol, of December of 2007, focused on the operability of the agreement and on the concrete procedures of the joint patrols⁷⁶. From a financial point of view, the Protocol imposed to Italy a considerable weight, being Italy responsible for supporting the costs of operation and maintenance of the vessels made available to

⁷¹ Meron Ghebreigziabih Ogbazghi, 'The Italy-Libya Agreements: Controversial Cooperation — Assessing the Human Rights Violations on Matters of Refugees and Migrants Protection' 13-16 (Master's Dissertation, University of Macedonia 2022)

⁷² Tjønn and Jumbert, 'Migration Across the Mediterranean' (n 67) 61.

⁷³ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 12.

⁷⁴ Protocollo tra la Repubblica Italiana e la Gran Giamahiria Araba Libica Popolare Socialista [Protocol between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya] (Tripoli, 29 December 2007) <<https://briguglio.asgi.it/immigrazione-e-asilo/2009/maggio/prot-italia-libia-2007.pdf>> accessed 28 April 2026.

⁷⁵ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 14.

⁷⁶ Protocollo aggiuntivo tecnico-operativo al Protocollo di cooperazione tra la Repubblica italiana e la Gran Giamahiria Araba Libica Popolare Socialista, per fronteggiare il fenomeno dell'immigrazione clandestina [Additional Technical-Operational Protocol to the Cooperation Protocol between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya to deal with the phenomenon of illegal immigration] (Tripoli, 29 December 2007) <<https://file.asgi.it/protocollo.italia.libia.tripoli.dicembre.2007.pdf>> accessed 28 April 2026.

Libya, as well as any compensation owed to the Italian personnel in the exercise of their functions and the inherent charges to supplying naval units⁷⁷.

However, even though the 2007 Protocols had a more operational nature, they still faced similar obstacles with regard to their effective implementation. None of the previous measures was concretely put into practice, mostly because of the lack of collaboration of the Libyan authorities. This situation can be explained by the fact that the agreements continued to not give an answer to the colonization⁷⁸.

In the point of view of the protection of human rights' framework, the 2007 Protocols had a significant gap on the protection of migrants. Both instruments gave more importance to the control and containment of migration flows to the detriment of the protection of people on the move.

In conclusion, these first cooperation agreements established a pattern that would characterize the bilateral relation between Italy and Libya on matter of migration: a logic of externalization and containment, where Italy looked to transfer to Libya the responsibilities of the migration flow management, without substantive guarantees of human rights respect. The intention of both countries was, since the beginning, to prevent and repress irregular immigration, in detriment of the migrant's protection and the creation of legal and safe routes to admission in Europe.

2.2. The Treaty on Friendship, Partnership and Cooperation

2.2.1. Historical and Political Context

The bilateral relationship between Italy and Libya is deeply marked by a colonial past, which had never been formally dealt with. The Italian occupation of Libya lasted from 1911 to 1943, leaving deep marks on the Libyan population, having been characterized by systematic violence

⁷⁷ *ibid* art.3, par.7

⁷⁸ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 13-16

and grave atrocities, such as the use of chemical weapons, the creation of concentration camps and the genocide of the Senussi population⁷⁹.

After Libyan independence in 1951 and the start of Gaddafi's regime in 1969, the colonial reparations became a structural element in the relation between the two countries. In this context, this Treaty was not just an instrument of cooperation in matters of security and migration, but also an act of reconciliation that allowed both countries to leave behind a hard past and start an economic relationship⁸⁰.

On the Italian side, the motivation to conclude this Treaty was the intensification of the migration flows coming from Libya, putting Italy under growing pressure, both domestically and at the European level. Consequently, the need to find a lasting solution for the Mediterranean border control made Libya an essential partner. Therefore, Berlusconi, at the time Prime Minister of Italy travelled to Benghazi in August 2008 to sign the Treaty. Additionally, he also gave a public apology for the colonialism, even though it was vaguely formulated, avoiding the term colonialism and attenuating the historical weight of Italy's actions⁸¹.

2.2.2. Structure and Content of the Treaty

The Treaty of Friendship, Partnership and Cooperation, signed in Benghazi on 30 of August of 2008 and ratified in 2009, established the most complete and ambitious instrument concluded between both countries until that date⁸². Unlike the previous instruments that would focus exclusively on security and migration matters, the Benghazi Treaty looked to establish a long-term partnership, covering various matters such as economic cooperation, investment, culture, security and electricity⁸³.

⁷⁹ Alessandra Ferrini, 'Italy, Libya and the EU: Co-dependent Systems and Interweaving Imperial Interests at the Mediterranean Border' in Paul Gilbert, Clea Bourne, Max Haiven and Johnna Montgomerie (eds), *The Entangled Legacies of Empire: Race, Finance and Inequality* (Manchester University Press 2023) 196.

⁸⁰ Tjønn and Jumbert, 'Migration Across the Mediterranean' (n 67) 61.

⁸¹ Ferrini, 'Italy, Libya and the EU' (n 79) 199

⁸² Treaty on Friendship, Partnership and Cooperation between Italy and Libya (signed 30 August 2008, entered into force 2 March 2009) (Benghazi Treaty)

⁸³ Natalino Ronzitti, 'The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?' (2009) 1(1) *Bulletin of Italian Politics* 129.

In terms of general principles, the Treaty asserted that it respected the sovereign equality of both countries, the prohibition of threat or use of force and non-interference in domestic matters of the other party. The text also included a reference to the respect of human rights and fundamental freedoms, with explicit mention of the UDHR and the UNC⁸⁴. Even though this reference was general and without concrete mechanisms for enforcement and control, it represented a humanitarian dimension that was missing in the previous instruments.

With regard to the cooperation in matters of migration and border control, the article 19° of the Treaty reestablished what had been established in the 2007 Protocols, setting up the realization of maritime patrols with joint personnel on vessels provided by Italy⁸⁵. This Treaty conferred a more solid legal base for the joint operations in the Central Mediterranean, legitimizing the Italians in Libyan waters and creating a bigger operational cooperation. The Treaty also established the creation of Libya's land border control system, which was being developed by Italian companies⁸⁶.

From an institutional point of view, article 14° of the Treaty established two follow-up committees⁸⁷. The first one, the Partnership Committee, operated at the Prime Ministers' level and met annually with the objective of adopting the necessary measures for the implementation of the Treaty. On the other hand, the second one, the Implementation Committee, operated on the Ministers of Foreign Affairs' level and had the competencies to summon extraordinary meetings whenever one of the parties considered that the other party had violated the commitments made⁸⁸. The existence of this second committee suggested a responsibility mechanism.

With regard to financing, the Treaty established distinct obligations for both parties. Italy agreed to invest five billion dollars over the course of twenty years in the construction of Libyan infrastructures⁸⁹, with the possibility of having funding from the EU for part of the agreed measures⁹⁰. On the other hand, Libya did not assume any concrete financial obligations, but had

⁸⁴ *ibid* 127

⁸⁵ *ibid* 130.

⁸⁶ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 19

⁸⁷ Benghazi Treaty (n 82) art. 14.

⁸⁸ Ronzitti, 'The Treaty on Friendship, Partnership and Cooperation between Italy and Libya' (n 83) 130

⁸⁹ *ibid* 128

⁹⁰ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 19

assumed a political and operational counterpart: to guarantee Italy a privileged position in oil access and to control migration flows heading to Italy⁹¹.

2.2.3. Push-back Operations and its Implications

One of the most immediate and controversial effects of the Benghazi Treaty was the intensification of the push-back operations of migrants intercepted in the Mediterranean. Based on Article 19⁹², the Italian authorities started to push-back to Libya, or directly to their country of origin, migrants intercepted at sea by Italian vessels⁹³. These operations were quickly implemented after the ratification of the Treaty in 2009, producing immediate effects on the reduction of the migration flows that arrived to Italy.

Consequently, from 2008 to 2010, the number of irregular arrivals to Italy decreased from around 37 000 to a little over 400⁹⁴. However, this reduction meant that the migrants who were returned to Libya were in the hands of a detention system without any guarantee of protection of their fundamental rights, in a country that has not even ratified the 1951 Geneva Convention and does not have an asylum system⁹⁵.

A series of concerns were raised by international organizations of human rights about migrants being pushed-back to Libya and they were brought to the attention of the Italian authorities. The reports of violence, arbitrary detention and inhuman conditions in detention centers were public and abundant⁹⁶. By proceeding with the push-back operations without an individual evaluation of each migrant, Italy was exposing them to serious risks of persecution and mistreatment, violating the principle of non-refoulement⁹⁷.

In conclusion, from a human rights point of view, the Benghazi Treaty raised questions regarding Italy's responsibility for the violations committed against migrants pushed-back to

⁹¹ Ferrini, 'Italy, Libya and the EU' (n 79) 199

⁹² Benghazi Treaty (n 82) art 19

⁹³ *ibid* 199

⁹⁴ Tjønn and Jumbert, 'Migration Across the Mediterranean' (n 67) 58

⁹⁵ Reviglio della Veneria, 'Externalizing Migration Management through Soft Law' (n 69) 5

⁹⁶ Ferrini, 'Italy, Libya and the EU' (n 79) 200

⁹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 3

Libya. The knowledge of the detention centers' conditions and the lack of a mechanism of individual evaluation before deportations, constitutes an element for analyzing Italy's international responsibility. The Benghazi Treaty was not only a cooperation instrument, but also the legal framework that made possible a systematic practice of human rights violations, with the complicity of both countries.

2.3. Hirsi Jamaa and Other v. Italy: The Condemnation of Push-Back Operations

The case of *Hirsi Jamaa and Others v. Italy*, brought before the ECtHR in 2009, represents a turning point in the bilateral relationship between Italy and Libya in the matter of migration management, establishing a judicial precedent that forced Italy to rethink its migration control strategy and, consequently, led to the conclusion of the Memorandum of Understanding of 2017.

The facts of the case date back to 6 of May of 2009, when three vessels, that were transporting around two hundred people, were intercepted by Italian military ships approximately thirty-five nautical miles south of Lampedusa, in the SAR zone under Malta's responsibility. Among the people on board of that ship, there were the applicants, eleven Somalians and thirteen Eritreans. All of them were transferred to the Italian military ships and transported back to Tripoli, where they were handed over to the Libyan authorities. The applicants claimed that, during the return trip, the Italian authorities did not communicate to them the true destination, did not take any measures to identify them and that their personal documents were confiscated⁹⁸.

On the next day after the operation, the Italian Minister of the Interior publicly declared that the interceptions of the vessels in high seas and the return of migrants to Libya were the direct consequence of the entry into force of the 2009 agreement with Libya, presenting the operation as a significant progress in the fight against irregular migration⁹⁹.

After being handed over to Libya, the applicants faced serious violations of their fundamental rights. Fourteen of the applicants were granted refugee status through the UNHCR office in Tripoli.

⁹⁸ *Hirsi Jamaa and Others v Italy* App no 27765/09 (ECtHR, 23 February 2012) paras 9-14

⁹⁹ *ibid* paras 13

Two of the applicants died of unknown circumstances. The remaining individuals lived in a precarious condition in Libya, while some were able to relocate to third countries¹⁰⁰.

2.3.1. Legal Issues

This case presented by the ECtHR raised a number of legal questions. The first and most fundamental question was: could Italy be held accountable, under the ECHR, for the acts committed in high seas, outside of its territory? The Italian Government argued that the obligations to save lives in high seas, imposed by the Montego Bay Convention¹⁰¹, did not create itself a judicial link between the State and the people saved. From the Government's perspective, the operation had been conducted within the scope of a humanitarian rescue and not a maritime police operation. Therefore, the migrants rescued were not under the exclusive control of the Italian authorities¹⁰².

The Court rejected this argument. A ship navigating on the high seas is subjected to the exclusive jurisdiction of the State whose flag it flies¹⁰³. Therefore, the Court concluded that the Applicants were, from the moment they boarded the Italian military ships until they were handed over to the Libyan authorities, under the continuous and exclusive control of the Italian authorities. As a result, the Court held that the facts that originated the alleged violations fell within the Italian jurisdiction, under the terms of Article 1° of the ECHR¹⁰⁴, so the State could not invoke the humanitarian nature of the operation to evade its obligations¹⁰⁵.

The second legal question was about the violation of Article 3° of the ECHR¹⁰⁶, that forbids torture and inhuman or degrading treatment. The Applicants claimed that their transfer to Libya had exposed them to the risk of being submitted to treatments contrary to the ECHR, both in Libya and in their countries of origin¹⁰⁷.

¹⁰⁰ *ibid* paras 15-17

¹⁰¹ United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS) arts 92, 94, 98

¹⁰² *Hirsi Jamaa* (n 98) paras 64-66

¹⁰³ UNCLOS (n 101) art 92

¹⁰⁴ ECHR (n 97) art 1

¹⁰⁵ *Hirsi Jamaa* (n 98) paras 77-82

¹⁰⁶ ECHR (n 97) art 3

¹⁰⁷ *Hirsi Jamaa* (n 98) paras 83-84

2.3.2. The Violation of the Article 3° of ECHR

In the matter of the risks of mistreatment in Libya, the Court analyzed the general situation of the migrants in Libya, based on reports from international organizations and NGOs, like UNHCR, Human Rights Watch and Amnesty International. These reports affirmed that any person who would enter Libya in an irregular way was considered clandestine, without making any distinction between irregular migrants and asylum seekers. These people were systematically arrested in inhuman conditions, with reports of torture, unhygienic conditions and lack of medical care. Furthermore, migrants were constantly in danger of being deported to their original country¹⁰⁸.

The Court underlined that this situation was widely known and easily verified by multiple sources, concluding that the Italian authorities knew or should have known that, by returning the Applicants to Libya, it would expose them to treatment contrary to the ECHR. In this regard, the Court rejected the Italian Government's argument that Libya was a safe country for migrants. The fact that Libya had ratified human rights instruments and that UNHCR has an office in Tripoli is not sufficient to guarantee adequate protection, since UNHCR's office was not officially recognized by the Libyan Government and the refugee status given by UNHCR did not guarantee effective protection in Libyan territory¹⁰⁹.

The Court also stated that Italy could not evade its responsibility by invoking the obligations from bilateral agreements with Libya. The State's responsibilities remain even after the celebration of agreements subsequent to the ECHR. In addition, the Court considered that the fact that the Applicants did not expressly formulate an asylum request, does not absolve Italy from its obligations under article 3 of the ECHR, since it was Italy's responsibility to verify with Libya if they were respecting the international obligations in the matter of refugee protection¹¹⁰.

Regarding the risk of deportation to Somalia and Eritrea, the Court concluded that the transfer of the Applicants to Libya would also expose them to treatments contrary to the ECHR. Libya has

¹⁰⁸ *ibid* paras 118, 123, 125

¹⁰⁹ *ibid* paras 127-131

¹¹⁰ *ibid* paras 129, 133, 157

not ratified the 1951 Geneva Convention¹¹¹ and does not have any asylum system, so it does not offer sufficient guarantees against arbitrary deportation¹¹².

2.3.3. The Violation of Article 4° of the ECHR Protocol and Article 13° of ECHR

The Court was also called upon to give its opinion about the applicability of the Article 4° of ECHR Protocol n°4¹¹³, that forbids collective expulsions of foreigners in situations occurring on the high seas. The Italian Government argued that this article was not applicable because the Applicants were not found on Italian territory when they were transferred to Libya. The Court rejected this argument considering that the prohibition of collective expulsions was applicable in an extraterritorial way, every time a state exercises its jurisdiction in the high seas. Admitting otherwise would mean that any state could evade its obligations by moving the border control operations to the high seas¹¹⁴.

Furthermore, the Court concluded that the transfer of the Applicants to Libya was operated without any analysis of the individual's situation. Also, the personnel on board the ship were neither trained to conduct interviews nor were assisted by interpreters and legal advisors. This was sufficient for the Court to conclude that this operation assumed a collective character, thereby violating article 4° of the Protocol 4¹¹⁵.

The Court also declared the violation of Article 13° of ECHR, that guarantees the right to an effective remedy¹¹⁶. The Applicants would have been deprived of any possibility to challenge the return to Libya, since they were not given information about the procedures to follow to avoid repatriation or any mechanisms on the ship that would allow them to do so¹¹⁷.

¹¹¹ Convention Relating to the Status of Refugees (opened for signature 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 art 33

¹¹² *Hirsi Jamaa* (n 98) paras 146-147, 153, 156-158

¹¹³ Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 16 September 1963, entered into force 2 May 1968) ETS 46 art 4

¹¹⁴ *Hirsi Jamaa* (n 98) paras 169-180

¹¹⁵ *ibid* paras 185-186

¹¹⁶ ECHR (n 97) art 13

¹¹⁷ *Hirsi Jamaa* (n 98) paras 201-207

2.3.4. Impact and relevance for the Analysis of the Italian Responsibility

This decision had an important impact on the Italian and European migration policy, by establishing that States cannot realize push-back operations without respecting the fundamental guarantees of migrants' protection, regardless of the place where these operations occur. Italy's condemnation by the ECtHR had, as an immediate consequence, the impossibility to continue to realize direct push-backs in high seas, forcing the Italian authorities to change their migration control strategy.

It is in this context that the MoU of 2017 between Italy and Libya acquires its relevance. Italy's condemnation by the ECHR had, as an immediate consequence, the impossibility to continue to carry out direct push-backs on the high seas, forcing the Italian authorities to change their migration control strategy: to delegate the interception and hand back operations to the LCG, by funding, equipping and training in this matter¹¹⁸.

2.4. Memorandum of Understanding of 2017

2.4.1. From the Hirsi Jamaa Case to the Memorandum: A new Externalization Strategy

Italy's condemnation by the ECtHR did not put an end to the bilateral cooperation with Libya in migration matters. On the contrary, it forced the Italian authorities to reconfigure the cooperation in a way to reach the same goals¹¹⁹. The fall of the Gaddafi's regime in 2011 and the following collapse of the Libyan State¹²⁰ made all of the instruments previously signed by both parties completely irrelevant, leaving Italy without a stable partner to control the migration flows. The political fragmentation of Libya became significantly more complicated for Italy to try to establish an efficient cooperation.

¹¹⁸ Memorandum of Understanding on Development Cooperation, Illegal Immigration, Human Trafficking and Reinforcement of Border Security between Italy and Libya (signed 2 February 2017, entered into force 2 February 2017)

¹¹⁹ Tjønn and Jumbert, 'Migration Across the Mediterranean' (n 67) 59

¹²⁰ Reviglio della Veneria, 'Externalizing Migration Management through Soft Law' (n 69) 4

It was in this context of instability that the so-called migration crisis of 2015 intensified political pressure upon the European Governments. The increase in irregular arrivals to the Italian coast, combined with the European political environment increasingly hostile to immigrants, created the conditions to adopt urgent measures¹²¹. The solution found by Italy was the conclusion of a new agreement with the GNA of Tripoli, the only Libyan government internationally recognized, even if its effective control on Libyan territory was, and still is, very limited¹²².

The agreement established a new strategy: instead of directly operating the interception and hand over operations condemned by the ECtHR, Italy opted to fund, equip and train the LCG so that they could execute such operations. This strategy allowed Italy to step away from the operation, avoiding the legal bond that the ECtHR had identified as determinant for their responsibility, while still exercising a determinant influence on the results of the operations¹²³.

2.4.2. Legal Form and Nature of the MoU

The “Memorandum of Understanding on cooperation in development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security between”¹²⁴ the Libyan State and the Italian State, was signed in Rome on February 2nd of 2017, by the respective Prime-Ministers. The choice of legal form of the agreement was not accidental: by opting for a Memorandum of Understanding instead of a formal international treaty, the Italian Government avoided the constitutional demand of parliamentary approval established in Article 80° of the Italian Constitution¹²⁵, that establishes the intervention of the Parliament in the ratification of international agreements of political nature or that imply new costs.

The MoU is an instrument of soft law, which means it is an agreement that, because of its simplified form, it is not legally binding, but can produce practical effects of great relevance. This qualification has important consequences: on one hand, it facilitates its adoption, dismissing any

¹²¹ Ogbazghi, ‘The Italy-Libya Agreements’ (n 71) 27

¹²² Reviglio della Veneria, ‘Externalizing Migration Management through Soft Law’ (n 69) 4

¹²³ Anja Palm, ‘The Italy-Libya Memorandum of Understanding: The Baseline of a Policy Approach Aimed at Closing All Doors to Europe?’ (*EU Migration Law Blog*, 2 October 2017) <<http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>> accessed 21 May, 2026

¹²⁴ Italy-Libya MoU 2017 (n 118)

¹²⁵ Costituzione della Repubblica Italiana (1948) art 80

control from the legislative power; on the other hand, it makes it difficult to control its application judicially and politically, both at a national and international level¹²⁶.

The fragility of the legal bases of the agreements was then confirmed by the Trapani Court, that concluded that the MoU was ineffective because it didn't follow the ordinary legislative procedure. Additionally, the agreement was celebrated with just the GNA of Tripoli, that does not control all Libya, which raises questions about its applicability to the Libyan regions that are controlled by other authorities¹²⁷.

2.4.3. Structure and Content of the MoU

The MoU consists of a preamble and eight articles, drafted in a generic and imprecise language that, as many authors underline, confers on the instrument a degree of vagueness that compromises its effectiveness¹²⁸. The preamble affirms the main goals of the cooperation: stabilization of the Libyan State, fight against human trafficking, cooperation in terrorism matters and prevention of deaths in the Mediterranean¹²⁹. The formulation of these objectives suggests a humanitarian concern that, as we will see, does not align with the provisions of the agreement.

The agreement systematically uses expressions such as “illegal migrants” and “illegal immigration”, without once mentioning the terms “refugee” and “asylum seeker”. This option of terminology may not be incidental: by categorizing all migrants as illegal, the agreement implicitly disregards the existence of people entitled to international protection, legitimizing the return of migrants to Libya without any individual evaluation¹³⁰. Human rights are mentioned only once, in article 5°, in a generic formulation that refers to the international obligations that both countries are bound to, without providing any concrete guarantee or control mechanisms¹³¹.

Article 1 establishes Italy's responsibilities to better support Libyan institutions responsible for fighting against irregular migration. Italy undertakes to give technical and technological support

¹²⁶ Reviglio della Veneria, 'Externalizing Migration Management through Soft Law' (n 69) 4

¹²⁷ *ibid* 4

¹²⁸ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 28

¹²⁹ Italy-Libya MoU 2017 (n 118) Preamble

¹³⁰ Palm, 'The Italy-Libya Memorandum of Understanding' (n 123).

¹³¹ Italy-Libya MoU 2017 (n 118) art 5

to the LCG, as well as funding development programs for regions in development affected by migration flows¹³². Furthermore, Article 2 establishes the rehabilitation and construction of detention centers for migrants in Libya, under the exclusive control of the Libyan Minister of Interior¹³³.

Article 3° institutes a mixed committee, composed of representatives from both parties, to identify the priorities of the action of the agreement and mechanisms of financing¹³⁴. In practice, this committee has proven largely ineffective: even though there are various complaints of violations of human rights in the Libyan detention centers and complaints about the LCG behavior during the SAR operations, the Italian Government never formally asked for clarifications to the Libyan Government regarding the compliance with the provisions of the agreement¹³⁵.

Article 4° establishes that the Italian funding for the initiatives in the MoU will not entail additional costs for the Italian State's budget, resorting instead to the already allocated funds and also the funds made available by the EU¹³⁶.

Finally, article 8°, that regulates the validity and renewal of this agreement, deserves some attention. The MoU was concluded with an initial period of three years, with automatic renovation for the same period, except for complaints from one of the parties, with three months' notice¹³⁷. This renovation clause has allowed the continuation of the agreement without any renegotiation: the MoU was automatically renewed in 2020, 2022 and in 2025 without any proposals to change it from Italy¹³⁸.

2.4.4. Analysis of MoU

The MoU of 2017 has some structural problems that compromise its compliance with international law and human rights. Firstly, the agreement was concluded with a government that does not have effective control over all Libyan territory, which significantly limits its applicability

¹³² *ibid* art 1

¹³³ *ibid* art 2

¹³⁴ *ibid* art.3

¹³⁵ Reviglio della Veneria, 'Externalizing Migration Management through Soft Law' (n 69) 5

¹³⁶ Italy-Libya MoU 2017 (n 118) art 4

¹³⁷ *ibid* art 8

¹³⁸ Ogbazghi, 'The Italy-Libya Agreements' (n 71) 28

and effectiveness. The political fragmentation of Libya implies that a big part of the migration flows is controlled by militias and non-state actors that operate outside of the authority of GNA¹³⁹.

Secondly, the agreement does not offer any concrete guarantee for the respect of migrants' rights. The generic reference in article 5° to the international obligations of both parties¹⁴⁰ is insufficient in a context where Libya did not ratify the 1951 Geneva Convention¹⁴¹, does not have an asylum system¹⁴² and is regularly pointed to international organizations as a non-safe country for migrants¹⁴³. Moreover, the fact that the agreement attributes to the Libyan Minister of Interior the exclusive control over the detention centers, explicitly excluding the intervention of international organizations or NGOs is particularly concerning given the reported conditions in these centers.

Thirdly, the option for the simplified form of soft law, with the consequent exclusion of parliamentary control, compromises the transparency of the agreement.

In conclusion, by delegating to the Libyan authorities the operational responsibility for controlling migration flows, Italy continues to fund, equip and train these authorities, keeping a determinant influence on the results of the operations without assuming any responsibility for its consequences.

2.5. Operational Cooperation

2.5.1. Financial Support

The MoU of 2017 included concrete operational measures that substantially transformed the reality of the migration control operations in the Central Mediterranean.

¹³⁹ 'Backed by Italy, Libya Enlists Militias to Stop Migrants' (*AP News*, 30 August 2017) <<https://apnews.com/article/9e808574a4d04eb38fa8c688d110a23d>> accessed 2 May 2026

¹⁴⁰ Italy-Libya MoU 2017 (n 118) art 5

¹⁴¹ UNHCR, 'Submission for the Universal Periodic Review — Libya' (n 48).

¹⁴² SIHMA, 'Libya' (n 47)

¹⁴³ UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea' (September 2020) <<https://www.refworld.org/policy/countrypos/unhcr/2018/en/121641>> accessed 10 May 2026.

First of all, the financial support provided by Italy was one of its determining elements. Italy allocated 22 million euros to Libya between 2017 and 2020 to support the LCG, also making available technical personnel to support Libyan authorities¹⁴⁴. Additionally, Italy pays 10.5 million euros each year to finance international missions supporting the LCG¹⁴⁵. The Italian funds were canalized by the Missions Decree, a legal instrument in which the Italian Government authorizes and funds the international military commitments¹⁴⁶.

Furthermore, the EU also helped fund this agreement. Between 2015 and 2021, under the EU Trust Fund for Africa, 465 million euros were allocated to Libya¹⁴⁷. In addition, it committed to making available an additional 65 million euros for the period between 2017 and 2027 under the International Neighborhood, Development and Cooperation instruments¹⁴⁸. In 2017, EU approved a program of 57 million euros¹⁴⁹ through the Support to Integrated Border and Migration Management in Libya' (IBM) program¹⁵⁰, specifically to reinforce the capacities of the Libyan border control.

However, there is a problem regarding the lack of transparency about the concrete use of these funds. The Italian authorities classified information relating to the activities carried out within the framework of cooperation with Libya as activities "highly sensitive" to stop questions about the destination of the funds¹⁵¹.

¹⁴⁴ ARCI, 'How Italy and Europe Funded the Libyan Coast Guards: 10 Years of Human Rights Violations' (ARCI, 2021) 7 «[ENG-HOW-ITALY-AND-EUROPE-FUNDED-THE-LIBYAN-COAST-GUARDS.pdf](#)» accessed 2 May 2026

¹⁴⁵ MM Okorie and U Okeja 'Leaving at All Costs: Implications of the Italy-Libya Border-Externalization Policy on Migrant Smuggling and Trafficking Facilitation' (2024) *Perspective Politice*. Vol. XVII, no. 1-2. Pages 131-146, 134

¹⁴⁶ MSF, 'Italy-Libya Agreement: Five Years of EU-Sponsored Abuse in Libya and the Central Mediterranean' (MSF, 2022) «[https://www.msf.org/italy-libya-agreement-five-years-eu-sponsored-abuse-libya-and-central-mediterranean](#)» accessed 2 May 2026

¹⁴⁷ Andreina De Leo, 'The Court of Crotona on the Libyan Coast Guard' (*REALaw Blog*, 27 September 2024) «[https://realaw.blog/2024/09/27](#)» accessed 3 May 2026

¹⁴⁸ *ibid*

¹⁴⁹ ARCI, 'How Italy and Europe Funded the Libyan Coast Guards' (n 144).

¹⁵⁰ European Commission, 'Support to Integrated Border and Migration Management in Libya – First Phase' (*EU Emergency Trust Fund for Africa*) «[https://trust-fund-for-africa.europa.eu/our-programmes/support-integrated-border-and-migration-management-libya-first-phase_en](#)» accessed 2 May 2026

¹⁵¹ ARCI, 'How Italy and Europe Funded the Libyan Coast Guards' (n 144).

2.5.2. Equipment and Training of the Libyan Coast Guard

Besides the financial support, Italy also provided material and training support to the LCG. In May of 2017, just three months after signing the MoU, Italy handed over four quick patrol vessels to the LCG, enabling them to conduct SAR operations in a more efficient way¹⁵². For the following year, the support increased: Italy handed over 12 ships that belonged to the Guardia di Finanza and to the Italian Coast Guard¹⁵³, as well as 20 vessels built specifically for this purpose under the IMB program¹⁵⁴.

The training of the LCG was developed under the Sophia Operation¹⁵⁵, the EU naval mission launched in 2015 to fight migrant trafficking in the Central Mediterranean. In 2016, they included in the same mission the objective to train the LCG and the navy¹⁵⁶. The training covered maritime law, human rights, gender awareness and SAR operations¹⁵⁷.

The mission MIASIT also had an important role in supporting the Libyan authorities, giving consulting, mentoring and training activities for Libyan security forces employed in controlling irregular immigration routes, as well as healthcare assistance and support¹⁵⁸. In July 2017, the Operation Sophia was also delegated to monitor the efficiency of the LCG and the navy, in an attempt to guarantee compliance with the human rights standards¹⁵⁹.

The reports from NGOs that operated in the Central Mediterranean during that period revealed a concern for the behavior of the LCG. There were documented episodes of violations of human rights during the LCG SAR operations, including the use of violence against migrants and obstruction of NGOs' SAR operations¹⁶⁰. In an incident in November 2017, a LCG vessel

¹⁵² Diego Zambiasi and Emanuele Albarosa, 'Externalizing Rescue Operations at Sea: The Migration Deal between Italy and Libya' (2025) 25(1) *Journal of Economic Geography* 41, 42 «<https://doi.org/10.1093/jeg/lbae022>»

¹⁵³ Decreto-Legge 28 giugno 2018, n. 84 'Cessioni di unità navali alla Libia' (Italia) «<https://www.senato.it/service/PDF/PDFServer/BGT/01069339.pdf>» accessed 2 May 2026

¹⁵⁴ ARCI, 'How Italy and Europe Funded the Libyan Coast Guards' (n. 144).

¹⁵⁵ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) [2015] OJ L122/31

¹⁵⁶ ARCI, 'How Italy and Europe Funded the Libyan Coast Guards' (n. 144).

¹⁵⁷ European External Action Service, 'Operation SOPHIA: Package 2 of the Libyan Navy Coast Guard and Libyan Navy Training Launched Today' (EEAS, 30 January 2017) «https://www.eeas.europa.eu/node/19518_en» accessed 2 May 2026

¹⁵⁸ Ministero della Difesa, 'Libia: Missione bilaterale di supporto e assistenza (MIASIT)' «difesa.it» accessed 3 May 2026

¹⁵⁹ Tjønn and Jumbert, 'Migration Across the Mediterranean' (n. 67) 63

¹⁶⁰ Human Rights Watch, 'EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk' (HRW, 25 July 2018) «<https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk>» accessed 2 May 2026

interfered with the SAR of the NGO Sea-Watch, causing the death of several people. The LCG vessel in this case had been handed over by Italy¹⁶¹. These episodes raise questions about the effectiveness of the human rights training under this cooperation.

2.5.3. Libyan SAR Zones

Another operational development arising from the MoU was the establishment of a SAR zone under the exclusive control of Libya. The IMO recognized a Libyan SAR zone that extends from the Libyan coast to vast areas of the Central Mediterranean¹⁶². This recognition was interpreted as a result of pressure from Italy and the EU, which constituted a decisive role in the transference of responsibility for the SAR operations to the Libyan authorities¹⁶³.

In 2018, Libya took over the operational control of their SAR zone, with the MRCC¹⁶⁴ coordinating the operations in this area. The practical consequences of this transfer were immediate: the NGOs that operated in the Central Mediterranean were progressively removed from Libyan territorial waters by the LCG, who claimed an exclusive control over the SAR operations even beyond their territorial waters. The MRCC of Rome, that used to coordinate the SAR operations in all Central Mediterranean, started to share information about vessels in difficulty with Libyan authorities, instructing NGOs to wait before intervening, so that they would allow the LCG to act first¹⁶⁵. This alteration had consequences for the migrants rescued: “before the delegation of SAR activities to Libya, migrants rescued by Italian authorities or by humanitarian NGOs would be brought to Italy, after the delegation of SAR activities to the LCG, migrants rescued by the LCG would be brought back to Libya.”¹⁶⁶.

¹⁶¹ *SS and Others v Italy* App no 21660/18 (ECtHR, 12 June 2025)

¹⁶² European Commission, Answer to Parliamentary Question P-003665/2018 (4 September 2018) <https://www.europarl.europa.eu/doceo/document/P-8-2018-003665-ASW_EN.html> accessed 4 May 2026

¹⁶³ 'The Libyan Coast Guard – Explained' (*InfoMigrants*, 2 October 2025) <<https://www.infomigrants.net/en/post/67224/the-libyan-coast-guard--explained>> accessed 4 May 2026.

¹⁶⁴ European Parliament, Parliamentary Question E-000547/2018 (31 January 2018) <https://www.europarl.europa.eu/doceo/document/E-8-2018-000547_EN.html> accessed 4 May 2026.

¹⁶⁵ Kathleen Gombeer and Melanie Fink, 'Search and Rescue in the Central Mediterranean' (2018) 4 *MarSafeLaw Journal* 1 <http://www.marsafelawjournal.org/wp-content/uploads/2018/06/MarSafeLaw-Journal_Issue-4_Gombeer-and-Fink.pdf> accessed 4 May 2026.

¹⁶⁶ Zambiasi and Albarosa 42 (n 152).

However, an investigation revealed that the probability of a shipwreck in the zones under the responsibility of the LCG significantly increased after the signing of the MoU. Estimates point to an eightfold increase in the probability of occurring a mortal event in the areas less than 120 km from Tripoli¹⁶⁷. These data suggest that the externalization of the SAR operations to an authority with limit operational capacity and violent documented behaviors has deadly consequences for the migrants that try to cross the Central Mediterranean.

2.5.4. Cooperation with Tribes and Militias

In March 2017, the Italian Minister of Interior signed a peace agreement with 60 tribal chiefs from South Libya¹⁶⁸, committing to fund the activities developed by these tribes to prevent the irregular crossing of migrants on the borders with Niger, Chad and Algeria¹⁶⁹. This agreement with non-state actors reveals that the Italian authorities knew that the GNA did not control the migration routes in the south of the country.

However, the problem is that these tribes are, in a lot of cases, the same entity directly responsible for the human trafficking routes that the agreement aims to fight. By financing these tribes, Italy reinforces the power and resources of the same networks that fuel human trafficking in that area¹⁷⁰.

Additionally, it was also documented a complicity between the LCG and the human trafficking networks. Reports from international organizations and journalists reveal that traffickers who would pay an agreed amount to the LCG would be escorted to international waters by Libyan vessels, being the vessels marked with symbols that signaled the previous payment¹⁷¹.

¹⁶⁷ Zambiasi and Albarosa 43 (n 152).

¹⁶⁸ Italy Backs Tribal Border Patrol in Libya to Slow Migration' (*InfoMigrants*, 3 April 2017) [«https://www.infomigrants.net/en/post/2646/italy-backs-tribal-border-patrol-in-libya-to-slow-migration»](https://www.infomigrants.net/en/post/2646/italy-backs-tribal-border-patrol-in-libya-to-slow-migration) accessed 4 May 2026.

¹⁶⁹ Italy and Libyan Tribes Agree on Deal to Curb Migrant Flow' (*Middle East Monitor*, 3 April 2017) [«https://www.middleeastmonitor.com/20170403-italy-and-libyan-tribes-agree-on-deal-to-curb-migrant-flow/»](https://www.middleeastmonitor.com/20170403-italy-and-libyan-tribes-agree-on-deal-to-curb-migrant-flow/) accessed 4 May 2026.

¹⁷⁰ 'Exclusive: Libyan Smuggler Says Human Trafficking Will Continue Despite Italian Deal' (*The Local Italy*, 13 September 2017) [«https://www.thelocal.it/20170913/exclusive-libyan-smuggler-says-human-trafficking-will-continue-despite-italian-deal»](https://www.thelocal.it/20170913/exclusive-libyan-smuggler-says-human-trafficking-will-continue-despite-italian-deal) accessed 4 May 2026.

¹⁷¹ Amnesty International, 'Libya's Dark Web of Collusion' (n 9).

3. International Legal Framework

The analysis of Italy's international responsibility for human rights' violations and for the trafficking risks that Nigerian women are exposed to in the context of the MoU of 2017, presupposes a previous identification of the legal framework that establishes the obligations of Italy in this matter. The following chapter aims to systematize the main international and European law instruments relevant for this analysis, identifying the concrete obligations that arise from them.

Before proceeding, it is important to clarify what constitutes human rights' violations in a technical-legal sense of the term. Human rights are a set of norms that establish the minimum limits of treatment to which any individual is entitled, simply because of their human condition, independently of their nationality, legal status or any other individual characteristic¹⁷². In international law, human rights are obligations legally binding that States accept by becoming parties to international treaties¹⁷³. The doctrine distinguishes three types of obligations regarding human rights: the obligation to respect, obligation to protect and obligation to fulfill. The obligation to respect imposes on the State not to interfere with the exercise of individual's fundamental rights. The obligation to protect demands that the State takes measures to prevent third parties from interfering with these rights. Lastly, the obligation to fulfill imposes on the State a positive action to create the conditions necessary for the effective exercise of these rights¹⁷⁴.

Consequently, a human rights' violation occurs when a State does not comply with one or more of these three obligations in relation to an individual or a group of individuals that are under its jurisdiction¹⁷⁵.

However, it is important to underline that not all restrictions on a right constitute a violation. International human rights law accepts that certain rights can be subjected to limitations, provided

¹⁷² James Nickel, 'Human Rights' in Edward Zalta (ed), *Stanford Encyclopedia of Philosophy* (2023) <<<https://plato.stanford.edu/entries/rights-human/>>> accessed 5 May 2026.

¹⁷³ United Nations Office of the High Commissioner for Human Rights, 'International Human Rights Law' (OHCHR) <<<https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>>> accessed 5 May 2026

¹⁷⁴ *ibid*

¹⁷⁵ Raoul Wallenberg Institute, 'International Human Rights Law' (RWI, 13 January 2023) <<<https://rwi.lu.se/human-rights-law/>>> accessed 5 May 2026.

that these limitations are stipulated by law, aim at a legitimate objective and are proportional to that objective¹⁷⁶. Nevertheless, some rights, such as the prohibition of torture and inhuman or degrading treatment, are absolute rights, meaning that they do not admit any limitation or derogation, independently of the circumstances¹⁷⁷.

The legal framework relevant to this analysis consists of two groups of instruments: international instruments, adopted within the scope of the UN and European instruments, adopted under the EU and the CoE. These two groups of instruments complete and reinforce each other, establishing rather a comprehensive system for the protection of human rights, to which Italy is bound to.

Finally, this chapter will also analyze the principle of non-refoulement and the obligations arising from the law of the sea.

3.1. International Human Rights Instruments

In the context of the present thesis, four international instruments assume particular importance: the UDHR, the ICCPR, CAT and CEDAW. Each one of these instruments establishes obligations that are directly relevant to the analysis of Italy's responsibility under the cooperation with Libya.

3.1.1. Universal Declaration of Human Rights

Adopted by the General Assembly of the United Nations on December 10 of 1948, the UDHR constitutes the normative foundation of the international system of human rights¹⁷⁸. Although it is not legally binding, the UDHR has acquired over time a legal status of great relevance in international law. The dominant doctrine considers that a lot of its provisions have attained the

¹⁷⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III) art 29(2)

¹⁷⁷ ECHR (n 97) art 15 (2)

¹⁷⁸ UDHR (n 176)

status of customary international law norms, binding to all states, independently of their formal accession to the instrument¹⁷⁹.

For this analysis, it stands out the following provisions of the UDHR: article 3°, that guarantees the right to life, liberty and security of person; article 5°, that prohibits torture and cruel, inhuman or degrading treatment or punishment; article 9°, that prohibits arbitrary arrest; article 13° that recognizes the right to freedom of movement and residence; and article 14, that established the right to asylum¹⁸⁰. The last provision is especially important for this analysis, since the detention system in Libya, by failing to distinguish between irregular migrants and asylum seekers, deprives them of the exercise of the right to asylum.

Lastly, the specific relevance of the UDHR stems from the fact that both the Treaty of Benghazi and the MoU of 2017 make reference to the respect of the principles enshrined in the Declaration. This reference, even though it is general and lacks monitoring mechanisms, implies that both parties have formally recognized the UDHR norms as a reference for their cooperation. Therefore, violations of these provisions are legally significant for the analysis of Italy's responsibility.

3.1.2. International Covenant on Civil and Political Rights

The ICCPR, adopted in 1966 and in force since 1976, is the main instrument for the protection of civil and political rights. Ratified by Italy and Libya, the ICCPR establishes legally binding obligations for both countries in matters of protection of fundamental rights¹⁸¹.

Article 2° establishes that every Member State commits to respect and guarantee the rights recognized in the Covenant to all individuals within their territory and under their jurisdiction¹⁸². This formulation, according to the General Comment n. ° 31, has extraterritorial reach whenever a state exercises effective control over individuals outside their territory¹⁸³.

¹⁷⁹ Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1996) 25 *Georgia Journal of International and Comparative Law* 317-351 <<https://digitalcommons.law.uga.edu/gjicl/vol25/iss1/13/>> accessed 7 May 2026.

¹⁸⁰ UDHR (n 176) arts 3, 5, 9, 13, 14

¹⁸¹ ICCPR (n 65)

¹⁸² *ibid* art 2

¹⁸³ UN Human Rights Committee, 'General Comment No 31' (2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 10

The ICCPR provisions with most relevance for the analysis are article 7°, that prohibits torture and cruel, inhuman or degrading treatment or punishment; article 9°, that guarantees the right to liberty and security of persons and includes the prohibition of arbitrary arrest; article 12°, that recognizes the right to freedom of movement; and article 13°, that establishes procedural guarantees in the context of expulsion of individuals, demanding an individual decision and the possibility to challenge it¹⁸⁴.

3.1.3. Convention against Torture

The CAT, adopted in 1984 and entered into force in 1987, is the international instrument more specific in matters of torture and protection against inhuman treatment. It was ratified by both Italy and Libya. The CAT establishes a comprehensive set of obligations for Member States, which range from the criminalization of torture to the prohibition of returning people to countries where they might be subjected to torture or inhuman treatment¹⁸⁵.

Article 1° of CAT provides a definition of torture, which include “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”¹⁸⁶. This definition is relevant for the analysis of the conditions documented in Libyan detention centers, where there have been reports of acts that fit in this definition.

Article 3° is particularly important because it prohibits the return of any person to a country where there are substantial reasons to believe that this person might be in danger of being subjected

¹⁸⁴ ICCPR (n 65) arts 7,9,12,13

¹⁸⁵ CAT (n 64)

¹⁸⁶ *ibid* art 1

to torture or inhuman treatment¹⁸⁷. This provision is absolute and does not allow any exception, independently of the circumstances or bilateral cooperation that a state might have¹⁸⁸.

Another important provision is article 16° that establishes that CAT not only prohibits torture, but also “acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I”¹⁸⁹. This provision is equally important to analyze the conditions in Libyan detention centers, where a lot of the violations documented might not amount to torture, but constitute inhuman or degrading treatment, such as overcrowding, degrading hygienic conditions and lack of medical care.

3.1.4. Convention on the Elimination of All Forms of Discrimination against Women

CEDAW was adopted in 1979 and is in force since 1981, being the main international instrument for the protection of women’s rights. Ratified by Italy and Libya, CEDAW establishes specific obligations for both states in matters of the fight against discrimination and violence against women, including trafficking of women and sexual exploitation¹⁹⁰.

Article 6° of CEDAW establishes an obligation for Member States to adopt all adequate measures, including legislative measures, to combat women trafficking and exploitation of women prostitution¹⁹¹. This provision not only imposes on the states not to participate or facilitate trafficking, but also imposes a positive obligation to adopt measures to prevent and protect. In the General Recommendation n. ° 38 of 2020, the CEDAW Committee clarified that this obligation to adopt measures extends to policies of migration management of the States, which should not expose migrant women to increased risks of trafficking¹⁹². This recommendation is particularly

¹⁸⁷ *ibid* art 3

¹⁸⁸ UN Committee against Torture, 'General Comment No 4 on the Implementation of Article 3 of the Convention in the Context of Article 22' (2017) UN Doc CAT/C/GC/4 para 9

¹⁸⁹ CAT (n 64) art 16

¹⁹⁰ Convention on the Elimination of All Forms of Discrimination against Women (opened for signature 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)

¹⁹¹ *ibid* art 6

¹⁹² UN Committee on the Elimination of Discrimination against Women, 'General Recommendation No 38 on Trafficking in Women and Girls in the Context of Global Migration' (2020) UN Doc CEDAW/C/GC/38 para 24

relevant since it addresses the intersection between policies of externalization of migration management and the risks of trafficking for women.

In conclusion, these four instruments establish a normative framework that binds Italy to a group of obligations in matters of protection of migrant's human rights. These obligations are applicable not only in Italian territory, but, in some circumstances, to actions of Italy outside its territory, which may include the support to the Libyan authorities under the MoU of 2017.

3.2. European Human Rights Instruments

At the European level, two instruments are relevant to the analysis of Italy's responsibility: the ECHR, adopted within the CoE, and the Charter of Fundamental Rights of the European Union. Although these instruments have different origins and application mechanisms, they complete each other and establish a regional system for the protection of fundamental rights, to which Italy is bound.

In article 3° of ECHR, there is established an absolute prohibition of torture and inhuman or degrading treatment¹⁹³. It was also this provision, as we saw previously, that constituted the legal basis for the condemnation of Italy in the case *Hirsi Jamaa*¹⁹⁴. The ECtHR developed a consolidated jurisprudence according to which article 3° imposes on States a non-return obligation every time there are substantial reasons to believe that an individual is at risk of being subjected to torture or ill-treatment in the country of destination¹⁹⁵. Another very important provision is article 4° that prohibits slavery, servitude and forced labor¹⁹⁶. In the case *Rantsev v. Cyprus and Russia*, the ECtHR clarified that trafficking of persons is included in this article 4° ECHR¹⁹⁷. Furthermore, article 4° of the Protocol n°4 prohibits collective expulsions¹⁹⁸, article 5° of ECHR

¹⁹³ ECHR (n 97) art 3

¹⁹⁴ *Hirsi Jamaa* (n 98) paras 136-138

¹⁹⁵ *Soering v United Kingdom* App no 14038/88 (ECtHR, 7 July 1989) para 88-91; *Chahal v United Kingdom* App no 22414/93 (ECtHR, 15 November 1996) para 80; *Saadi v Italy* App no 37201/06 (ECtHR, 28 February 2008) para 125.

¹⁹⁶ ECHR (n 97) art 4

¹⁹⁷ *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 282

¹⁹⁸ Protocol No 4 (n 113) art 4

establishes the right to liberty and security and article 13° of ECHR guarantees the right to an effective remedy¹⁹⁹.

The Charter of Fundamental Rights of the EU entered into force with the Lisbon Treaty in 2009, reinforcing Italy's obligations as a Member State²⁰⁰. Article 19° prohibits collective expulsions and establishes that no one can be "removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment"²⁰¹. Additionally, article 5° prohibits slavery and forced labor and article 18° guarantees the right to asylum in accordance with the Geneva Convention, imposing on Italy an obligation to guarantee mechanisms that do not deprive asylum seekers from access to international protection procedures²⁰².

3.3. Principle of non-Refoulement

The principle of non-refoulement is the pillar of the international system for the protection of refugees and asylum seekers. Enshrined in article 33°, n. ° 1 of the Geneva Convention of 1951, this principle prohibits the States from expelling or returning a refugee to a territory "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"²⁰³. The refugee status exists independently of its formal recognition by the State, which implies that the protection provided by the principle of non-refoulement applies even before any administrative or judicial decision on the status of the person²⁰⁴.

Under the Geneva Convention, article 33° technically applies only to refugees. However, under article 3° of ECHR and article 3° of the CAT, there is no distinction between migrant and refugee: these provisions are applied to any person that is at risk of being subjected to torture or ill-treatment or punishment in the country of destination²⁰⁵. The ECtHR has confirmed this in the case *Hirsi*

¹⁹⁹ ECHR (n 97) arts 5, 13

²⁰⁰ Charter of Fundamental Rights of the European Union [2000] OJ C364/1

²⁰¹ *ibid* art 19

²⁰² *ibid* arts 5, 18

²⁰³ Refugee Convention (n 111) art 33(1)

²⁰⁴ *ibid* art 33(1)

²⁰⁵ ECHR (n 97) art 3; CAT (n 64) art 3

Jamaa, where it expressly affirmed that article 3° of the ECHR applies to all intercepted migrants, without necessity to previously determine their status²⁰⁶. This interpretation of article 3° of the ECHR by the ECtHR is relevant for this discussion: Nigerian women intercepted in the Central Mediterranean may not be formally recognized as refugees, but, under article 3° of ECHR and CAT²⁰⁷, that is irrelevant, since they might be at real risk of being subjected to torture or ill-treatment in Libya.

The scope of protection of this principle has been progressively extended. This principle was also recognized in other international instruments, specifically article 3°, n. ° 1 of CAT²⁰⁸, article 16°, n°1 of the ICPPED²⁰⁹, article 22°, n°8 of the American Convention of Human Rights²¹⁰ and article 19°, n. °2 of the EU Charter of Fundamental Rights²¹¹.

The dominant doctrine and States' practice recognize this principle as having reached the status of customary international law, binding all States, independently of their accession to the Geneva Convention²¹². Furthermore, this principle has also been progressively recognized as a *ius cogens* norm, non-derogable by any other international law provision. The UNHCR²¹³ recognized the customary character of this principle, and in an advisory opinion of 2007, it affirms that non-refoulement is applicable extraterritorially²¹⁴.

Nevertheless, the principle admits exceptions, provided for in article 33°, n. ° 2 of the Geneva Convention, that allows a State not to apply the non-refoulement protection when a refugee constitutes a threat to the countries' security or has been convicted for a serious crime²¹⁵. However,

²⁰⁶ *Hirsi Jamaa* (n 98) paras 133-138

²⁰⁷ ECHR (n 97) art 3; CAT (n 64) art 3

²⁰⁸ CAT (n 64) art 3(1)

²⁰⁹ International Convention for the Protection of All Persons from Enforced Disappearance (opened for signature 6 February 2007, entered into force 23 December 2010) 2716 UNTS 3 (ICPPED) art 16(1)

²¹⁰ American Convention on Human Rights (opened for signature 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123 (ACHR) art 22(8)

²¹¹ Charter of Fundamental Rights (n 200) art 19(2)

²¹² Elihu Lauterpacht and Daniel Bethlehem, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law* (Cambridge University Press 2003) 149.

²¹³ UNHCR, 'The Principle of Non-Refoulement as a Norm of Customary International Law' (Refworld, 1994) <<https://www.refworld.org/jurisprudence/amicus/unhcr/1994/en/20625>> accessed on 9 of May 2026

²¹⁴ UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol' (26 January 2007) <<https://www.refworld.org/policy/legalguidance/unhcr/2007/en/40854>> accessed 11 May 2026.

²¹⁵ Refugee Convention (n 111) art 33(2)

these exceptions are subject to a restrictive interpretation and are not applicable in any case where an individual is at risk of being subjected to torture or ill-treatment²¹⁶.

The concrete application of the principle implies an evaluation of whether there is a real risk of being persecuted or ill-treatment upon removal which means more than a mere possibility, but does not require the harm to be highly probable or more likely than not²¹⁷. The burden of this assessment is shared between the asylum seeker and the State: the claimant has to demonstrate their personal circumstances, while the State has to verify the general conditions in the country of return²¹⁸.

Finally, it is also important to mention the indirect non-refoulement, according to which a State violates this principle when it returns an individual to a country that, in turn, might return that individual to a third country where they might be at risk of persecution or ill-treatment. This dimension of this principle was established by the ECtHR, namely in the cases *T.I. v. United Kingdom*²¹⁹ and *M.S.S. v. Belgium and Greece*²²⁰. This form of non-refoulement can be applicable to the context of returns to Libya, since there is a documented risk of arbitrary repatriation of migrants by the Libyan authorities to their countries of origin.

3.4. Law of the Sea and Obligation to Rescue

The law of the sea establishes specific obligations relevant to the analysis of the SAR operations in the Central Mediterranean. The United Nations Convention on the Law of the Sea of 1982 imposes on all States the obligation to give assistance to any person in danger at sea, independently of their nationality or status²²¹. The International Convention on Maritime Search and Rescue of

²¹⁶ *Chahal* (n 195) para 80; *Saadi* (n 195) para 138;

²¹⁷ *Sivarajah and Others v United Kingdom* App no 13163/87 (ECtHR, 30 October 1991) para 111

²¹⁸ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR 2019) UN Doc HCR/1P/4/ENG/REV.4 para 196 «<https://www.refworld.org/policy/legalguidance/unhcr/2019/en/123881>» accessed 11 May 2026.

²¹⁹ *TI v United Kingdom* App no 43844/98 (ECtHR, 7 March 2000) (Admissibility Decision)

²²⁰ *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) para 342

²²¹ UNCLOS (n 101)

1979²²², complemented by the IMO guidelines²²³, develops this obligation, establishing that the survivors rescued at sea must be disembarked in a place of safety as quickly as possible.

The concept of safe place is crucial for this analysis. Under the IMO guidelines, a place of safety is a place where the SAR operations are considered finished and where the security and basic necessities of the survivors are satisfied²²⁴. However, Libya does not satisfy this requirement: multiple international organizations have classified Libya as a non-safe country for migrants, given the arbitrary detention system, the inhuman conditions of the detention centers and the lack of a functional asylum system. The delegations of the SAR operations to the LCG, with the consequent disembark of migrants in Libya, is incompatible with the obligations to disembark in a place of safety established by the law of the sea²²⁵.

The attribution to Libya of a SAR zone recognized by the OMI in 2018²²⁶ does not change this conclusion. The responsibility for the coordination of the SAR operations in a given area, does not imply that the responsible state satisfies the criteria of a safe place to disembark²²⁷. On the contrary, as the UNHCR clarified, the obligation to disembark in a place of safety must be interpreted under the principle of non-refoulement, which means that a state cannot fulfill its rescue obligation by disembarking in a country where there is a risk of persecution or ill-treatment²²⁸.

These obligations, under the law of the sea, are articulated with the principle of non-refoulement and with the rest of the international obligations that Italy is bound to. Consequently, this can raise some questions about the compatibility of the externalization policies with the applicable framework.

²²² International Convention on Maritime Search and Rescue (opened for signature 27 April 1979, entered into force 22 June 1985) 1405 UNTS 97 (SAR Convention)

²²³ IMO, *Guidelines on the Treatment of Persons Rescued at Sea* (IMO Resolution MSC.167(78), 20 May 2004) para 6.12-7.17

²²⁴ *ibid* para 6.12

²²⁵ UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country' (n 143).

²²⁶ European Commission, Answer to Parliamentary Question P-003665/2018 (n 162)

²²⁷ UNHCR, 'General Legal Considerations: Search-and-Rescue Operations Involving Refugees and Migrants at Sea' (UNHCR, 2017) <<https://www.onlinelibrary.iihl.org/wp-content/uploads/2025/02/2017-%E2%80%93UNHCR-General-legal-considerations-search-and-rescue-operations-involving-refugees-and-migrants-at-sea.pdf>> accessed 11 May 2026 para 14

²²⁸ *ibid* para 16-17

3.5. International Anti-Trafficking Instruments

The international framework to fight human trafficking has evolved from an approach essentially focused on criminalization to a perspective more focused on the victim's human rights, including the positive obligations of States to identify, protect and assist the victims.

The Palermo Protocol of 2000²²⁹, adopted as a complement to the United Nations Convention Against Transnational Organized Crime²³⁰ and ratified by Italy on August 2006²³¹, was the first international instrument to give an accepted definition of trafficking in persons. Its article 3° a) defines trafficking with three elements: the action (recruitment, transportation, transfer, harboring or receipt of persons), the means (threat or use of force, coercion, abduction, fraud, deception, abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) and the purpose (sexual exploitation, forced labor, slavery, servitude or removal of organs)²³².

It is also relevant to underline that in its article 3°, paragraph b), it is established that the consent of the victim is irrelevant when any of the means of the paragraph a) is being used. This means that although the victims had, initially, consented, that does not deprive them from the protection that this Protocol offers, insofar as that consent was obtained through deceptive means or through abuse of vulnerability²³³. Furthermore, in the case of children, the paragraph c) establishes that the use of any of the means referred to above is not a requirement for the situation to be considered trafficking²³⁴.

With regard to the obligation to protect the victims, the Palermo protocol establishes, in its article 6°, a set of minimum measures that the States should adopt, including providing information about relevant legal and administrative procedures, legal assistance, access to appropriate housing,

²²⁹ Palermo Protocol (n 10)

²³⁰ United Nations Convention against Transnational Organized Crime (opened for signature 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209 (UNTOC).

²³¹ United Nations Treaty Collection, 'Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime – Status of Treaties' <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=en> accessed 5 July 2026.

²³² Palermo Protocol (n 10) art 3 para a)

²³³ ibid para b)

²³⁴ ibid para c)

medical support and employment and training opportunities²³⁵. The article 7° gives the possibility to the States to grant authorization to temporary or permanent residence to the victims of trafficking, given the risks that they would have to go through by returning to their country of origin²³⁶.

The Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005 and entered into force in 2008, represents a significant advance compared to the Palermo Protocol, explicating and developing the States' obligations in matters of protection of the victims²³⁷. Ratified by Italy in 2010²³⁸, the Convention adopts a definition of trafficking that is substantially similar to that in the Palermo Protocol²³⁹.

Firstly, the article 10° of the Convention establishes an obligation to identify the victims of trafficking, demanding that the states adopt measures to identify the victims among the people who are in situations of vulnerability, including irregular migrants²⁴⁰. Additionally, article 13° establishes a recovery and reflection period of at least 30 days, during which the person identified as a potential victim of trafficking cannot be expelled from the territory of the state and has the right to assistance and protection. This period has the goal to allow the victim to recover and make an informed decision about the possibility to cooperate with the authorities²⁴¹. Furthermore, article 14° establishes the obligation to issue renewable residency permit to the victims of trafficking every time the victim's permanence is necessary to cooperate with the authorities or because of their personal situation²⁴². Finally, article 26° establishes the non-punishment principle, affirming that the states should predict the possibility of not punishing the victims of trafficking for their participation in illegal activities due to their trafficking situation²⁴³.

²³⁵ *ibid* art 6

²³⁶ *ibid* art 7

²³⁷ Anti-Trafficking Convention (n 11).

²³⁸ Council of Europe, 'Monitoring of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings — Italy' (Council of Europe) «<https://www.coe.int/en/web/anti-human-trafficking/italy1>» accessed 11 May 2026.

²³⁹ Anti-Trafficking Convention (n 11) art 4 para (a)

²⁴⁰ *ibid* art 10

²⁴¹ *ibid* art 13

²⁴² *ibid* art 14

²⁴³ *ibid* para 26

Additionally, this Convention differs from the Palermo protocol because of the creation of a monitoring mechanism: GRETA. Established in article 36° of the Convention²⁴⁴, GRETA is composed by independent experts, elected based on their technical competences, with the objective to evaluate the implementation of the Convention by the Member States through periodic evaluations. For this purpose, GRETA may request information from States, conduct country visits and receive input from the civil society, subsequently preparing reports with conclusions and recommendations addressed to each State²⁴⁵. These reports are then sent to the Committee of the Parties²⁴⁶, who can urge States to adopt concrete implementing measures²⁴⁷.

3.6. European Union Anti-Trafficking Instruments

In the EU, the main instrument to fight human trafficking is the Directive 2011/36/EU of the European Parliament and Council, amended by the EU Directive 2024/1712²⁴⁸, related to prevention and fight against trafficking in persons and protection of victims²⁴⁹. Adopted in 2011 and implemented in the Italian legal system²⁵⁰, the Directive has an approach that combines criminalization of trafficking with the protection of victims and prevention of trafficking.

The Directive adopts in its article 2° a definition of trafficking aligned with the Palermo Protocol, but included a reference to begging and exploitation of criminal activities as a way of exploitation. The definition was subsequently expanded by Directive 2024/1712 to include surrogacy, forced marriage and illegal adoption as forms of exploitation²⁵¹. It also includes a definition of position of vulnerability and establishes that, in the case of a child, there is no need for any means mentioned in the paragraph 1 to be considered trafficking²⁵².

The article 11° of the Directive establishes measures of assistance and support to victims of trafficking, including appropriate accommodation, medical assistance, including psychological

²⁴⁴ Anti-Trafficking Convention (n 11) art 36

²⁴⁵ *ibid* art 38

²⁴⁶ *ibid* art 37

²⁴⁷ *ibid* art 38 (7)

²⁴⁸ Directive (EU) 2024/1712 (n 13)

²⁴⁹ Directive 2011/36/EU (n 12)

²⁵⁰ Decreto Legislativo 4 marzo 2014, n 24 'Attuazione della direttiva 2011/36/UE' (Italia)

²⁵¹ Directive (EU) 2024/1712 (n 13) art 1

²⁵² Directive 2011/36/EU (n 12) art 2

support, translation and interpreter, counseling and information and legal representation. These measures of assistance and support should be available before, during and after a sufficient time after the conclusion of the criminal procedures. Furthermore, these measures cannot be a condition for the victims to cooperate in the criminal investigation, prosecution or trial²⁵³.

The article 12° establishes procedural guarantees for the victims in criminal procedures, including the right to free legal counselling and representation, the right of protection before and during the investigation and legal procedures²⁵⁴. Moreover, article 13° establishes dispositions for child victims of trafficking, granting reinforced protection measures that take into account the best interests of the child²⁵⁵.

Finally, article 18° establishes prevention measures, demanding that the States adopt adequate measures to discourage and reduce the demand that fuels trafficking, including education and training²⁵⁶. Additionally, following the amendment introduced by Directive 2024/1712, paragraph 4 requires all member states to criminalize the use of services which are object to exploitation of trafficking victims²⁵⁷.

Furthermore, the Directive 2004/81/EC²⁵⁸, in relation to the residence permit granted to the nationals of third countries that are victims of human trafficking, constitutes a complementary instrument for the present analysis. This Directive establishes a mechanism of protection of victims of trafficking that cooperate with the authorities, anticipating the concession of a renewable temporary residence permit that allows them to stay in the territory of the state²⁵⁹. The Directive also establishes a reflection period during which the victim cannot be expelled from the state, with the purpose to allow the victim to make an informed decision about the cooperation with the authorities²⁶⁰.

²⁵³ *ibid* art 11

²⁵⁴ *ibid* art 12

²⁵⁵ *ibid* art 13

²⁵⁶ *ibid* art 18

²⁵⁷ Directive (EU) 2024/1712 (n 13) art 18 (a)

²⁵⁸ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [2004] OJ L261/19

²⁵⁹ *ibid* art 8,13

²⁶⁰ *ibid* art 6

Moreover, the Directive 2012/29/EU establishes the minimum standards on the rights, support and protection of victims of crime²⁶¹. In its article 22° it establishes the obligation to an individual evaluation of the necessities of protection of each victim²⁶². This Directive complements the Directive 2011/36/EU in regard to the procedural guarantees of the victims of trafficking, reinforcing the European protection framework applicable in this situation.

In conclusion, the obligations to identify, protect and support the victims of trafficking established in the Directives mentioned before, presupposes the contact of victims with the authorities of the states, which implies the access of potential victims to the territory of the state or the possibility of identification during the SAR operations. This may raise questions on the compatibility of the SAR operations of Libya facilitated by the MoU of 2017 with the EU legislation: by delegating to the Libyan authorities the SAR operations without any mechanisms of identification of the victims, Italy can be depriving the victims of access to protection measures provided by both European and international law.

²⁶¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L315/57

²⁶² *ibid* art 22

4. State Responsibility and Indirect Responsibility

The analysis developed in the previous chapters allowed me to identify the factual scenario of the Italy-Libya cooperation and the legal instruments establishing Italy's responsibilities regarding human rights, non-refoulement and the fight against human trafficking. The present chapter it seeks to determine to what extent Italy may incur international responsibility for human rights violations committed in Libya that it did not directly perpetrate, but to which it may have contributed through the support provided to the Libyan authorities. For that purpose, I will analyze the Articles on Responsibility of States for Internationally Wrongful Acts, the international relevant jurisprudence and, in particular, the judgement *S.S. and Others v. Italy* of 2025, which is the most recent jurisdictional development and directly relevant to the research question of this thesis.

4.1. The Articles on Responsibility of States for Internationally Wrongful Acts

The ARSIWA were adopted by the International Law Commission in 2001 and approved by the UN General Assembly through Resolution 56/83 of the same year²⁶³. As an instrument of codification of international law in matters of states responsibility, the ARSIWA systematizes the norms that regulate the conditions under which a state can incur international responsibility, the methods for assigning acts to states and the legal consequences of such responsibility. This is

²⁶³ ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10 annex (ARSIWA); UNGA Res 56/83 'Responsibility of States for Internationally Wrongful Acts' (12 December 2001) UN Doc A/RES/56/83

important for the present analysis, because it lies on the fact that it does not create new provisions, but only articulates and systematizes the norms that already exist in international law.

From a formal point of view, ARSIWA is considered soft law because it was not adopted as a treaty, meaning that it is not legally binding as a conventional instrument. This qualification as soft law could raise questions about their legal authority. However, this was overcome from the moment that it was recognized, by the ICJ and by other international courts, as customary international law. In the Bosnian Genocide case, the ICJ expressly declared that certain rules of customary international law on state responsibility are reflected in ARSIWA, which implies that the authority of these articles does not come only from the instrument itself, but also from the customary law that it codifies²⁶⁴. This distinction is fundamental: when invoking ARSIWA, we are invoking customary international law that is binding to all states, and not just a soft law instrument.

For the present analysis, 3 articles of ARSIWA are of particular importance. First of all, article 2° establishes two constitutive elements of a state international responsibility: the existence of an act that violates an international obligation of a state and the attribution of that act to that state under international law²⁶⁵. Second of all, article 8° establishes that “the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”²⁶⁶, demanding, according to the ICJ interpretation of the Nicaragua case, an effective control over every specific act²⁶⁷. Finally, article 16° establishes that a State that aids or assists another State practicing an internationally wrongful act incurs in responsibility: “if it does so with knowledge of the circumstances of the internationally wrongful act” and if that act would also be considered internationally wrongful if committed by that State²⁶⁸.

The difference between article 8° and 16° is that article 8° is meant to be used for direct attribution of acts to a state, which implies that the state had effective control over the specific act in question. On the other hand, article 16° is meant to be used for complicity, which does not

²⁶⁴ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ Reports 43, para 385 and 420

²⁶⁵ ARSIWA (n 263) art 2

²⁶⁶ *ibid* art 8

²⁶⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Reports 14, para 115

²⁶⁸ ARSIWA (n 263) art 16

demand control over every specific act, but rather aid or assistance with knowledge of its use for wrongful acts²⁶⁹. Consequently, article 16° is the most adequate mechanism to analyze Italy's responsibility in this context, even though, as will be seen in the next chapter, the fulfilling of its requirements raises significant practical difficulties.

4.2. Relevant Jurisprudence

ARSIWA is only truly relevant when international courts apply it. The jurisprudence that will be analyzed in this subchapter fulfills two distinct functions: it confirms the customary status of ARSIWA; on the other hand, delimits the operational criteria that determines when a state incurs in responsibility for acts practiced by third states. Therefore, there are three rulings that have particular relevance for this research question – the cases Nicaragua, Bosnian Genocide and M.S.S against Belgium and Greece.

Firstly, the case Military and Paramilitary Activities in and against Nicaragua, ruled by the ICJ in 1986, established the standard for effective control for the purposes of attribution of responsibility, which was latter codified in article 8° of ARSIWA²⁷⁰. The ICJ was called to determine whether the acts practiced by the Contras, especially executions of prisoners, homicides of civilians, torture and kidnappings, were imputable to the USA due to the support provided by the latter. The ICJ concluded that the USA was not responsible: its participation, even though preponderant and decisive, in funding, organizing, training, equipping the Contras, the selection of military targets and planning operations, was considered insufficient to attribute to the USA the acts committed in the course of those operations²⁷¹. This standard of effective control is relevant for the present analysis because it demonstrates that the mere provision of funding, equipment and logistic support is not, in itself, enough to satisfy the requirement of effective control under article 8° of ARSIWA, which guides the analysis for article 16° being the most adequate argument.

²⁶⁹ *ibid* art 8,16; James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press 2002) 148

²⁷⁰ *Nicaragua* (n 267) para 109

²⁷¹ *ibid* paras 109 - 115

Secondly, the case *Bosnian Genocide*, decided by the ICJ in 2007, is particularly relevant for two reasons: first, the court confirmed that the ARSIWA reflect customary international law²⁷²; Second, even though the ICJ applied the complicity provision of the Genocide Convention rather than article 16° ARSIWA, since the jurisdiction was limited to that instrument, the analysis of it is structurally equivalent: to establish complicity, the assistant state must have awareness that the specific wrongful act would be committed with its assistance²⁷³. The ICJ concluded that Serbia did not incur in responsibility for complicity because it was not proven that it possessed knowledge that the genocide would be specifically committed with its help, which is different from just a mere awareness that serious violations of humanitarian international law could occur²⁷⁴.

Finally, the case *M.S.S. against Belgium and Greece*, decided by ECtHR in 2011, established a principle equally relevant. The court confirmed that Belgium was responsible for transferring of an asylum seeker to Greece, concluding that the Belgians authorities knew or ought to have known that there was no guarantee that his asylum application would be properly examined and that he was under serious risk of being subjected to treatments contrary to article 3° of ECHR in Greece²⁷⁵. To reach this conclusion, the Court resorted to reports from the UNHCR and other international bodies²⁷⁶. The fact that existed available documentation on the matter was enough to proof that Belgium knew or ought to have known, even without having specific knowledge of the circumstances affecting the transferred asylum seekers.

4.3. S.S. and Others v. Italy

The ruling *S.S. and Others* against Italy constitutes the most recent and directly relevant jurisprudential development for the research question for this dissertation. The complaint was presented in 2018 of May by seventeen survivors of an incident that occurred in November of 2017 in Central Mediterranean, in which at least twenty people died. The facts of this case are the following: in November 6 of 2017, a vessel of the LCG, ceded by Italy, interfered with the SAR operation of the Sea-Watch 3 that was trying to rescue 130 migrants in difficulties. The intervention

²⁷² *Bosnian Genocide* (n 264) paras 385, 401, 420

²⁷³ *ibid* para 420

²⁷⁴ *Ibid* para 421-424

²⁷⁵ *MSS v Belgium and Greece* (n 220) paras 349–360; ECHR (n 97) art 3

²⁷⁶ *ibid* paras 347-348

of the LCG had been coordinated by the MRCC of Rome. The people who were not rescued were returned to Libya and detained in detention centers where they were subjected to serious violations of their fundamental rights²⁷⁷.

The applicants presented three main arguments: first of all, they claimed that Italy was responsible, under article 3° of ECHR, for the violations suffered in Libya, both during the SAR operation by LCG and in the detention centers; second, they claimed that Italy was responsible, under article 2° of ECHR, for the death of the people that could not be rescued during the incident; Thirdly, they claimed that the SAR operation by LCG constituted a collective expulsion prohibited by article 4° of the Protocol n.° 4²⁷⁸. Additionally, to prove Italy's responsibility, the Applicants argued that Italy gave financial and logistic support to Libya to manage migrants, which constitutes exercise of extraterritorial jurisdiction²⁷⁹. Moreover, in the joint observations of ICJ, AIRE Centre, DCR and ECRE, they noted that “a State could be contributing to wrongful conduct on the part of another State when it provided that State with funding, training or any other material support.”²⁸⁰.

In June 2025, the ECtHR declared that the complaint was inadmissible for lack of Italy's jurisdiction under article 1° of ECHR²⁸¹. The court distinguished the case *S.S.* from the case *Hirsi Jamaa* based on the identity of whom exercised physical control over the applicants: while in the case *Hirsi Jamaa* the migrants were physically on-board Italian military vessels that were under the exclusive control of Italian authorities, in the case *S.S.*, the applicants were on board a LCG vessel under the control of Libyan authorities²⁸². The court concluded that the financial, material and operational support given by Italy to the LCG was not enough to establish the effective control over the applicants demanded by article 1° of ECHR²⁸³. In particular, the fact that it was the MRCC of Rome that coordinated the operation was not considered enough to establish that control, given the fact that the LCG kept the direct physical control over the people concerned²⁸⁴.

²⁷⁷ *SS and Others v Italy* (n 161)

²⁷⁸ *ibid* paras 40-44

²⁷⁹ *ibid* para 93

²⁸⁰ *ibid* para 71

²⁸¹ *ibid* para 114

²⁸² *Hirsi Jamaa* (n 98); *Ibid* paras 101 - 102

²⁸³ *ibid* para 93

²⁸⁴ *ibid* paras 103-106

The implications of this ruling for the assessment of Italy's responsibility are significant, but might not be conclusive. The S.S. decision creates an obstacle to the argument of Italy's responsibility, because it demonstrates that the ECtHR is not willing to broaden the concept of jurisdiction to encompass situations of financial and logistic support to third states²⁸⁵. However, this conclusion does not extend to other international legal instruments. Italy's obligations under CAT²⁸⁶, ICCPR²⁸⁷, ARSIWA²⁸⁸ and anti-trafficking instruments do not depend on the concept of jurisdiction and provide alternative frameworks for assessing Italy's responsibility, independently of the S.S. decision. In particular, article 16° of ARSIWA does not demand that Italy was exercising jurisdiction over the applicants, but only that Italy aided or assisted with the knowledge of the violations that were being committed. While the enforcement mechanisms available under these instruments are more limited than those provided by the ECHR, they still establish a normative framework under which the conduct of Italy can be assessed.

²⁸⁵ ECHR (n 97) art 1

²⁸⁶ CAT (n 64) art 3

²⁸⁷ ICCPR (n 65) art 7

²⁸⁸ ARSIWA (n 263) art 16

5. Assessing Italy's International Responsibility

The previous chapters allowed us to establish a factual framework of the Italy-Libya Cooperation, outlining the legal instruments that bind Italy in human rights matters, the principle of non-refoulement and combating trafficking and the mechanisms of State responsibility under international law. This chapter applies that same framework to the present case, the Memorandum of Understanding of 2017, with the purpose of answering the following question: to what extent can Italy incur international responsibility for the violations of human rights and the risks of trafficking that Nigerian women are exposed to in the context of the cooperation with the Libyan authorities?

The present analysis will be developed in two distinct parts. The first part examines Italy's overall responsibility for human rights violations occurring in Libya, evaluating if the support given by Italy to Libyan authorities fulfills the presupposes of article 16° of ARSIWA and analyzing the implications of the principle of non-refoulement under CAT and ICCPR. The second part addresses the specific responsibility of Italy in relation to the Nigerian women victims of trafficking, arguing that the possibility of the adoption of the MoU without implementing necessary measures could constitute a direct violation of the anti-trafficking obligations of Italy.

5.1. Italy's contribution to Human Rights Violations in Libya

To better analyze Italy's responsibility for the human rights violations that occur in Libya, two provisions of the ARSIWA may potentially apply: article 8° or 16°. However, article 8° requires that the conduct in question be carried out under the direction or effective control of the assessing

State. Since Italy does not exercise effective control over the operations of the LCG, attribution of the latter's conduct to Italy under article 8° is unlikely to be established. Article 16, which requires aid or assistance with knowledge of violations constitutes the more convincing framework for assessing Italy's international responsibility²⁸⁹.

The analysis of Italy's responsibility for the human rights violations that occur in Libya under article 16° of ARSIWA²⁹⁰ demands, first of all, the identification of the international wrongful acts committed by Libyan authorities in the context of the cooperation established by MoU of 2017. Secondly, it demands the demonstration that Italy provided aid or assistance that contributed to the commission of those acts. And thirdly, that Italy did so with the knowledge of the illicitness of these acts.²⁹¹

With regard to the first requirement, namely the existence of international wrongful acts committed by Libya, there is a lot of available evidence from credible sources. The documented conditions of the Libyan detention centers demonstrate inhuman and degrading treatment that violates international law and human rights treaties ratified by Libya, namely ICCPR²⁹² and CAT²⁹³. Additionally, UNHCR declared that Libya does not fulfil the requirements to be considered a place of safety for the purpose of disembarkation²⁹⁴. Moreover, Amnesty International documented a systematic practice of torture, sexual violence and arbitrary arrest in these detention centers²⁹⁵. Therefore, it is clear that the existence of international wrongful acts is well-documented.

The second requirement, regarding Italy's assistance, is also well documented. As demonstrated in the subchapter 2.5, Italy's support to the LCG was substantial, continuous and directly related to the operation that resulted in the documented violations, encompassing financial material and operational contributions, including coordination through the MRCC of Rome. Notably, the vessels ceded by Italy were the same that were used in SAR missions that resulted in documented

²⁸⁹ *ibid* arts 8, 16

²⁹⁰ *ibid* art 16

²⁹¹ Crawford, *The International Law Commission's Articles on State Responsibility* (n 269) 148.

²⁹² ICCPR (n 65) art 7

²⁹³ CAT (n 64) art 1, 3

²⁹⁴ UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country' (n 143).

²⁹⁵ Amnesty International, 'Libya's Dark Web of Collusion' (n 9)

violations, including the Sea-Watch 3 incident in November 2017²⁹⁶. The link between Italy's assistance and the wrongful acts committed by Libya is, therefore, well established.

The third requirement, Italy's knowledge of the circumstances of the wrongful acts, is simultaneously the most crucial one, but also the most complex. As the ICJ clarified in the Bosnian Genocide case²⁹⁷, the knowledge demanded by article 16° of ARSIWA is the knowledge that the wrongful act would be committed with Italy's assistance. To begin with, Italy can hardly claim complete ignorance of the conditions prevailing in Libya: the Hirsi Jamaa case had documented, with precision, the conditions to which the migrants sent back to Libya were subjected and, consequently, had condemned Italy for having exposed them to those conditions²⁹⁸. The reports from UNHCR, Human Rights Watch and Amnesty International published between 2015 and 2017 documented the violent behavior of the LCG and its complicity with trafficking networks²⁹⁹. The CPT report of 2010 had already documented the inhuman conditions in detention centers in Libya³⁰⁰. The abundance and credibility of these sources make it difficult to argue that the Italian authorities were unaware of the situation. However, according to the ICJ in the Bosnian Genocide case what is required is not mere awareness of a wrongful act, but awareness that the specific wrongful act would be committed with Italy's assistance. Consequently, there is a need to prove that Italy knew that their funding, equipment and training would be used to specifically conduct violent operations, to torture migrants in Libyan detentions centers, etc. This is challenging to demonstrate and without this proof, Italy's responsibility cannot be established under article 16° of ARSIWA.

It is, however, important to question if the ICJ's strict standard for a genocide is the only possible criteria to apply to article 16° of ARSIWA in a scenario as different as a migration cooperation agreement. Recent doctrine argues that constructive knowledge, knowability, should

²⁹⁶ *SS and Others v Italy* (n 161)

²⁹⁷ *Bosnian Genocide* (n 264) paras 421-424

²⁹⁸ *Hirsi Jamaa* (n 98)

²⁹⁹ UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country' (n 143); Amnesty International, 'Libya's Dark Web of Collusion' (n 9).

³⁰⁰ Council of Europe Committee for the Prevention of Torture, 'Report to the Italian Government on the Visit to Italy Carried out by the CPT from 27 to 31 July 2009' (CPT/Inf (2010) 14, 28 April 2010) <<<https://rm.coe.int/1680697276>>> accessed 21 May 2026

be sufficient to establish responsibility for aid or assistance³⁰¹. According to this doctrine, it is not necessary to demonstrate that the assisting State possessed specific and actual knowledge that its support would contribute to particular wrongful acts. Rather, responsibility may arise where the State knew or should have known of the circumstances giving rise to the internationally wrongful conduct. A State could not evade responsibility simply by invoking a lack of transparency regarding their decision-making processes or by avoiding the creation of documentary evidence demonstrating their awareness of the risks involved. This interpretation is based on practical considerations. Requiring proof of actual and specific knowledge would impose an evidentiary burden that is often impossible to satisfy.³⁰² Applied to our case, this standard considerably strengthens the argument for Italy's responsibility. Given the extensive and widely available information concerning the treatment of migrants in Libya, it would be difficult for Italy to argue that it neither knew nor should have known that its assistance could contribute to serious violations of international human rights law³⁰³. If this more flexible criterion is accepted, Italy's position becomes more fragile: the number and the reliability of the sources they had access to before 2017, makes it unlikely that they didn't know or didn't have to know, that the support given to LCG would expose migrants, refugees and victims of human trafficking to serious risks of violations of human rights.

Additionally, it is also important to have into consideration that Italy continued to provide support after the Sea-Watch 3 incident in November 2017, which can strengthen the argument that Italy had awareness that the specific wrongful act would be committed with its assistance, since, because of this incident, the ECtHR alerted for the violations of human rights that were happening in Libya³⁰⁴. On another note, Italy had the opportunity either to renew the agreement or to renegotiate its terms to ensure compliance with international human rights obligations³⁰⁵. Nevertheless, it deliberately chose to maintain the agreement in its existing form.

³⁰¹ André Nollkaemper, Jean d'Aspremont, Christiane Ahlborn, Berenice Boutin, Nataša Nedeski and Ilias Plakokefalos, 'Guiding Principles on Shared Responsibility in International Law' (2020) 31 *European Journal of International Law* 15, 40-42 «<https://academic.oup.com/ejil/article/31/1/15/5882075>» accessed 18 June 2026

³⁰² *ibid* 42-43

³⁰³ *ibid* 42, para 4

³⁰⁴ *SS and Others v. Italy* (n 161) paras 109-111

³⁰⁵ Italy-Libya MoU 2017 (n 118) art 8

Furthermore, the practical application of article 16° of ARSIWA to the present case faces an additional difficulty that cannot be ignored: the lack of an available judicial mechanism capable of formally determining Italy's responsibility under this provision. The ARSIWA does not establish a forum for adjudication and individuals cannot directly invoke article 16° of ARSIWA before the ICJ, whose jurisdiction is limited to disputes between states³⁰⁶. Likewise, although various UN treaty bodies may examine complaints concerning Italy's compliance with its human rights obligations, their findings generally do not possess the binding force of judicial decisions. This limitation does not invalidate the legal argument, but it means that Italy's responsibility under article 16° of ARSIWA largely remains within the realm of legal and academic analysis, without an effective enforcement mechanism.

An alternative argument regarding Italy's responsibility could be found in the principle of non-refoulement under article 3° of CAT and article 7° of ICCPR, that prohibit the return of individuals to a country where they might be at real risk of torture or inhuman treatment. However, both instruments demand that the individual has to be under the jurisdiction or effective control of the state, a requirement that faces the same difficulties as those in ARSIWA and the ECHR. Consequently, the argument of non-refoulement, although it is solid in theory, it does not offer a better basis for establishing Italy's responsibility than the ARSIWA. Therefore, the analysis developed in this subchapter demonstrates that the question of jurisdiction constitutes a significant obstacle to all treaty-based human rights instruments, revealing a structural gap in the system of international responsibility.

5.2. Italy's Specific Responsibility Regarding Trafficked Nigerian Women

The previous subchapter demonstrated that Italy's responsibility for human rights violations occurring in Libya faces significant difficulties, namely the jurisdiction problem, which affects all conventional instruments analyzed. However, the present subchapter develops a distinct argument: independently of the difficulties of the question of jurisdiction, Italy may have directly violated

³⁰⁶ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, art 34(1)

their own obligations under international and European anti-trafficking instruments by adopting the MoU of 2017 without taking the necessary measures to prevent trafficking and to protect victims of trafficking. This argument does not depend on Italy's jurisdiction over the victims intercepted by Libya, but rather on the fact that Italy deliberately adopted a migration policy that might be incompatible with their anti-trafficking obligations, despite being aware of the specific vulnerability of Nigerian women. The present analysis will be structured in three parts: Italy's previous knowledge of the vulnerability of Nigerian women; the incompatibility of the MoU with the anti-trafficking obligations; and the violation of the due diligence obligation.

5.2.1. Italy's prior knowledge of the vulnerability of Nigerian women

The main argument of this section is that Italy not only knew that Nigerian women intercepted in the Central Mediterranean were predominantly trafficking victims, but that it possessed sufficiently specific and reliable information (the vulnerability of Nigerian women to trafficking was neither incidental nor unforeseen; rather, it had been extensively documented by international organizations, governmental agencies and civil society actors long before the adoption of the 2017 MoU) with a degree of specificity that makes any argument of ignorance or unpredictability unsustainable. This previous knowledge is legally determinant: under article 5° of the CoE Convention on Action Against Trafficking, States are obliged to adopt measures to prevent trafficking, giving particular attention to persons who are vulnerable to become victims of trafficking³⁰⁷. The adoption of the MoU of 2017 without the incorporation of specific safeguards for victims of trafficking, or mechanisms capable of identifying and protecting Nigerian women exposed to trafficking risks, raises serious concerns regarding Italy's compliance with its preventive obligations. The failure to integrate anti-trafficking safeguards into the cooperation framework, may constitute a breach of its obligations under article 5° of the Convention.

There is substantial evidence from credible sources demonstrating that Italy possessed prior knowledge of the particular vulnerability of Nigerian women. This knowledge was available before the conclusion of the MoU and highlighted the strong connection between the migration of Nigerian women and human trafficking for the purpose of sexual exploitation. A significant

³⁰⁷ Anti-Trafficking Convention (n 11) art 5

example comes from the IOM. In August 2016, six months before the signing of the MoU, the director of IOM Coordination Office for the Mediterranean in Rome, Federico Soda, estimated that, from the 5,346 Nigerian women that arrived that year, 80% were potential victims for purpose of sexual exploitation³⁰⁸.

Furthermore, Italy's knowledge was not limited to the profile of Nigerian women, but extended to the context of sexual exploitation that these women were subjected to in Libya. The report about Trafficking of People in Libya, from 2017, of the USA Department of State documented that Nigerian women were in an increased risk of being forced to prostitution in Libya and that the detention centers controlled by the LCG and by armed groups were a place of sexual violence³⁰⁹. The article "It Happened in the Desert, in Libya and in Italy" documented the existence of "connection houses", where smugglers and migrants lived. These houses worked like brothels where Nigerian women were forced to prostitution for the first time³¹⁰.

The case *Hirsi Jamaa* of 2012 had documented the conditions to which the migrants pushed-back to Libya were subjected to, including the arbitrary detention, violence and lack of any protection system³¹¹. The Italian authorities could not ignore that Nigerian women pushed-back to Libya under the context of the MoU of 2017, would be subjected to the same conditions that the ECtHR had documented and for which it had condemned Italy. This knowledge is even more relevant when Italy continued to support the LCG operations after the Sea-Watch 3 incident in November 2017³¹². Consequently, this makes impossible any argument of ignorance of the specific conditions that Nigerian women were subjected to.

Besides the sexual exploitation in Libya, Italian authorities also had knowledge of the risk of re-trafficking that Nigerian women were subjected to after being pushed-back to Libya and the eventual repatriation to Nigeria. The UN Support Mission in Libya documented that Libya should not be considered a place of safety for disembarkation of rescued migrants, given that those who

³⁰⁸ IOM, 'Mediterranean Human Trafficking and Exploitation Prevalence Survey' (IOM, 12 August 2016) <https://www.iom.int/news/mediterranean-human-trafficking-and-exploitation-prevalence-survey-iom> accessed 1 June 2026

³⁰⁹ US Department of State, '2017 Trafficking in Persons Report: Libya' (US Department of State, 2017) <https://www.state.gov/reports/2017-trafficking-in-persons-report/libya> accessed 2 June 2026.

³¹⁰ Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert, in Libya and in Italy' (n 14).

³¹¹ *Hirsi Jamaa* (n 98) paras 125-128

³¹² *SS and Others v Italy* (n 161)

return face a considerable risk of rape and sexual violence, and that Nigerian women, in particular, are forced into connection houses where they are subjected to forced prostitution³¹³. Although the UNSMIL report was published in 2018, Italy maintained the same support to Libya and renewed the MoU in 2020 without any additional safeguards. The case of Princess and Doris, two Nigerian women that presented a complaint against Italy and Libya before the CEDAW Committee, demonstrates this cycle: both women were intercepted in the Mediterranean by LCG, returned to Libyan detention centers where they were subjected to new exploitation and, later, repatriated to Nigeria through programs of voluntary repatriation of the IOM, where they were under the risk of being trafficked again by the same trafficking networks³¹⁴. As ASGI underlined, the Italian authorities had the international obligation to protect these women from refolement, obligation that was systematically ignored in the context of the cooperation by the MoU³¹⁵. However, this case hasn't gotten a decision yet.

Finally, the fact that Italy has a well-established national system for protection of trafficking victims further reinforces the argument that the Italian authorities were fully aware of their anti-trafficking obligations. Article 18° the Legislative Decree n. ° 286/1998 allows the concession of authorization of residence permits for victims of trafficking³¹⁶. The Legislative Decree n. ° 24/2014, that transposed the Directive 2011/36/EU³¹⁷ into the Italian legal framework, established a set of comprehensive measures for identification and protection of victims³¹⁸. The existence of this internal system makes unsustainable any argument that Italy did not know their obligations of protection of victims of trafficking.

Therefore, the contrast between the internal protection system and the lack of equal mechanisms in the MoU of 2017 cannot be explained with lack of knowledge, but rather a deliberate choice to pursue migration-control objectives without extending the same level of protection to trafficking victims within the context of its cooperation with Libya. Although it may be difficult to establish

³¹³ OHCHR and UNSMIL, *Desperate and Dangerous* (n 49) 17, 33-34

³¹⁴ Association for Juridical Studies on Immigration (ASGI), *Legal Framework: Italian and Libyan Responsibilities for the Violation of Articles 2 and 6 of the CEDAW* (December 2021) «asgi.it» accessed 3 of June 2026.

³¹⁵ *ibid* pp 5.

³¹⁶ Decreto Legislativo 25 luglio 1998, n 286 'Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero' (Italia) art 18.

³¹⁷ Directive 2011/36/EU (n 12)

³¹⁸ Decreto Legislativo n 24/2014 (n 250)

a deliberate intention to expose individuals to exploitation, the failure to incorporate anti-trafficking safeguards into the MoU occurred in circumstances where the relevant risks were well known and extensively documented. As such, it considerably strengthens the argument that Italy failed to comply with its obligations to prevent and protect against trafficking.

5.2.2. Incompatibility of the MoU with the Anti-trafficking Obligations

After analyzing both the MoU of 2017 and the Anti-trafficking instruments, it may be concluded that the MoU is incompatible with the anti-trafficking obligations of Italy under CoE Convention of 2005 and the Directive 2011/36/EU. The analysis of the MoU and the way that it was implemented shows that its main objective was to reduce the migration flux, since it rarely mentions the combat of human trafficking.

The MoU makes reference to human trafficking in its preamble³¹⁹, affirming that this agreement was created to combat human trafficking, among other things. Article 2° identifies the fight against trafficking as one of the objectives of the cooperation, while article 5° reiterates the commitment of both parties to respect their obligations under international human rights law³²⁰. While this latter provision does not specifically mention anti-trafficking treaties, its broad reference to international human rights obligations encompasses the relevant anti-trafficking instruments binding upon Italy. However, these references lack of an operational substance: the MoU does not establish concrete mechanisms of identification of victims of trafficking during SAR operations, does not predict the access of specialized international organizations or NGOs to the LCG operations, does not condition the financial and material support to the respect of minimum obligations of migrant protection and it does not establish any monitoring mechanism of the LCG behavior.

The delegation to the LCG of the SAR operations creates a system incompatible with the obligation of identification of trafficking victims under article 10° of the CoE Convention of 2005³²¹. This obligation demands that States should adopt measures to identify trafficking victims. The compliance with this obligation presupposes, in the context of SAR operation, that these are

³¹⁹ Italy-Libya MoU 2017 (n 118) preamble.

³²⁰ *ibid* art 2, 5

³²¹ Anti-Trafficking Convention (n 11) art 10.

conducted and supervised by people with specific training to identify victims and, also, that there is an individualized procedure of evaluation of each person intercepted³²². The LCG does not satisfy any of these requirements: it does not have a specific training to identify victims of trafficking³²³, does not have any incentive to do so, since it cooperates with trafficking networks³²⁴, and it returns all intercepted migrants to detention centers without any individual evaluation³²⁵. Consequently, by financing, equipping and coordinating these types of operations, Italy created a system that makes it impossible to identify victims and, therefore, their access to mechanisms of protection established by the Convention.

Furthermore, article 13° of the CoE Convention of 2005 establishes a period of recovery and reflection of at least 30 days, during which the potential trafficking victim cannot be expelled from the territory of the State and has a right to assistance and protection³²⁶. This period has the purpose to allow the victim to recover and take an informed decision about the possibility to cooperate with the authorities. Libya is not a party to the Convention and, therefore, is not directly bound by this article. However, Italy is bound by its obligations under the Convention. Consequently, the relevant question is whether Italy, by establishing and supporting a system of interceptions and returns to Libya without adequate screening and protection mechanisms, effectively deprived potential trafficking victims of access to the safeguards that the Convention seeks to guarantee. From this perspective, the Italy-Libya cooperation framework appears difficult to reconcile with the objectives of article 13°. By financing, equipping, training and operationally supporting interception activities that resulted in the return of vulnerable individuals to Libya without prior identification or protection procedures, Italy contributed to a system in which potential victims of trafficking were prevented from accessing the recovery and reflection period that constitutes one of the Convention's core protective mechanisms.

Additionally, article 16° of the same Convention establishes specific obligations in matters of repatriation of trafficking victims, demanding that it should be done with attention to their rights,

³²² Council of Europe, 'Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings' (Council of Europe, 2005) CETS 197 para 128 - 132 «<https://rm.coe.int/16800d3812>» accessed 3 June 2026.

³²³ US Department of State, '2017 Trafficking in Persons Report: Libya' (n 309)

³²⁴ UNSMIL and OHCHR, 'Desperate and Dangerous' (n 49) p 27. Amnesty International, 'Libya's Dark Web of Collusion' (n 9) p 34.

³²⁵ *Hirsi Jamaa* (n 98) paras 185-186

³²⁶ Anti-Trafficking Convention (n 11) art 13

safety and dignity of the victims, while also having in consideration the state of the judicial processes in course³²⁷. This is also relevant of the present case, because Nigerian women are frequently repatriated in conditions that exposed them to the risk of re-trafficking by the same trafficking networks. Consequently, the MoU of 2017 contributed to create a cycle of trafficking.

Furthermore, article 26° of the Convention establishes the principle of non-criminalization of the victims, affirming that the states should predict the possibility of not condemning victims for their role in the illegal activities committed as a consequence of being trafficked, including the irregular entry into the territory³²⁸. Nigerian women intercepted by the LCG are treated exclusively as irregular migrants and detained as such, without any evaluation of their situation as potential trafficking victims. This form of condemnation violates article 26° of the Convention and derives from the lack of identification mechanisms in the operations funded by Italy.

The articles 5° and 7° of the CoE Convention of 2005 establish obligations of prevention that are directly relevant to the evaluation of the MoU³²⁹. Article 5° demands that the States adopt measures to prevent trafficking that take into consideration more vulnerable groups³³⁰. Moreover, article 7° establishes specific obligations in relation to measures in borders, demanding the States to reinforce border control in a way to prevent and detect trafficking, without harming the right of movement of people³³¹. These articles imply that any agreement of cooperation in matters of migration management should include mechanisms that allow the fulfillment of these obligations. The MoU of 2017 does not fulfill these requirements: by delegating the SAR operations to LCG without any specific safeguards for the victims of trafficking, Italy violated their obligations to prevent trafficking under article 5° and 7° of the Convention.

At the EU level, article 11° of the Directive 2011/36/EU establishes that the Member States have to guarantee that the assistance and support measures to trafficking victims cannot be conditioned to their will to cooperate with the authorities³³². This obligation was transposed into the Italian legal system through Legislative Decree n. ° 24/2014, meaning Italy was bound, under

³²⁷ *ibid* art 16

³²⁸ *ibid* art 26

³²⁹ *ibid* art 5, 7

³³⁰ *ibid* art 5

³³¹ *Ibid* art 7

³³² Directive 2011/36/EU (n 12) art 11

its own domestic law, by an obligation directly derived from this provision³³³. This guarantee is fundamental to Nigerian women, since some are bound to Juju rituals, which makes them more afraid to report their situation to the authorities³³⁴. The impossibility to access this protection mechanisms in consequence of the interception operation constitutes a violation of article 11° of this Directive, since Italy, by funding the LCG operations, created a system that makes it impossible for victims to arrive in a territory where this protection can be exercised.

Additionally, article 6° of CEDAW, which imposes the Member States to adopt all adequate measures to combat trafficking of women and sexual exploitation³³⁵, should be read with the General Recommendation n. ° 38 of the CEDAW Committee of 2020³³⁶. This recommendation clarified that States cannot adopt restrictive migration policies, including agreements of cooperation with third countries, that increase the vulnerability of women to trafficking without adopting compensatory protection measures. The paragraph 24 of this recommendation establishes that the restrictive migration policies, as the reinforcement of border control and interception operation, increases the vulnerability of women to trafficking by pushing them to irregular routes controlled by criminal networks³³⁷. The MoU of 2017 is an example of this: by closing the Central Mediterranean route without any safe alternative and without any protection mechanisms for trafficking victims, Italy's conduct can be considered to amount to a violation of its obligations under article 6° of CEDAW, as interpreted by the CEDAW Committee in General Recommendation n. ° 38.

The incompatibility of the MoU with Italy's anti-trafficking obligations is equally proved by comparing the cooperation framework with the protection mechanisms available under Italian domestic law. As it was demonstrated in the previous subchapter, the article 18° of the Legislative Decree n. ° 286/1998 allows the concession of residence permits to victims of trafficking, a mechanism that presupposes a previous identification of the victims and referral to protective services³³⁸. Together with the measures introduced by Legislative Decree n. ° 24/2014, this framework reflects Italy's recognition that trafficking victims require specific procedures of

³³³ Decreto Legislativo n 24/2014 (n 250)

³³⁴ Adeyinka, Lietaert and Derluyn, 'The Role of Juju Rituals' (n 15)

³³⁵ CEDAW (n 190) art 6

³³⁶ CEDAW Committee, 'General Recommendation No 38' (n 192)

³³⁷ *ibid* para 24

³³⁸ Decreto Legislativo n 286/1998 (n 316) art 18.

identification, assistance and protection. The lack of any equivalent mechanism in the MoU demonstrates that Italy adopts its anti-trafficking obligations in its territory, but does not show any interest in guarantee equivalent mechanisms to migrants intercepted outside of its territory. This choice constitutes a violation of prevention and protection obligations that the CoE Convention of 2005 imposes to Italy, who cannot evade its anti-trafficking obligations by structuring migration control in a way that prevents victims from accessing protection mechanisms.

The evaluation of the compatibility of the MoU with Italy's anti-trafficking obligations would be incomplete without considering the Palermo Protocol because, as a legally binding instrument ratified by Italy³³⁹, imposes concrete preventive obligations. Article 9° n. °3 demands that the policies of prevention of trafficking adopted by a member state should include cooperation with NGOs and civil society³⁴⁰. Article 9°, n. °4 demands member states to make or strengthen measures that aim to attenuate the factors that make people vulnerable to trafficking³⁴¹. Finally, article 10°, n. °2 imposes that States to provide adequate training to the relevant authorities, with particular emphasis on protecting the rights of victims³⁴².

The MoU raises serious concerns regarding compliance with these three provisions. In the preamble, the MoU presents itself as an instrument that, amongst other things, aims to fight against human trafficking³⁴³. Therefore, it can be formally considered prevention policy under article 9° of the Protocol³⁴⁴. However, the MoU does not include any cooperation with NGOs or the civil society, in contradiction with paragraph 3 of this article. On the contrary, the attribution to an exclusive SAR zone to Libya, lead to the progressive exclusion of SAR humanitarian organizations, with the MRCC instructing them to await intervention by the LCG³⁴⁵. Regarding article 9°, n. °4, the MoU not only failed to attenuate the vulnerability factors of Nigerian women trafficked, but aggravated them by increasing the LCG's interception capacity without creating any mechanism to protect the individuals intercepted. Lastly, although the training given to LCG had included a human rights component, there is no evidence that it included specific procedures

³³⁹ Palermo Protocol (n 10)

³⁴⁰ *ibid* art 9(3)

³⁴¹ *ibid* art 9(4)

³⁴² *ibid* art 10(2)

³⁴³ Italy-Libya MoU 2017 (n 118) preamble.

³⁴⁴ Palermo protocol (n10) art 9

³⁴⁵ Gombeer and Fink (n 165) 4

of protecting the rights of victims, including their identification³⁴⁶, which is exactly what article 10°, n. °2 demands.

Nevertheless, the Palermo Protocol presents structural limitations that prevent it from constituting, itself, an autonomous and sufficient basis for establishing Italy's international responsibility. The obligations of assisting and protecting the victims, provided for in articles 6° and 7° of the Protocol, use the term “shall consider”, which removes their legally binding force³⁴⁷. Additionally, the available monitoring mechanism, the UNTOC Review Mechanism, is not independent and does not have capacity to do a state evaluation, like GRETA does. Furthermore, the monitoring mechanism does not predict any mechanism of individual complaints³⁴⁸. Consequently, the Protocol constitutes, not so much an autonomous basis for liability, but an additional normative framework in light of which the incompatibility of the MoU with Italy's international obligations can be critically assessed, reinforcing the argument already built on the basis of instruments that offer greater normative density and more robust verification mechanisms.

This incompatibility was recognized by the UN Committee against Torture, since in its Final Observations about Italy in 2017, only 10 months after the signing of the MoU, expressed concerns about the fact that the agreement does not contain any provision that conditions the cooperation on respect for human rights. Consequently, it recommended the establishment of monitoring mechanisms to guarantee a human rights-centered approach.³⁴⁹ The fact that an UN supervising organ identified a gap after only a few months of the start of the cooperation, reinforces the argument that the incompatibility between the MoU and the Italian anti-trafficking obligations was evident and was known.

5.2.3. Violation of Obligation of Due Diligence

Besides the specific obligations analyzed in the last subchapter, the behavior of Italy in the context of MoU of 2017 may also be assessed in the light of the general principle of due diligence

³⁴⁶ EEAS, 'Operation SOPHIA: Package 2 (n 157)

³⁴⁷ Palermo Protocol (n10) arts 6, 7

³⁴⁸ UNTOC (n 230) art 32

³⁴⁹ UN Committee against Torture, 'Concluding observations on the combined fifth and sixth periodic reports of Italy' (18 December 2017) UN Doc CAT/C/ITA/CO/5-6, para 22 - 23.

in international law. Due diligence is an international law principle that imposes to the States the obligation to adopt reasonable and proportional measures to prevent, investigate, condemn and repair violations of human rights, including those that occur from acts of third parties, namely private actors, criminal networks and armed groups operating within or in connection with the territory over which the State exercises influence³⁵⁰. In the specific context of human trafficking, the due diligence obligation requires States to adopt appropriate measures to prevent trafficking and to protect actual and potential victims whenever the authorities know or reasonably should know, that certain individuals or groups are exposed to a risk of trafficking³⁵¹. Unlike the specific violations of the articles of the CoE Convention of 2005, which demand the demonstration of non-compliance with a specific obligation, the violation of due diligence can be established by demonstrating that the State failed to adopt reasonable measures that the circumstances demanded, independently of any intention of causing damage.

The standard of due diligence in the context of human trafficking was clarified by the ECtHR in the case *Rantsev v. Cyprus and Russia*, where the ECtHR established that the States have positive obligations under article 4° of ECHR³⁵² to adopt operational measures to protect victims of trafficking when the authorities knew or ought to have known that a certain person was under the risk of being trafficked³⁵³. The ECtHR underlined that these positive obligations do not depend on a certainty of a risk, but rather only the authorities' knowledge of circumstances that indicate a real and immediate risk³⁵⁴. This standard was equally developed by the CoE Convention of 2005, whose article 5° imposes an obligation of prevention that includes the adoption of specific measures for the most vulnerable groups and also by article 6°, which demands the adoption of measures of dissuasion to reduce the demand that fuels trafficking³⁵⁵.

³⁵⁰ ILC, 'Due Diligence in International Law' (ILC Report 2024) UN Doc A/79/10 Annex II para 1-3 «<https://legal.un.org/ilc/reports/2024/english/annex2.pdf>» accessed 9 June 2026; Timo Koivurova, 'Due Diligence' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2010) para 1, 17 «<https://www.arcticcentre.org/loader.aspx?id=78182718-d0c9-4833-97b3-b69299e2f127>» accessed 9 June 2026; Vladyslav Lanovoy, 'Due Diligence in International Law: A Useful Renaissance or All Things to All People?' (2024) 35 *European Journal of International Law* 1029, 1033 - 1035 «<https://doi.org/10.1093/ejil/cha067>» accessed 9 June 2026.

³⁵¹ *Rantsev* (n 197) para 284-289; Anti-Trafficking Convention (n 11) arts 5, 29.

³⁵² ECHR (n 97) art 4

³⁵³ *Rantsev* (n 197) para 286

³⁵⁴ *ibid* para 286

³⁵⁵ Anti-Trafficking Convention (n 11) arts 5, 6.

The application of the due diligence standard to the present case leads to a clear conclusion: Italy failed to exercise the level of due diligence required by international law when it adopted and implemented the MoU of 2017 without incorporating specific safeguards for Nigerian women who were victims, or potential victims, of trafficking. As it was already demonstrated, before the signing of the MoU, the Italian authorities had the knowledge that 80% of the Nigerian women who arrived through the Central Mediterranean were potential victims of trafficking³⁵⁶, that they were subjected to sexual exploitation in Libya³⁵⁷ and that their possible repatriation to Nigeria would put them at risk of re-trafficking³⁵⁸. This level of knowledge fulfils the standard established in the case *Rantsev*³⁵⁹, because the Italian authorities knew or ought to have known that Nigerian women intercepted by the LCG with their funding were at real risk of being trafficked. Therefore, the adoption of the MoU without any mechanisms of identification of specific protection to this group constitutes an omission, which violates the due diligence obligation.

It is also important to underline that the due diligence obligation does not demand that Italy prevents all violations, but rather adopting reasonable measures that the circumstances demanded³⁶⁰. In the present case, reasonable measures would include the inclusion in the MoU of provisions that conditioned the financial and material support on compliance with minimum standards of protection of victims of trafficking³⁶¹, the access to SAR operations of UNHCR and specialized organizations in combat of trafficking³⁶² and the creation of independent monitoring mechanisms of the behavior of the Libyan authorities³⁶³. The lack of any of these measures, which were within Italy's reach, demonstrates that Italy did not comply with the due diligence standard demanded by international law.

³⁵⁶ IOM, 'Mediterranean Human Trafficking and Exploitation Prevalence Survey' (n 308)

³⁵⁷ US Department of State, '2017 Trafficking in Persons Report: Libya' (n 309)

³⁵⁸ ASGI, 'Nigeria: The Risk of Re-Trafficking and (In)Voluntary Return of Victims of Trafficking' (ASGI, Sciabaca & Oruka) «<https://sciabacaoruka.asgi.it/en/nigeria-the-risk-of-re-trafficking-and-involuntary-return-of-victims-of-trafficking/>» accessed 8 June 2026.

³⁵⁹ *Rantsev* (n 197) para 286.

³⁶⁰ Koivurova, 'Due Diligence' (n 350) para 2; 'Lanovoy, 'Due Diligence in International Law' (n 350)1046

³⁶¹ UN Committee against Torture, 'Concluding Observations on Italy' (n 349) para 22.

³⁶² UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country' (n 143)

³⁶³ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), 'Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy — Second Evaluation Round' (GRETA (2018)28, 25 January 2019) «<https://rm.coe.int/greta-2018-28-fgr-ita/168091f627>» accessed 8 June 2026.

Furthermore, the due diligence violation is aggravated by the fact that Italy repeatedly renewed the MoU in 2020, in 2022 and 2025³⁶⁴, even after the publication of reports that documented in a more detailed way the violations that are occurring in the context of this cooperation. The renewal of the agreement without introducing any safeguards for the victims of trafficking, even though there were recommendations from GRETA³⁶⁵, the Committee of Torture³⁶⁶ and multiple international organization³⁶⁷, demonstrates that the omission of Italy was not accidental, but rather a deliberate and continuous choice. This continuation aggravates Italy's responsibility under the due diligence obligation, because the omission constitutes a systematic violation that extends over several years and was kept despite the knowledge of its consequences to Nigerian women.

In conclusion, the due diligence violation constitutes a more comprehensive argument in matter of Italy's responsibility for the violations of anti-trafficking documents. Italy's responsibility does not arise from a deliberate intention to facilitate trafficking, but from its failure to take reasonable and proportionate measures in response to known risks. The adoption and implementation of the MoU without mechanisms capable of identifying and protecting Nigerian women vulnerable to trafficking constitutes a strong indication that Italy failed to comply with its due diligence obligations under international anti-trafficking law.

5.3. The Specific Vulnerability of Nigerian Women and the Concrete Impact of the Italy-Libya Cooperation

The previous legal analysis demonstrates that Italy has violated their Anti-trafficking obligations by adopting of the MoU of 2017. However, the true dimension of this responsibility can only be understood through the concrete impact that this cooperation had on Nigerian women. Before the signing of the MoU, Nigerian women intercepted at the Central Mediterranean arrived at Italian territory where they could be identified as trafficking victims and access mechanisms of

³⁶⁴ Italy-Libya MoU 2017 (n 118).

³⁶⁵ GRETA, 'Second Evaluation Round Italy' (n 363) paras 5, 19

³⁶⁶ UN Committee against Torture, 'Concluding Observations on Italy' (n 349) para 22

³⁶⁷ UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country' (n 143); Amnesty International, 'Libya's Dark Web of Collusion' (n 9).

protection provided by the Italian and international frameworks³⁶⁸. The MoU significantly altered this dynamic: by delegating the SAR operations to the LCG, Italy created a system where Nigerian women are systematically returned to Libya before having the chance to reach Italy. The consequences of this change were immediate and serious. According to IOM data, the number of migrant arrivals from Libya to Italy has decreased significantly after 2017, from more of 180.000 in 2016³⁶⁹ to, approximately, 119.000 in 2017 and 23.000 in 2018³⁷⁰. However, this reduction does not reflect an improvement in the situation of Nigerian women, but rather their imprisonment in Libya, where they keep being subjected to the same exploitation that the cooperation supposedly intended to combat.

The concrete impact of the Italy-Libya cooperation in Nigerian women is also understood through the exploitation cycle that the MoU perpetuated. Nigerian women intercepted by the LCG are sent to detention centers where they face sexual violence³⁷¹, forced prostitution at connection houses³⁷² and the risk of being re-trafficked by the same trafficking networks that recruited them³⁷³. These women can also be repatriated to Nigeria where they face additional risks, such as social stigma, reprisals from trafficking networks and a probability of being re-trafficked³⁷⁴. The case of Princess and Doris mentioned before, demonstrates, clearly, this cycle. The case demonstrates that the Italy-Libya cooperation did not interrupt the trafficking cycle, but rather reinforced it, by returning the victims to the same conditions to which they were trying to escape³⁷⁵. The specific vulnerability of Nigerian women, specifically the debts to traffickers³⁷⁶, *Juju* rituals³⁷⁷ and the lack of an alternative safe route to Europe, means that the MoU's consequences for this particular group

³⁶⁸ Decreto Legislativo 25 luglio 1998, n 286 (Italia) (n 316) art 18; Decreto Legislativo 4 marzo 2014, n 24 (Italia) (n 250)

³⁶⁹ Deaths at Sea: 27' (IOM, 13 January 2017) <<https://www.iom.int/news/mediterranean-migrant-arrivals-reach-1159-deaths-sea-27>> accessed 12 June 2026.

³⁷⁰ UNHCR, 'Italy Sea Arrivals Dashboard 2018' (UNHCR, 2019) <<https://data.unhcr.org/en/documents/download/67555>> accessed 12 June 2026.

³⁷¹ OHCHR, 'Lethal Disregard: Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea' (OHCHR, May 2021) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>> accessed 3 June 2026.

³⁷² Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert, in Libya and in Italy' (n 14).

³⁷³ ASGI, 'Nigeria: The Risk of Re-Trafficking' (n 358)

³⁷⁴ ASGI, 'Focus Nigeria' (ASGI, Sciabaca & Oruka, 2021) <<https://sciabacaoruka.asgi.it/en/focus-nigeria/>> accessed 8 June 2026; ASGI, 'The Consequences of Externalisation of Borders on Women's Rights' (ASGI, Sciabaca & Oruka, 16 December 2021) <<https://sciabacaoruka.asgi.it/en/le-conseguenze-dellesternalizzazione-sui-diritti-delle-donne/>> accessed 8 June 2026.

³⁷⁵ ASGI, 'Legal Framework: Italian and Libyan Responsibilities' (n 314)

³⁷⁶ HRW, "'You Pray for Death'" (n 19)

³⁷⁷ Adeyinka, Lietaert and Derluyn, 'It Happened in the Desert' (n 14)

were serious and predictable, since Italy had access to extensive documentation about the situation before the signing of the agreement.

5.4. Conclusion: To What Extent can Italy be Considered Internationally Responsible?

The analysis developed throughout the present chapter allows me to answer the research question by giving two different answers, depending on the invoked legal instrument. Consequently, Italy incurs international responsibility for the violations of the anti-trafficking obligations and might be considered responsible for the violations of human rights happening in Libya.

Under article 16° of ARSIWA, Italy's responsibility is solid in theory, since the 3 requirements are, *prima facie*, fulfilled, but faces significant practical difficulties, namely the higher standard of knowledge established by the ICJ on the Bosnian Genocide case and the lack of a court with jurisdiction to formally declare this responsibility. The argument of non-refoulement under CAT and ICCPR also faces difficulties regarding the requirement of jurisdiction that the ECtHR decision on the case S.S. made more problematic under ECHR. This decision demonstrated that financial and operational support is not sufficient to establish the legal link that the human rights treaties demand.

However, by adopting the MoU of 2017 without any mechanism of identification and protection of victims of trafficking, with knowledge of the specific vulnerability of Nigerian women, Italy has violated articles 5°, 10°, 13°, 16° and 26° of the CoE Convention of 2005, article 11° of the Directive 2011/36/EU and article 6° of CEDAW. This argument does not depend on the jurisdiction question, neither is affected by the S.S. decision: it is based on the fact that Italy has directly violated their own obligations by adopting an agreement incompatible with the anti-trafficking instruments that had ratified and transposed. Furthermore, the violation of the due diligence obligation reinforces this conclusion since Italy didn't adopt the reasonable measures that the knowledge of the circumstances demanded. Additionally, the renovation of the MoU, even after the publications of reports that document the systematic violations of human rights in Libya, demonstrates that this omission was deliberate.

The Palermo Protocol reinforces this framework: by concluding the MoU without including cooperation with NGOs and civil society, by deepening the vulnerability factors of Nigerian women instead of mitigating them and by not guaranteeing specific training to the LCG in identification and protection of victims, Italy acted in contradiction with the obligations under article 9°, n. °3, 9°, n. °4 and 10°, n. °2. Although the structural limitations of the Protocol prevent it from being an autonomous basis for responsibility, it confirms the incompatibility of the MoU with Italy's international obligations.

Consequently, the concrete impact of this cooperation in Nigerian women confirms that the violations identified in this chapter are not abstract, but rather have real consequences on human beings.

Conclusion

The Memorandum of Understanding celebrated between Italy and Libya in 2017 represents one of the examples of the externalization policy of migration control in Europe. Through this agreement, Italy has delegated to the Libyan authorities the interception operations of migrants in the Central Mediterranean and financed, equipped and trained the LCG for this purpose. The consequences of this agreement to Nigerian women, one of the most vulnerable groups to try to reach Italian territory, were serious and extensively documented: they were intercepted at sea and returned to Libya, where they were exposed to sexual exploitation in detention centers, unable to access the identification, assistance and protection mechanisms provided for under international and Italian law, and subjected to the risk of re-trafficking after the possible repatriation to Nigeria. The legal analysis developed along this dissertation aimed to determine in what terms can Italy be considered accountable for these consequences under international law.

The developed legal analysis demonstrates that Italy's responsibility is legally solid under the anti-trafficking instruments. The CoE Convention of 2005, the Directive 2011/36/UE and CEDAW impose direct obligations that Italy violated by concluding the MoU, independently of any question of jurisdiction. The Palermo Protocol, although it has limitations that prevent it from constituting an autonomous basis of responsibility, confirms the incompatibility of the MoU with Italy's international obligations. The argument under article 16° of ARSIWA remains possible and would gain considerable strength if the emergent doctrine about constructive knowledge would prevail, but, at the moment, faces practical difficulties that make this argument less solid. However, what this analysis makes unequivocal is that the delegations to third-party authorities do not exempt Italy from its international responsibilities: by financing, equipping and coordinating operations that made it impossible to protect Nigerian women victims of trafficking, it assumed obligations that international law does not allow to be ignored.

It is also important to address the ECtHR decision in *S.S. and Others v. Italy*, since, in my opinion, constitutes a concerning jurisprudential development. By concluding that financing, equipment and operational coordination of the LCG are not sufficient to establish Italy's jurisdiction under article 1° of ECHR, the Court distinguished the present case from the *Hirsi Jamaa* case, based on the criteria of the identity of those who had effective control over the intercepted migrants. This distinction, however, has consequences which go beyond the concrete

case. The S.S. decision implicitly validated a migration control policy where States can avoid accountability under ECHR by simply ensuring that it is not their own personnel to exercise physical control over the intercepted migrants, even though they can be financing, equipping, training and controlling the operations that produce exactly the same violations that Hirsi Jamaa prohibited. In my point of view, this paradox is legally unsustainable: a State that directly performs push-backs is made accountable; a State that delegates those same operations to a third party is not accountable. Consequently, the S.S. decision risks becoming a way to escape responsibility and to encourage states to strengthen their externalization policies to avoid their obligations under the ECHR.

Faced with this legal gap in the human rights protection system, I think it would be important to consider these 3 suggestions. First of all, both courts and international supervision organs should develop broader interpretations of the jurisdiction concept, making it capable of encompassing situations in which a State exercises a decisive influence over operations formally conducted by a third country. This reasoning could be developed in the context of policies of border externalization, applied to situations where a state funds, equips, trains and coordinates third parties' operations, without having direct physical control over the victims. The consolidation of this approach would allow for filling the gap created by de S.S. decision, making the ECHR protection system more resistant to strategies of externalization of accountability.

Secondly, I consider that it would be important to develop a specific international law instrument that regulates States' responsibility in situations of externalization of border control operation. This is a gap that the existent instruments do not directly fulfill and that the S.S. decision made obvious. This instrument would establish clear due diligence obligations for the States that celebrate migration cooperation agreements with third countries, including obligations to guarantee access to specialized organizations to SAR operations and obligations to condition financial and material support to the respect of human rights provisions.

Lastly, I believe that every agreement of cooperation in matters of migration management with third countries should include independent mechanisms of monitoring, capable of assessing both the conduct of the authorities involved and the human rights consequences of the cooperation, should guarantee the access of UNHCR and specialized organizations in combating trafficking to

SAR operations, include measures to prevent trafficking and protect trafficking victims and provide measures of automatic suspension of the agreement in case of human rights violations.

The Italy-Libya MoU of 2017 does not satisfy any of these conditions, which is precisely this gap that constitutes Italy's responsibility. My suggestions to Italy regarding this MoU are to, at minimum, include mechanisms of identification of victims of trafficking in the LCG operations, grant UNHCR, GRETA and specialized organizations access to all detention centers and, mostly, make all support conditional on compliance with minimum standards for the protection of Nigerian women victims of trafficking.

The Nigerian women situation in the context of the MoU of 2017 is not merely a legal problem, but rather a problem with real consequences on human beings. Behind every number, every statistic about migrants intercepted in the Central Mediterranean, there are real people, women that leave Nigeria searching for a better life and, instead of that, they experience sexual exploitation, violence and trafficking networks, from which it is difficult to escape. This thesis has demonstrated that Italy is not a mere spectator of this reality, but rather an active actor, whose political decisions have contributed to perpetuate the suffering of these women. While the extent of Italy's responsibility under certain legal frameworks remains open to doctrinal debate, the arguments supporting its responsibility under international and European anti-trafficking law are particularly strong and well grounded. To overlook it is not only a legal omission, but also a moral deficiency that international law must urgently address. If nothing changes, Nigerian women will continue to be returned to Libya, to be held in detention centers that Italy helps to maintain and will continue to be deprived of protection mechanisms to which they are entitled. International law has the responsibility to not allow this to continue happening.

Bibliography

A. Table of Cases

Bosnia and Herzegovina v Serbia and Montenegro (Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide) [2007] ICJ Reports 43

Chahal v United Kingdom App no 22414/93 (ECtHR, 15 November 1996)

Hirsi Jamaa and Others v Italy App no 27765/09 (ECtHR, 23 February 2012)

MSS v Belgium and Greece App no 30696/09 (ECtHR, 21 January 2011)

Nicaragua v United States of America (Military and Paramilitary Activities in and against Nicaragua) (Merits) [1986] ICJ Reports 14

Rantsev v Cyprus and Russia App no 25965/04 (ECtHR, 7 January 2010)

Saadi v Italy App no 37201/06 (ECtHR, 28 February 2008)

Sivarajah and Others v United Kingdom App no 13163/87 (ECtHR, 30 October 1991)

Soering v United Kingdom App no 14038/88 (ECtHR, 7 July 1989)

SS and Others v Italy App no 21660/18 (ECtHR, 12 June 2025)

TI v United Kingdom App no 43844/98 (ECtHR, 7 March 2000)

B. Table of Legislation

International Treaties and Conventions

Agreement on Collaboration in the Fight against Terrorism, Organised Crime, Illegal Trafficking of Drugs and Psychotropic Substances and Clandestine Immigration (Italy-Libya, 2000)

American Convention on Human Rights (opened for signature 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123

Charter of Fundamental Rights of the European Union [2000] OJ C364/1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)

Convention Implementing the Schengen Agreement of 14 June 1985 (signed 19 June 1990, entered into force 26 March 1995) [2000] OJ L 239/19

Convention on the Elimination of All Forms of Discrimination against Women (opened for signature 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13

Convention Relating to the Status of Refugees (opened for signature 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

Council of Europe Convention on Action against Trafficking in Human Beings (opened for signature 16 May 2005, entered into force 1 February 2008) CETS 197

International Convention for the Protection of All Persons from Enforced Disappearance (opened for signature 6 February 2007, entered into force 23 December 2010) 2716 UNTS 3

International Convention on Maritime Search and Rescue (opened for signature 27 April 1979, entered into force 22 June 1985) 1405 UNTS 97

International Covenant on Civil and Political Rights (opened for signature 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

Memorandum of Understanding on Development Cooperation, Illegal Immigration, Human Trafficking and Reinforcement of Border Security between Italy and Libya (signed 2 February 2017, entered into force 2 February 2017)

Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 16 September 1963, entered into force 2 May 1968) ETS 46

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319

Protocollo tra la Repubblica Italiana e la Gran Giamahiria Araba Libica Popolare Socialista [Protocol between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya] (Tripoli, 29 December 2007)

Protocollo aggiuntivo tecnico-operativo al Protocollo di cooperazione tra la Repubblica italiana e la Gran Giamahiria Araba Libica Popolare Socialista [Additional Technical-Operational Protocol] (Tripoli, 29 December 2007)

Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993

Treaty on Friendship, Partnership and Cooperation between Italy and Libya (signed 30 August 2008, entered into force 2 March 2009)

United Nations Convention against Transnational Organized Crime (opened for signature 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209

United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III)

European Union Legislation

Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) [2015] OJ L122/31

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings [2004] OJ L261/19

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims [2011] OJ L101/1

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime [2012] OJ L315/57

Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU [2024] OJ L 2024/1712

National Legislation and Institutional Documents

Costituzione della Repubblica Italiana (1948)

Decreto-Legge 28 giugno 2018, n 84 'Cessioni di unità navali alla Libia' (Italia)

Decreto Legislativo 4 marzo 2014, n 24 'Attuazione della direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime, che sostituisce la decisione quadro 2002/629/GAI' (Italia) Gazzetta Ufficiale n 60, 13 marzo 2014

Decreto Legislativo 25 luglio 1998, n 286 'Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero' (Italia)

Ministero della Difesa, 'Libia: Missione bilaterale di supporto e assistenza (MIASIT)'

C. List of references

- 'Backed by Italy, Libya Enlists Militias to Stop Migrants' (AP News, 30 August 2017) «<https://apnews.com/article/9e808574a4d04eb38fa8c688d110a23d>» accessed 2 May 2026
- 'Deaths at Sea: 27' (IOM, 13 January 2017) «<https://www.iom.int/news/mediterranean-migrant-arrivals-reach-1159-deaths-sea-27>» accessed 12 June 2026
- 'Exclusive: Libyan Smuggler Says Human Trafficking Will Continue Despite Italian Deal' (The Local Italy, 13 September 2017) «<https://www.thelocal.it/20170913/exclusive-libyan-smuggler-says-human-trafficking-will-continue-despite-italian-deal>» accessed 4 May 2026
- 'Exploitation and Enslavement: Two Nigerian Migrants Take Rights Case to UN Committee' (InfoMigrants, 10 January 2022) «<https://www.infomigrants.net/en/post/37752/exploitation-and-enslavement-two-nigerian-migrants-take-rights-case-to-un-committee>» accessed 22 March 2026
- 'Italy and Libyan Tribes Agree on Deal to Curb Migrant Flow' (Middle East Monitor, 3 April 2017) «<https://www.middleeastmonitor.com/20170403-italy-and-libyan-tribes-agree-on-deal-to-curb-migrant-flow/>» accessed 4 May 2026
- 'Italy Backs Tribal Border Patrol in Libya to Slow Migration' (InfoMigrants, 3 April 2017) «<https://www.infomigrants.net/en/post/2646/italy-backs-tribal-border-patrol-in-libya-to-slow-migration>» accessed 4 May 2026

-- 'The Libyan Coast Guard – Explained' (InfoMigrants, 2 October 2025)
«<https://www.infomigrants.net/en/post/67224/the-libyan-coast-guard--explained>»
accessed 4 May 2026

Adeyinka S, Lietaert I and Derluyn I, 'It Happened in the Desert, in Libya and in Italy: Physical and Sexual Violence Experienced by Female Nigerian Victims of Trafficking in Italy' (2023) 20(5) International Journal of Environmental Research and Public Health 4309

Adeyinka S, Lietaert I and Derluyn I, 'The Role of Juju Rituals in Human Trafficking of Nigerians: A Tool of Enslavement, But Also Escape' (2023) 13(4) SAGE Open 1

Amnesty International, Libya: Horrific Violations in Detention Highlight Europe's Shameful Role in Forced Returns (Amnesty International 2021)

Amnesty International, Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants (Amnesty International 2017)

ARCI, 'How Italy and Europe Funded the Libyan Coast Guards: 10 Years of Human Rights Violations' (ARCI, 2021)

Association for Juridical Studies on Immigration (ASGI), 'Legal Framework: Italian and Libyan Responsibilities for the Violation of Articles 2 and 6 of the CEDAW' (December 2021)

ASGI, 'Focus Nigeria' (ASGI, Sciabaca & Oruka, 2021)

ASGI, 'Nigeria: The Risk of Re-Trafficking and (In)Voluntary Return of Victims of Trafficking' (ASGI, Sciabaca & Oruka)

ASGI, 'The Consequences of Externalisation of Borders on Women's Rights' (ASGI, Sciabaca & Oruka, 16 December 2021)

Braimah T, 'Sex Trafficking in Edo State: Causes and Solutions' (2013) 13(3) Global Journal of Human Social Science 17

Council of Europe, 'Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings' (Council of Europe, 2005) CETS 197

Council of Europe, 'Monitoring of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings — Italy' (Council of Europe)

Council of Europe Committee for the Prevention of Torture, 'Report to the Italian Government on the Visit to Italy Carried out by the CPT from 27 to 31 July 2009' (CPT/Inf (2010) 14, 28 April 2010)

Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), 'Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy — Second Evaluation Round' (GRETA (2018)28, 25 January 2019)

Crawford J, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press 2002)

De Leo A, 'The Court of Crotone on the Libyan Coast Guard' (REALaw Blog, 27 September 2024)

Eke S and others, 'African Traditional Religion and "Juju" in Human Trafficking' (2016) 17(1) *Journal of International Women's Studies* art 1

European Commission, Answer to Parliamentary Question P-003665/2018 (4 September 2018)

European Commission, 'Support to Integrated Border and Migration Management in Libya – First Phase' (EU Emergency Trust Fund for Africa)

European External Action Service, 'Operation SOPHIA: Package 2 of the Libyan Navy Coast Guard and Libyan Navy Training Launched Today' (EEAS, 30 January 2017)

European Parliament, Parliamentary Question E-000547/2018 (31 January 2018)

European Union Agency for Asylum, COI Report – Nigeria: Sex Trafficking of Women (EUAA 2022)

Ferrini A, 'Italy, Libya and the EU: Co-dependent Systems and Interweaving Imperial Interests at the Mediterranean Border' in Paul Gilbert and others (eds), *The Entangled Legacies of Empire: Race, Finance and Inequality* (Manchester University Press 2023)

Gombeir K and Fink M, 'Search and Rescue in the Central Mediterranean' (2018) 4 MarSafeLaw Journal 1

Hannum H, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1996) 25 Georgia Journal of International and Comparative Law 317

Human Rights Watch, 'EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk' (HRW, 25 July 2018)

Human Rights Watch, 'No Escape from Hell': EU Policies Contribute to Abuse of Migrants in Libya (HRW 2019)

Human Rights Watch, "'You Pray for Death': Trafficking of Women and Girls in Nigeria' (27 August 2019)

ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10 annex

ILC, 'Due Diligence in International Law' (ILC Report 2024) UN Doc A/79/10 Annex II

IMO, Guidelines on the Treatment of Persons Rescued at Sea (IMO Resolution MSC.167(78), 20 May 2004)

IOM, 'Mediterranean Human Trafficking and Exploitation Prevalence Survey' (IOM, 12 August 2016)

IOM, 'Voodoo' Curses Keep Victims of Trafficking Under Bondage (IOM 2016)

IOM and UNHCR, Migrant and Refugee Movements through the Central Mediterranean Sea: Joint Annual Overview 2024 (UNHCR/IOM 2025)

IOM, DTM Libya Migrant Report Round 58 (May–July 2025) (IOM 2025)

IOM, Missing Migrants Project: Mediterranean

Koivurova T, 'Due Diligence' in Rüdiger Wolfrum (ed), Max Planck Encyclopedia of Public International Law (Oxford University Press 2010)

Lanovoy V, 'Due Diligence in International Law: A Useful Renaissance or All Things to All People?' (2024) 35 European Journal of International Law 1029

Lauterpacht E and Bethlehem D, 'The Scope and Content of the Principle of Non-Refoulement: Opinion' in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law* (Cambridge University Press 2003)

Médecins Sans Frontières, 'You're Going to Die Here': Abuse in Libyan Detention Centers (MSF 2023)

MSF, 'Italy-Libya Agreement: Five Years of EU-Sponsored Abuse in Libya and the Central Mediterranean' (MSF, 2022)

Msuya N, 'Traditional "Juju Oath" and Human Trafficking in Nigeria: A Human Rights Perspective' (2019) *De Jure* 1

Nickel J, 'Human Rights' in Edward Zalta (ed), *Stanford Encyclopedia of Philosophy* (2023)

Nollkaemper A, D'Aspremont J, Ahlborn C, Boutin B, Nedeski N and Plakokefalos I, 'Guiding Principles on Shared Responsibility in International Law' (2020) 31(1) *European Journal of International Law* 15

OHCHR, *Detained and Dehumanised: Report on Human Rights Abuses Against Migrants in Libya* (13 December 2016)

OHCHR, 'Lethal Disregard: Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea' (OHCHR, May 2021)

OHCHR and UNSMIL, 'Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya' (UNSMIL/OHCHR, 20 December 2018)

OHCHR and UNSMIL, *Migrants in Libya: Victims of a Violent Business Model of Systemic Violations and Abuses* (UN 2026)

Ogbazghi MMG, 'The Italy-Libya Agreements: Controversial Cooperation — Assessing the Human Rights Violations on Matters of Refugees and Migrants Protection' (Master's Dissertation, University of Macedonia 2022)

Okorie MM and Okeja U, 'Leaving at All Costs: Implications of the Italy-Libya Border-Externalization Policy on Migrant Smuggling and Trafficking Facilitation' (2024) XVII(1-2) *Perspective Politice* 131

Palm A, 'The Italy-Libya Memorandum of Understanding: The Baseline of a Policy Approach Aimed at Closing All Doors to Europe?' (EU Migration Law Blog, 2 October 2017)

Raoul Wallenberg Institute, 'International Human Rights Law' (RWI, 13 January 2023) <<<https://rwi.lu.se/human-rights-law/>>> accessed 5 May 2026

Reviglio della Veneria M, 'Externalizing Migration Management through Soft Law: The Case of the Memorandum of Understanding between Libya and Italy' (2019) 20 *Global Jurist* 4

Ronzitti N, 'The Treaty on Friendship, Partnership and Cooperation between Italy and Libya: New Prospects for Cooperation in the Mediterranean?' (2009) 1(1) *Bulletin of Italian Politics* 129

SIHMA, 'Libya' (African Migration Statistics, Scalabrini Institute for Human Mobility in Africa)

Tjønn MH and Jumbert MG, 'Migration Across the Mediterranean: Shaping Italy-Libya Relations Over Time' in Maria Gabrielsen Jumbert and others (eds), *Externalizing Migration Management: Europe, North Africa and the Middle East* (Springer 2024)

UN Committee against Torture, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Italy' (18 December 2017) UN Doc CAT/C/ITA/CO/5-6

UN Committee against Torture, 'General Comment No 4 on the Implementation of Article 3 of the Convention in the Context of Article 22' (2017) UN Doc CAT/C/GC/4

UN Committee on the Elimination of Discrimination against Women, 'General Recommendation No 38 on Trafficking in Women and Girls in the Context of Global Migration' (2020) UN Doc CEDAW/C/GC/38

UN Human Rights Committee, 'General Comment No 31' (2004) UN Doc CCPR/C/21/Rev.1/Add.13

UN Human Rights Council, Detailed Findings of the Independent Fact-Finding Mission on Libya (27 March 2023) UN Doc A/HRC/52/CRP.8

UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (26 February 2018) UN Doc A/HRC/37/50

UNGA Res 56/83 'Responsibility of States for Internationally Wrongful Acts' (12 December 2001) UN Doc A/RES/56/83

UNGA Res 65/229 'United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)' (adopted 21 December 2010) UN Doc A/RES/65/229

UNGA Res 70/175 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)' (adopted 17 December 2015) UN Doc A/RES/70/175

UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol' (26 January 2007)

UNHCR, Desperate Journeys: Refugees and Migrants Arriving in Europe and at Europe's Borders (UNHCR 2019)

UNHCR, 'General Legal Considerations: Search-and-Rescue Operations Involving Refugees and Migrants at Sea' (UNHCR, 2017)

UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR 2019) UN Doc HCR/1P/4/ENG/REV.4

UNHCR, 'Italy Sea Arrivals Dashboard 2018' (UNHCR, 2019)

UNHCR, 'Submission by the United Nations High Commissioner for Refugees for the Universal Periodic Review — Libya' (36th Session, UPR-Info, 2021)

UNHCR, 'The Principle of Non-Refoulement as a Norm of Customary International Law' (Refworld, 1994)

UNHCR, 'UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea' (September 2020)

United Nations Office for the Coordination of Humanitarian Affairs, Libya Humanitarian Profile 2025 (As of May 2025) (2025)

United Nations Office of the High Commissioner for Human Rights, 'International Human Rights Law' (OHCHR) [«https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law»](https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law) accessed 5 May 2026

United Nations Treaty Collection, 'Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime — Status of Treaties'

UNODC, Global Report on Trafficking in Persons 2024 (UN 2024)

UNODC, Issue Paper: Abuse of a Position of Vulnerability and Other 'Means' within the Definition of Trafficking in Persons (UN 2012)

US Department of State, '2017 Trafficking in Persons Report: Libya' (US Department of State, 2017)

US Department of State, 2021 Trafficking in Persons Report: Nigeria (US Department of State 2021)

Xchange, 'Libyan Detention Centers: A Legal Analysis' (Xchange)

Zambiasi D and Albarosa E, 'Externalizing Rescue Operations at Sea: The Migration Deal between Italy and Libya' (2025) 25(1) Journal of Economic Geography 41