

**Crossing borders & moving boundaries:  
for better or worse**

A process tracing analysis of the European externalisation of migration  
management to Libya

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**Abstract:** On consecutive days in February 2017 the Italy-Libya Memorandum of Understanding and the Malta Declaration were concluded. Together, these soft law agreements externalise European migration management to Libya, inter alia, through strengthening border control and enhancing the capacity of Libyan authorities, including the Libyan Coast Guard. This externalisation is contested, as it potentially encompasses European support for, and enablement of, human rights violations in Libya, and breaches the principle of non-refoulement. To understand how and why the EU engages in such unconscionable policies, a process tracing analysis is conducted. This thesis argues the externalisation of European migration management to Libya arose and subsisted through the conclusion of two sequenced, incomplete and ambiguous agreements, and is likely a consequence of the securitisation of migration, diverging interests, and organised hypocrisy in the European Union.

**Keywords:** externalisation; migration management; soft law; securitisation; organised hypocrisy; EU; Libya.

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## List of abbreviations

ASGI	Italian Association for Juridical Studies on Immigration
DCIM	Directorate for Combating Illegal Migration
EBP	Evidence based policy
ECA	European Court of Auditors
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union
EUTFA	EU Trust Fund for Africa
GNA	Government of National Accord
HRW	Human Rights Watch
IOM	International Organisation for Migration
LCG	Libyan Coast Guard
MD	Malta Declaration
MoU	Italy-Libya Memorandum of Understanding
MSF	Médecins Sans Frontières
OHCHR	United Nations Office of the High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees

## 1. Introduction

“If someone escapes hell, how can you grab them and take them back to hell?”<sup>1</sup>

Migrants in Libya are “trapped in a cycle of serious human rights violations and abuses” (Amnesty International, 2020a, p.6), in which they face arbitrary and indefinite detention, (serial) rape, torture, enslavement, exploitation, enforced disappearance and unlawful killing. These abuses are perpetrated against men, women and children alike, and are committed by human traffickers and militias en route, as well as in migrant reception centres controlled by Libyan authorities (Amnesty International, 2020a, pp.6-10; 17-32).

Libya is not a signatory to the 1951 Refugee Convention nor does it have any refugee protection system of its own (HRW, 2019, p.31). On the contrary: crossing the Libyan border without authorisation is illegal and punished with imprisonment (HRW, 2019, p.14). In most cases, the only way for migrants to leave detention is through informal and dangerous routes, such as enslavement or escape (HRW, 2019, p.16). When migrants indeed manage to escape, another challenge awaits them: the Mediterranean Sea. During its crossing they not only face the dangers of the high seas, but are increasingly intercepted by the Libyan Coast Guard (LCG) and returned to shore. Upon disembarkation in Libya, migrants are transferred to the Directorate for Combating Illegal Migration (DCIM) who return them to the detention centres (Amnesty International, 2020a, p.7), whereupon the cycle of abuse continues.

The number of migrants intercepted by the LCG has risen from 9.225 returns in 2019, to 11.891 in 2020 and an estimated 15.000 in the first half of 2021. These interceptions are, in part, enabled by the European Union (EU), through the provision of training, equipment and surveillance assistance to the LCG, in conjunction with the retreat of European naval search and rescue operations (Amnesty International, 2021, pp.22-24). These provisions, among other cooperation initiatives, are set out in two agreements concluded on consecutive days in February 2017: the *Italy-Libya Memorandum of Understanding* (MoU) (Uselli, 2017) and the *Malta Declaration* (MD) (European Council, 2017). Since their initiation, both agreements have been widely critiqued. Médecins Sans Frontières (MSF), for instance, stated that with the Malta Declaration, “it's clear that the EU is ready to sacrifice thousands of vulnerable men, women, and children in order to stop them reaching European shores” (MSF, 2017). And the Italian Association for Juridical Studies on Immigration (ASGI) stated that with these

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<sup>1</sup> A quote by “Bamba, a 31-year-old from Ivory Coast who reached Italy in October 2016” in Human Rights Watch’s report “No Escape from Hell – EU Policies Contribute to Abuse of Migrants in Libya” (2019, p.1).

agreements Italy and the EU “de facto violate the principle of non-*refoulement*, as it requires third countries to forcibly block the passage of people in clear need of international protection” (ECRE, 2017). This then makes one wonder how it is possible that the EU, as today’s global normative power, continues to engage in such unconscionable policies?

### **1.1 A case of the externalisation of migration management through soft law**

Whereas the MoU is a bilateral agreement between Italy and Libya on cooperation against migration, human trafficking and fuel smuggling (Uselli, 2017), the MD is an agreement between the European heads of state and government (i.e., the European Council) on addressing migration through the Central Mediterranean to Europe (European Council, 2017). Both agreements express their support for the UN-backed Government of National Accord (GNA), one of Libya’s three competing governments (Kruashvili, 2020, pp.129-130), and commit, inter alia, to the provision of support, financing and equipment to the Libyan Coast Guard, the “adaptation” of reception centres, capacity-building of Libyan authorities, strengthening of border control and cooperation with international organisations on – among other things – enhancing return programmes (European Council, 2017; Uselli, 2017). The Italy-Libya Memorandum of Understanding and Malta Declaration are thus agreements to externalise migration management, by which I mean: the outsourcing of migration and border control related practices to a third (non-EU) party.

Both agreements classify as soft law instruments, which means that they are non-legally binding, but derive their effectiveness from their influential and coercive character (Eurofound, 2011). Over the last few years, such soft law instruments have increasingly been used within European migration management (Terpan & Saurugger, 2021, p.33), for instance, in the creation of the EU-Turkey Statement and the Joint Way Forward with Afghanistan (Slominski & Trauner, 2021, pp.94-95). Correspondingly, this case-study research – which focusses on the MoU and MD – can be defined as *a case of the externalisation of migration management through soft law measures*. Within academia, this modus operandi is often explained by the increased xenophobia (Vari, 2020, p.110) and perception of migration as a threat (Panebianco, 2020, p.1) in the Member States, as well as, the diverging interests (Loschi and Russo, 2020, p.8), organised hypocrisy (Cusumano, 2019, p.4) and increased use of security-based incentives (Gürkan & Coman, 2021, p.293) in the European Union.

While the agreements successfully decreased the number of arrivals to Europe (HRW, 2019, p.4; Kruashvili, 2020, p.130), the chances of death at sea increased following their conclusion to 1 in 18 by 2018, from 1 in 42 by 2017 (HRW, 2019, p.4), and the consequences



for migrants returned to Libya are severe (Amnesty International, 2021, pp.5-8). The strong indications of detriment caused by the agreements make one wonder if the academic explanations are in fact sufficient. Because, should it not take more for the EU to implement a policy that causes such harm?

The aim of this thesis is, therefore, to uncover the process and rationale behind these cooperation agreements and their extension. What drove Italy and the EU to the creation of these agreements? And how exactly does this externalisation work? The aim of this thesis is thus to answer the following question:

*How and why did the externalisation of European migration management to Libya arise and subsist, despite widespread moral and practical critique?*

## **1.2 Tracing the process of externalisation**

As the aim of this thesis is to uncover the processes that led to the European externalisation of migration management to Libya, I will conduct a process tracing analysis. Specifically, I will conduct *explaining-outcome process tracing*, which “aims to trace causal mechanisms in order to produce a comprehensive explanation of a particular historical outcome” (Beach, 2017, p.21), namely the conclusion of the MoU and MD. Process tracing does not comprise of one single research method, but involves the constant going back and forth between theory and evidence, the case and its context, and inductive and deductive methods, to trace the conglomerate of mechanisms that eventually resulted in the explored outcome (Beach, 2017, p.21). Considering the time and resources allocated to this thesis project, I seek to identify the externalisation process by analysing and compiling academic literature, civil society reports and official documentation on the agreements.

First, in chapter 2, the foundations for this research will be established through a discussion of the academic literature, which not only introduces the broad field of externalisation and soft law, but also elaborates on the critiques and explanations of the agreements and their modus operandi. In addition, a conceptual framework will be formed and the process tracing methodology elucidated. Hereafter, chapter 3 discusses the context in which the MoU and MD were concluded. This is a context influenced by a long history of both friendship and hostility, marked by conflicting interests and the increased securitisation of migration throughout the EU. Subsequently, chapter 4 elaborates on the two agreements: first, by outlining their content in detail, and second, by reflecting on the content by situating it in its wider context. This not only shows the complex structure of the agreements, but also reveals

the lack of adequate monitoring and the omission of several essential issues. Finally, chapter 5 argues that the externalisation of European migration management to Libya arose through the conclusion of two contested, incomplete and at times ambiguous agreements, and was enabled by the EU's unpreparedness, the securitisation of migration and disagreement among the Member States.

This thesis contributes to the debate on the externalisation of migration management not by focusing on a specific aspect of the process, such as orchestration, securitisation or organised hypocrisy, but by bringing together the existing knowledge and literature to paint a more complete picture of the situation and agreements, and the processes that underpin them. Furthermore, answering this research question is relevant because the externalisation of migration management via soft law appears to become a regular *modus operandi* for the EU, despite the serious human rights consequences it may have.

## **2. Towards a framework of externalisation**

Within the academic literature, cooperation on migration management between the EU and Libya has been widely critiqued. Over a decade ago, Hamood (2008) argued that a policy aimed at strengthening European borders was unlikely to successfully protect migrants' human rights (Hamood, 2008). Similar policies, however, are still used today in the MoU and MD, and with the Mediterranean Sea being the world's deadliest border (Palm, 2020, p.9; Panebianco, 2020, p.14), these policy concerns remain as pressing as ever.

The present agreements have been critiqued for being inconsistent and ineffective (Panebianco, 2020, p.15). In the case of the MD this involves underestimating the gravity of the situation in Libya (Palm, 2020, p.13). While for the MoU it concerns: the involvement of militias in coast control, Italy's absence on the ground (Kruashvili, 2020, p.131) and its technical phrasing, which allows Libyan authorities to avoid human rights obligations while abiding by the EU's security framework (Loschi & Russo, 2020, p.17). Furthermore, it is believed that the EU's strengthened border control has pushed migrants towards even more dangerous pathways and into the hands of human traffickers (Graziani, 2017, p.34). As such it can be argued that "the memorandum has exacerbated severely the situation of migrants in Libya" (Reviglio, 2020, p.8).

Some scholars argue that the MoU operates in a legal "black hole" (Reviglio, 2020, p.3) and orchestration techniques enable the EU to avoid legal responsibility, while still approaching (international) law as an important normative resource (Müller & Slominski, 2020, p.4). Others, however, claim Italy and the EU can still be held accountable. Following jurisprudence of the European Court of Human Rights (ECtHR), for instance, states can be "held accountable for the effects of any act carried out under their jurisdiction, even if these take place outside their territory" (Palm, 2020, p.23). Additionally, states become legally liable when their (financial) assistance to a state furthers human rights violations in that state (Ferstman, 2020, p.460). Since there is a connection between European policies and funding, and the harms migrants suffer, both in Libya and on the Mediterranean Sea, one could argue that the EU may be held accountable (Palm, 2020, pp.23-24).

Yet, despite the widespread critique and potential complicity to human rights violations in Libya, both the EU and Italy have continued to cooperate with Libya and externalise their respective migration management. The following section will elaborate on what exactly this externalisation of migration management entails, what the agreements' soft law nature implies and which processes may have caused their formation. From this, a conceptual framework and

case-definition are derived, which form the backbone of this thesis project. Subsequently, this research's process tracing methodology will be explained.

## 2.1 Managing migration

Migration management refers to any and all policy initiatives related to the cross-border movement of persons, and is composed of three interconnected trends, whereby migration management i) “is mobilized by actors to conceptualize and justify their increasing interventions in the migration field”; ii) “refers to a range of practices that are now part of migration policies, and that are often performed by the institutions that promote the notion”, such as anti-smuggling activities; and iii) “relies on a set of discourses and on new narratives regarding what migration is and how it should be addressed” (Geiger & Pécoud, 2010, pp.1-2). Migration management takes on many different forms, and is often deployed through bilateral and regional agreements on its shared management (Reslow, 2020, p.546), such as the MoU.

To understand migration management one must understand the interactions between space, movement and human rights. As this interaction reveals how borders (still) matter: they establish the rights a person is entitled to and envisage states' efforts to “monopolise the legitimate means of movement” (FitzGerald, 2020, p.5). The field of migration management features two commonly used – and often combined – approaches to border control: *hyper-territorialisation*, the increased efforts to strengthen physical borders and keep migrants on the other side; and *extra-territorialisation*, the outward shift of control practices, which in turn makes the physical location of the border less relevant (FitzGerald, 2020, pp.5-6). This extra-territorialisation is also referred to as externalisation.

### 2.1.1 Externalising migration management

Since 2004, European migration management has increasingly been externalised (Hamood, 2008, p.20). This *externalisation of migration management* means the EU's border control practices and responsibilities are outsourced to third (non-EU) countries (Palm, 2020, pp.11-12). This is referred to by Panebianco (2020) as “borders' control by proxy, i.e. delegating migration management to third actors with an open mandate” (2020, p.14), and summarised by Moreno-Lax and Lemberg-Pedersen (2019) as: “the range of processes whereby European actors and Member States complement policies to control migration across their territorial boundaries with initiatives that realize such control extra-territorially and through other countries and organs rather than their own” (2019, p.5).

Accordingly, I will refer to the externalisation of migration management as any practice related to migration management that is outsourced to a third party; which includes remote border control, but may also entail other initiatives regarding, for instance, return programmes or reception centres in third countries. In general, it is believed that through this externalisation, parties aim “to intercept migrants before they approach Europe in order to deter and prevent their crossings (and applications for asylum)” (Gaibazzi, Bellagamba & Dünnwald, 2017, p.6). As by keeping migrants away from state territory a “Hippocratic bubble”<sup>2</sup> occurs, whereby unwanted migrants are prevented from entering a state’s territory and so cannot invoke the rights to which they are entitled (FitzGerald, 2020, pp.7-8).

Migration management agreements are increasingly concluded through the use of orchestration. This *orchestration* “involves orchestrators [here: the EU] enlisting third parties as intermediaries on a voluntary basis, providing them with ideational and material support in pursuit of a certain governance goal” (Müller & Slominski, 2020, p.1). While traditionally it is believed orchestration is employed as a problem-solving approach, Müller and Slominski (2020, p.13) argue states may use it to avoid legal responsibilities as well.

Generally, orchestration (to avoid accountability) is used when there is i) a high legal standard to uphold (which is incompatible to political preferences); ii) a lack of legal alternatives to avoid accountability; and iii) a third party that is (legally) able to perform the requested tasks. However, when the third party is not legally competent, *orchestration techniques* can be used to comply with this third dimension. Müller and Slominski (2020) distinguish between four different techniques: i) *assistance*, providing material (e.g., training), financial or administrative support; ii) *endorsement*, increasing the party’s authority (e.g., recognition as the legitimate government); iii) *convening*, providing access to relevant actors and networks to enhance legitimacy; and iv) *coordination*, mobilising and coordinating activities of different parties (Müller & Slominski, 2020, pp.4-6). It is thus the use of orchestration and provision of support that enables states to externalise migration management to third parties, and so possibly avoid legal responsibility. Through this provision of support however the question arises as to whether externalisation in fact exploits the third country that is party to the agreement, because although the agreements were signed voluntarily, this did not happen under equal conditions (Palm, 2020, p.20).

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<sup>2</sup> The term Hippocratic is used because of the similarity with the American hospital system, where only selected patients – with proof of sufficient resources – are allowed to pass the gatekeepers and see a doctor, who took the Hippocratic Oath to aid those in need (FitzGerald, 2020, pp.7-8).

### 2.1.2 *Managing migration through soft law*

Both the MoU and MD qualify as soft law, and are part of a larger European shift towards the increased use of these instruments (Reviglio, 2020, p.3). *Soft law* measures are not legally binding, but derive their effect from informal influence and persuasion, aiming to convince parties to adopt a policy voluntarily (Eurofound, 2011). As such, without being legally binding, soft law does have both practical and legal consequences (Slominski & Trauner, 2021, p.95), and is in many cases supported by some kind of enforcement mechanism (e.g., monitoring) (Terpan and Saurugger, 2021, p.23). Therefore, while the commitments do not legally classify as hard law they are still legally relevant, which is an ambiguity that, according to Terpan (2015), is instrumental as it “helps describe with precision the different ways of adopting and enforcing norms in the EU” (Terpan, 2015, p.72).

Soft law is a useful tool due to its flexibility, low sovereignty costs and easy negotiation. This is particularly beneficial for intergovernmental bodies such as the EU, which have to operate amidst a complexity of European laws and regulations, and a variety of interests and veto powers. Additionally, soft law’s “low legislative costs” make it a practical tool for crisis response. This because, in times of crisis, soft law policies can be implemented without following standard norms and procedures, as to quickly respond to the crisis and subsequent threats (Slominski & Trauner, 2021, pp.95-96). In general, at the European level, soft law instruments are thus used when there is disagreement between Member States on policy proposals or an inability to implement hard law measures (Eurofound, 2011).

The strength of soft law, hence, lies in that it is easily adapted to changing circumstances, enforces conformity through self-regulation (Zerilli, 2010, p.7) and has coercive effects through practices as shaming and persuasion. Therefore Zerilli (2010) also refers to soft law as “non-binding coercions” (Zerilli, 2010, p.5). Critics, however, claim soft law instruments are often highly simplified, through which the checks and balances of democracy can be evaded (Reviglio, 2020, p.1). This is not only because it is non-legally binding, but also because soft law does not require the involvement of the (European) Parliament (Reviglio, 2020, p.5) and can contain unclear language (Vari, 2020, p.113), which allows for different interpretations.

## **2.2 Choosing to externalise migration management**

In many instances, strengthening border control and migration management is justified by calling upon a state’s sovereignty, its right to self-determination and freedom to (not) associate (Palm, 2020, pp. 15-16). Following De Guttery, Capone and Sommario (2017), specific factors that motivated Italy to conclude the MoU are: i) pressure from national (centre-) right-wing

political parties; ii) actions and demands of other EU Member States (e.g., closing of borders); iii) the large numbers of casualties on the Mediterranean Sea; and iv) Italy's financial crisis (De Guttery et al., 2017, p.52). In general, however, two potential reasons for externalisation prevail in the academic literature: the securitisation of migration and the divergence of interests – and subsequent organised hypocrisy – within the European Union.

### 2.2.1 *Securitisation of migration*

The European migration response is, according to Panebianco (2020), a result of the upwards spiralling of securitisation by political actors, which led to the mediatisation and politicisation of the subject (Panebianco, 2020, p.15) and increased perceptions of migrants as threats to security and national identity (Panebianco, 2020, p.1). As such, securitisation does not only affect politicians directly, but also influences public opinion and the electoral request for increased security, to which politicians may respond by externalising migration management (Reviglio, 2020, p.1).

This *securitisation* “refers to the overall process of turning a policy issue such as drug trafficking or international migration into a security issue” (Faist, 2004, p.2), through “the creation of a continuum of threats and general unease” (Bigo, 2002, p.63). These security issues are then not objective reflections of reality, but result from (political) actors' attempts to understand and shape a phenomenon (i.e., security is performative), often with the aim to obtain the authority and justification to address the “threat” in the preferred manner. Securitisation thus “combines the politics of threat design with that of threat management” (Balzacq, Léonard & Ruzicka, 2016, p.495).

In the field of European migration, securitisation addresses concerns related to cultural security, internal security and the welfare state crisis (Huysmans, 2000, p.758). This happens through discourse and mobilisation, but also through more practical incentives such as population profiling, statistics and category creation (Bigo, 2002, p.65). This interaction between security (or securitisation) and migration is referred to as the *migration-security nexus* (Faist, 2004, p.3). While the destabilising effects of migration have been a topic of debate since the 1980's (Huysmans, 2000, p.751), its significance increased after 9/11 (Faist, 2004, p.1). Although the migration-security nexus has taken precedence over humanitarian incentives in the European migration dialogue (Panebianco, 2020, p.1), there are instances where a humanitarian dimension is still adopted.

Through the incorporation of this *humanitarian* dimension, two types of security threats occur: on the one hand, migrants are portrayed as security threats; while on the other hand, they

are threatened by both human smugglers and the dangerous sea crossings – for which they need to be protected. By incorporating this humanitarian dimension to securitisation, (restrictive) border measures are justified, and a form of “ethical policing” is generated. This humanitarian securitisation however tends to neglect human rights obligations, while amplifying securitisation rationales (Moreno-Lax, 2018, pp.120-122).

### *2.2.2 Organised hypocrisy in migration management*

Another common explanation for the soft law conclusion of the MoU and MD are the competing interests of EU Member States (Loschi and Russo, 2020, p.8; Phillips, 2020, p.90), and their inability to reach agreement (Panebianco, 2020, p.15), which led to a policy stalemate (Panebianco, 2020, p.8) as well as a degree of organised hypocrisy (Cusumano, 2019, p.4).

Cusumano (2019) studied how Frontex’s missions in the Mediterranean were communicated as humanitarian search and rescue missions, while their actual activities mostly revolved around border control: they represent a case of organised hypocrisy. This *organised hypocrisy* is caused by institutions’ need to meet contradicting demands and pressures, and refers to a “systematic mismatch between the words and deeds of organizations”. Which generally means that publicly norm-based arguments prevail, while this does not correspond to the actions on the ground (Cusumano, 2019, p.6). Hypocrisy in this case is organised as it arises from systematic contradictions within a ‘formal organisation’ (Lipson, 2007, p.6).

Organised hypocrisy, in Nils Brunsson’s definition, focusses on the inconsistency in an organisation’s output: its talk, decision, and action. This form of organised hypocrisy does not entail a decoupling of talk and action per se, but instead is comprised of an inconsistency between the two. This is, Brunsson argues, because there still is a causal relationship between talk and action, only not in the way that was anticipated (e.g., A “compensates for” the lack – or inconsistency – of B). Lipson refers to this as “counter-coupling” (Lipson, 2007, pp.9-10). Which is particularly relevant to the present case as “the EU’s unsettled constitutional balance makes it particularly vulnerable to the combination of high normative ambitions and practical political limits” (Lavenex, 2018, p.1196), and hence to counter-coupling.

While inconsistency between normative incentives and policy actions harms the legitimacy of both the institutional policy response (Lavenex, 2018, p.1196) and the norms it seeks to uphold (Lipson, 2007, p.23), a certain degree of organised hypocrisy may be inevitable for organisations such as the EU (Cusumano, 2019, p.16). Moreover, there are instances where organised hypocrisy is, in fact, beneficial to the organisation’s survival and decisiveness, by enabling cooperation and agreement (Lipson, 2007, p.6). Nonetheless, while such counter-



coupling enables the EU to reconcile its competing interests, in the process, it may lead to ineffective management (Cusumano, 2019, p.3).

**2.3 A conceptual framework on externalisation**

The preceding sections put forward a number of concepts essential to the present case. Combined they form the conceptual framework for this thesis (see *Figure 1*), which is understood to be a network “of interlinked concepts that together provide a comprehensive understanding of a phenomenon” (Jabareen, 2009, p.51), and so maintain the tools and indicators required to analyse that phenomenon. While it is a relatively simple frame, it derives its importance from the different aspects of the case it covers. Together these concepts are able to explain the different processes within the case, potentially answer the thesis question and define this case-study research as *a case of the externalisation of migration management through soft law measures*.

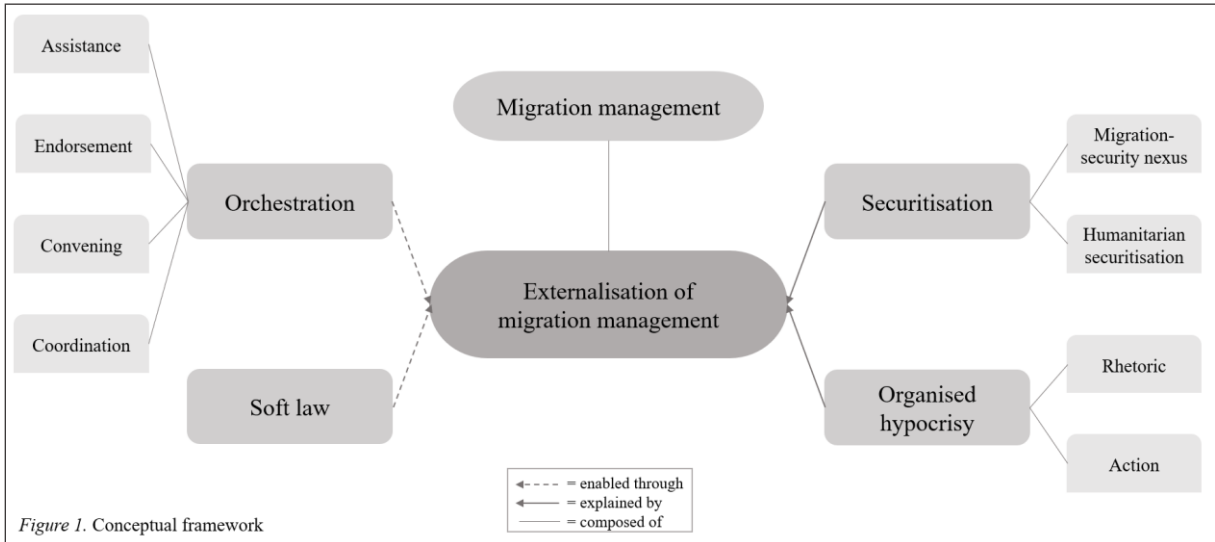


Figure 1. Conceptual framework

Figure 1. The conceptual framework indicates how the externalisation of migration management is enabled through the use of soft law measures and orchestration (techniques). This modus operandi is likely a consequence of the securitisation of migration and organised hypocrisy in the EU (Member States).

**2.4 Process tracing methodology**

As I seek to understand what led to the creation of the MoU and MD, I need to understand the processes that lay at their foundation. I will do this via a process tracing analysis. Through process tracing, one conducts an in-depth analysis of the causal mechanisms in a case to understand the process *in-between* a cause and outcome (Beach, 2017, p.2). As I focus on one specific outcome, rather than on testing or building a theory, I will conduct *explaining-outcome process tracing*. This method “aims to trace causal mechanisms in order to produce a comprehensive explanation of a particular historical outcome” (Beach, 2017, p.21), through a

mixture of deductive and inductive methods. Here, one does not move from theory to evidence, or vice versa, but moves back and forth between the two, to find a “sufficient” explanation of the outcome of the case (Beach, 2017, p.21). “Sufficient”, in this case, refers to the subjective judgment that all relevant aspects of the outcome are explained, and that there are no more plausible alternatives (Beach & Pederson, 2011, p.26).

Process tracing studies *mechanistic evidence*, which refers to “within-case empirical material left by the workings of a causal mechanism” (Beach, 2017, p.3), and requires finding diagnostic evidence. What qualifies as such evidence, is dependent on one’s prior knowledge of the case (Collier, 2011, p.824) and is hence largely based on the foregoing conceptual framework.

In explaining-outcome process tracing, however, cases are often too complex to be explained by one single theory or mechanism. Therefore, a wider definition of causal mechanisms is employed, allowing the combination of different mechanisms into one “eclectic conglomerate mechanism” that sufficiently explains the outcome. These conglomerates include *non-systematic mechanisms*, which are non-generalisable, case-specific mechanisms that contributed to this one particular outcome (e.g., a large shipwreck). While explaining-outcome process tracing focuses on one specific case, the goal remains to find an explanation that is as generalisable as possible. It is therefore important to identify what the systematic and non-systematic mechanisms within the conglomerate are, and to differentiate between unique and – potentially – generalisable findings (Beach & Pederson, 2011, pp.22-23). To identify these non-systematic mechanisms, but also to trace the sequencing of mechanisms and study the involvement of a phenomenon, one must be able to understand and adequately describe the relevant events of the case, at specific moments in time (Collier, 2011, pp.823-824). Understanding the context in which a phenomenon occurs is thus crucial in process tracing research. In the following section I will elaborate on some specificities of this research design.

#### 2.4.1 *An explaining-outcome process tracing design*

Explaining-outcome process tracing involves the constant moving back and forth between theory and evidence. As such, this study’s research design progressively developed over time. Amnesty International’s Report “Between Life and Death – refugees and migrants trapped in Libya’s cycle of abuse” (2020a), which addressed the atrocities migrants endure in Libya and the alleged European support to these violations, prompted an extensive review of the literature. This revealed how externalisation practices affect many different disciplines (e.g., political, migration, ethical and legal studies) and are widely contested. This, combined with the

conceptual framework above, led to the formulation of the following thesis question: *how and why did the externalisation of European migration management to Libya arise and subsist, despite widespread moral and practical critique?* This thesis question fits a *critical realist* epistemology, not only because it seeks to identify the causes and mechanisms of a real world problem, but also because – within this conceptual framework – perceptions and interpretations of our world matter (Mason, 2018, p.9), as threat creation and conflicting interests, or securitisation and organised hypocrisy, are not only perceived as part of the real world but are also constitutive of it. The corresponding ontological position is then that of *processes and interactions* (Mason, 2018, pp.4-6), specifically those processes and interactions that take place within the EU, and have shaped today's migration management.

I seek to answer the thesis question by compiling existing knowledge on the subject and analysing academic literature, official documentation and civil society reports on the two agreements as well as on the EU and the externalisation of migration management in general. I aim to trace *why* the externalisation of migration management arose by outlining the context wherein the MoU and MD were concluded and creating a timeline of the important events preceding their formation. Subsequently, to explicate *how* the externalisation of migration management to Libya materialised, I will discuss the exact content of the two agreements, in as much – or in some cases as little – detail as they provide, and reflect upon them in light of the (conflict and human rights) situation in Libya, the structure of the interventions and the set-out evaluation techniques.

Within process tracing methodology, there are different approaches to unpacking and understanding the found mechanisms. Whereas a *minimalist understanding* refers merely to identifying the mechanisms in-between cause and outcome (i.e., cause → mechanism → outcome), a *systems understanding* captures the interaction within the system and between its entities and their activities in detail (i.e., how *exactly* does the mechanism move from cause into outcome) (Beach, 2017, pp.4-7). As I seek to trace the mechanisms within the externalisation process in as much detail as possible, and particularly in chapter 4 try to explicate the mechanisms concretely, I attempt to approach the mechanisms in this case through a systems understanding.

The previous sections demonstrated how process tracing has shaped this research, through a continuous dialogue between the literature and evidence. The next chapter will expand upon this by depicting the context in which the MoU and MD were formed.

### **3. The politics and securitisation of migration**

The context in which international relations and agreements are formed is influenced by a wide variety of processes and factors. This chapter outlines several of these processes and documents the context in which the MoU and MD arose. This way, its potential influence on the externalisation of migration management to Libya is traced. After a brief overview of the recent Euro-Libyan history, the political dynamics and securitisation of migration in the EU, in the period preceding the conclusion of the MoU and MD, will be discussed.

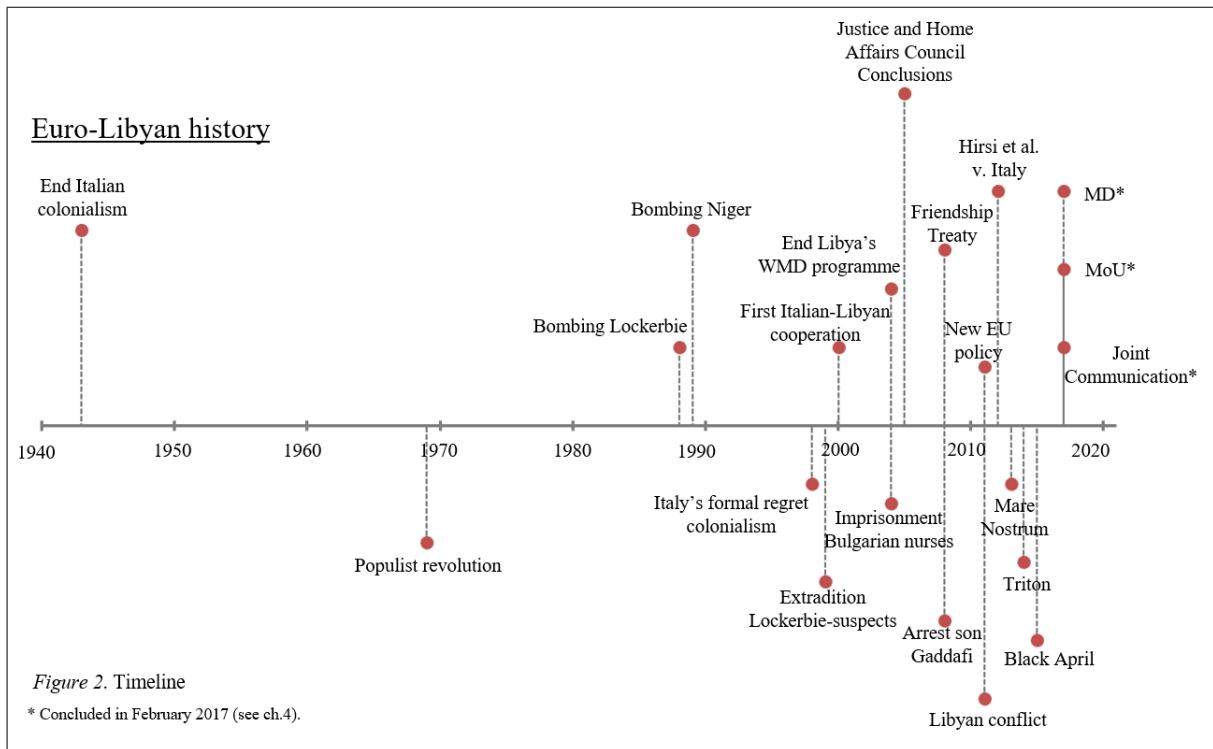
#### **3.1 A history of animosity and alliances**

Although Libya is not a signatory to the 1951 Refugee Convention, nor has a national asylum law (Ferstman, 2020, p.463), migration has played a large role in Libya's history. Not only because of the many labour migrants it receives, but also because it is a major transit country to Europe (Phillips, 2020, pp.90-91). The following sections will outline some of the most important events in this recent history of Libya, Italy and the EU (see *Figure 2*).

##### *3.1.1 From colonial rule to a stateless society*

Libya's modern – and unruly – history begins with the Italian colonisation in the first half of the 1900's (Vari, 2020, p.107). Between 1911 and 1943 at least one-eighth of Libya's population died. Many of whom in colonial prisons, which bear a striking resemblance to the detention centres migrants are kept in today (De Cesari, 2012, p. 317). The discovery of petroleum on Libyan soil marked the beginning of a new period, driven by the 1969 populist revolution and rise of Colonel Moammar Gaddafi. Gaddafi implemented efforts to reform Libya's political structures and create a "stateless society" (Vari, 2020, p.107). He pursued a generally anti-capitalist and anti-Western agenda and supported terrorist groups from all over the world. In response, the EU imposed numerous sanctions (Gaub, 2014, pp.40-41).

In the late 1980's, Euro-Libyan relations further deteriorated after two attacks on passenger flights, over Lockerbie in Scotland (1988) and Niger (1989) (Gaub, 2014, p.41). During the first decades of Gaddafi's rule, Libya became increasingly isolated from the rest of the world and obtained a "pariah" status. The situation first started to improve in 1998, when Italy expressed formal regret for its colonial conduct (Paoletti & Pastore, 2010, pp.11-12). In 1999, when Gaddafi extradited the two Lockerbie-suspects, the tide turned for Euro-Libyan relations as well (Gaub, 2014, p.41).



### 3.1.2 A new era of relative cooperation

In the early 2000's, Gaddafi's "inclusive stance" to (labour) migration led to increased migration to Libya and, subsequently, to Italy, and hence motivated the revival of cooperation efforts between Libya and EU Member States. As such, in December 2000, the first agreement between Libya and Italy for cooperation on terrorism, drug trafficking and migration was signed. This agreement is largely perceived as the foundation for future (in)formal cooperation efforts (Paoletti & Pastore, 2010, pp.11-12).

The proper new beginning in EU-Libya relations came in 2004, when Gaddafi ended Libya's weapons of mass destruction programme, and – shortly afterwards – visited Brussels for the first time in 15 years (Gaub, 2014, p.42). This EU-Libya cooperation began to take shape in 2005, when the Justice and Home Affairs Council adopted a number of conclusions on "Cooperation with Libya on migration issues" (Paoletti & Pastore, 2010, p.20). However, the relationship remained troubled. Between 2004 and 2007, for instance, tensions were caused by the imprisonment of Bulgarian nurses in Libya, for allegedly infecting 400 children with HIV. And a diplomatic dispute over the arrest of Gaddafi's son in Zurich in 2008 ended in travel restrictions on both sides (Gaub, 2014, pp.43-44). In addition, despite recent cooperation efforts, the numbers of migrants travelling through the Central Mediterranean remained high. It was only in 2009 that numbers started to decrease, most likely as a result of the Friendship Treaty (Gaub, 2014, p.43).

The 2008 Treaty on Friendship, Partnership and Cooperation portrays a large turning point in Italian-Libyan relations (Paoletti & Pastore, 2010, p.13) and is the first ever formal reparation for colonial atrocities (De Cesari, 2012, p.319). The treaty includes financial compensation from Italy (\$5 billion), a number of economic and strategic components (e.g., Italian investment in Libya's oil industry), and the commitment to collaborate on migration and border control (De Cesari, 2012, pp.316-317). This cooperation on migration includes joint coastal patrols, the provision of Italian boats, and European and Italian funding for satellite detection systems along Libya's land borders (Vari, 2020, pp.111-112). In the period following the conclusion of the Friendship Treaty, several notorious pushbacks took place (Paoletti & Pastore, 2010, p.13).

Throughout this period, a number of things stand out. First, Libya's ability to tactically deploy its position as a transit country, to obtain concessions from both Italy and the EU (Paoletti & Pastore, 2010, p.11). The most infamous example being Gaddafi's claim that "Europe would turn black" if the EU would not pay Libya to prevent migration (Phillips, 2020, p.93), for which he asked €5 billion a year (Gaub, 2014, p.43). Second, none of the agreements between Libya and Italy safeguarded the crucial distinction between asylum seekers and other migrants (Vari, 2020, p.112). And third, Libya generally preferred bilateral agreements (such as with Italy) to EU-wide arrangements, because of which the EU-Libya relationship was not particularly strong at the time conflict erupted (Gaub, 2014, p.44).

### 3.1.3 *Conflict and casualties at sea*

On 17 February 2011, following mass demonstrations in Benghazi, Ajdabiya, Derna, Zintan and Bayda, the Libyan civil conflict broke out. Shortly thereafter the EU called for Gaddafi's resignation, the UN Security Council authorised Member States to "protect civilians by all necessary measures" (i.e., resolution 1973), and both the UN and EU imposed sanctions against Libya (Gaub, 2014, pp.44-45). Subsequently, France and the UK carried out air strikes on Libya, and Italy joined the "coalition of the willing", thereby breaching the Friendship Treaty (De Cesari, 2012, p.322). In the first months of the Libyan conflict alone, almost 24.000 migrants – mostly deported by Gaddafi's militias – arrived on Italian shores, and over 1.600 people lost their lives on the Mediterranean Sea, marking the highest migration-deathrate in recent history (De Cesari, 2012, p.323).

The EU and Libya have strong economic ties. So strong that, before the 2011 conflict, the EU accounted for 70% of Libya's trade, most of which was related to petroleum. After a brief decrease in 2011, trade-relations returned to normal in 2012 (Gaub, 2014, p.52).

Furthermore, despite the ongoing violence, in March 2011, the EU implemented new policies to improve its relations with Libya (e.g., the “Partnership for Democracy and Shared Prosperity with the Southern Mediterranean”), aiming to promote institutional reform, support civil society and intensify security cooperation. The EU allocated €95 million to the project, €20 million of which was reserved for migration management efforts. Despite these initiatives, however, the situation in Libya quickly deteriorated and led to the “complete implosion” of Libya’s governance structures (Gaub, 2014, pp.47-48).

In 2012, Italy halted cooperation with Libya, not only because of the unfolding Libyan civil conflict, but also because of a ruling of the ECtHR (Vari, 2020, p.112), which denounced Italy’s migrant-return to Libya as a violation of the principle of non-refoulement. The *Hirsi et al. v. Italy*-case was brought before the ECtHR by 24 Eritrean and Somali migrants who, along with 200 others, were sent back to Libya by the Italian coastguard without trial or the possibility to seek asylum. While the pushback took place in international waters, the ECtHR ruled that the coastguard acted under Italian jurisdiction, and was therefore obliged to comply with the European Convention on Human Rights. Additionally, the ECtHR condemned the Italian coastguard for returning migrants to a country where they knew their human rights would not be safeguarded. Consequently, the ECtHR ruled the return of migrants to Libyan shores was a violation of the principle of non-refoulement, and a breach of Article 3 (i.e., the prohibition of torture, inhuman and degrading treatment) and Article 4 of Protocol 4 (i.e., the prohibition of the collective expulsion of aliens) of the European Convention on Human Rights (Vari, 2020, pp.127-128).

As a consequence of the events that unfolded during the Arab Spring, migration to the EU, and Italy in particular, increased significantly (Vari, 2020, p.108). Following a large shipwreck near Lampedusa in 2013, Italy set up the “Mare Nostrum” search and rescue programme, which rescued over 160.000 migrants at sea. After its great success, the EU took over the mission and launched “Triton”. Triton’s main purpose however was not to rescue migrants at sea, but to monitor irregular migration (Vari, 2020, p.109), an approach that proved insufficient. During one week in April 2015 – also known as “Black April” – more than 1.200 people lost their lives on the Mediterranean Sea<sup>3</sup> (Baldwin-Edwards, Blitz & Crawley, 2019, p.2139). After Black April, there was a general consensus that the European Union had to take action (Panebianco, 2020, p.6).

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<sup>3</sup> This week saw one of the deadliest shipwrecks ever, when 800 people lost their lives in a single incident on the Mediterranean Sea on 18 April 2015 (Baldwin-Edwards et al., 2019, p.2139).

### 3.2 The politics of policymaking and the 2015 migration “crisis”

Although the 2015 migration “crisis”<sup>4</sup> was not unpredictable, the EU was not prepared when it arrived. European leaders were divided on which measures to take and seemed unable to come to a comprehensive, long-term solution. The absence of a shared policy drove Member States to implement their own measures. Following this lack of comprehensive policy, combined with internal divisions among Member States, the migration “crisis” is also referred to as a “migrant policy crisis” (Grigonis, 2016, pp.93-95).

In response to the increased migration through the Mediterranean, the European Commission, as well as several international organisations, invested in *evidence based policy* (EBP). EBP links governance to academia and stems from the assumption that policy-making should be based more on evidence, data and rational analysis (Baldwin-Edwards et al., 2019, pp.2139-2140). However, despite growing investments, a gap remained between the existing knowledge on migration management and the EU’s policy responses. This gap is largely caused by a diverging understanding of the found evidence (e.g., influenced by previous knowledge, experience or policy narrative) and the context of the policy making process. Through this, policy remains largely based on assumption and interest, instead of evidence. It can be argued that the “migrant policy crisis” was thus not the result of a lack of knowledge, but rather resulted from existing evidence perceived as insufficiently convincing (Baldwin-Edwards et al., 2019, pp.2147-2150). This conclusion reiterates that, despite attempts to incorporate evidence, policymaking is “neither objective nor neutral; it is an inherently political process” (Baldwin-Edwards et al., 2019, p.2148).

Within the European crisis response, this political process is generally characterised by the European Council’s consensus-seeking efforts (Gürkan & Coman, 2021, p.294). In the case of Libya, however, it seems that the EU’s internal fragmentation and inconsistency, and the different interests of Member States in the country, have created a bureaucratic – rather than strategic – European crisis response (Loschi & Russo, 2020, p.8). The poor conflict-sensitivity and context-specificity of this response portray the reflection of a wider crisis of the European liberal project (Loschi & Russo, 2020, p.19). Accordingly, Grigonis argues that, while the EU portrays itself as unitary power, “it is evident that EU met the recent crisis neither having a common position, nor being united” (Grigonis, 2016, p.94).

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<sup>4</sup> Inverted commas are placed around “crisis” because of the different perceptions on this crisis and the possible securitising effect of the term (see also section 3.3).



### 3.2.1 *A conflict of interests*

In response to the crisis which unfolded on the Mediterranean Sea in 2015, the EU tried to implement new migration management approaches guided by its principles of solidarity and responsibility. Part of the newly adopted “European Agenda on Migration” was the formation of a new relocation and burden-sharing system. This system, however, never came to fruition, as disagreement arose between the Mediterranean states, carrying the pressure of the large influx of migrants, and the Visegrad countries, who closed their borders to defend “the nation-state’s integrity”. By rejecting the new relocation schemes, “the Visegrad countries were *de facto* questioning EU norms”, which eventually led to the EU’s failure to “Europeanize the refugee crisis” (Panebianco, 2020, p.7). The policy stalemate that followed was the result of the diverging interests of EU Member States and domestic anti-immigration processes, as well as the high demand of EU voting rules (Panebianco, 2020, p.8).

The numbers of migrants arriving to Europe remained high, and by the time Angela Merkel decided to suspend Dublin regulations (i.e., which enforce that asylum applications must be processed in the EU country of first arrival) for Syrian refugees, Italy and Greece had opened their borders, allowing migrants to travel to other EU countries. In response, other Member States, such as Austria, Hungary, France and Belgium, reinstated internal border controls. This compromised the freedom of movement, a fundamental EU principle, and so turned the migration “crisis” into a “Schengen crisis” as well (Lavenex, 2018, p.1197). While Central European countries opposed the relocation quotas from the start, due to domestic resistance the “pro-quota camp” increasingly followed suit (Gürkan & Coman, 2016, p.279).

Likewise, preferences differed between the various European institutions. In the case of the EU-Turkey Statement (i.e., the perceived predecessor of the MoU) for instance, the Council of the European Union, the European Council and – increasingly – the European Commission invoked security and state-centred arguments to (externalise) migration management, while the European Parliament (EP) continued to appeal to humanitarian and normative incentives (Gürkan & Coman, 2021, p.293). It is striking then that, within the field of migration management, there appears to be a trend to avoid parliamentary involvement. This happens, on the one hand, through reducing the EP’s budgetary authority, by seeking greater budgetary flexibility (e.g., through the use of EU Emergency Trust Fund for Africa), and on the other hand, through the use of soft law instruments. Nonetheless, the EP retains the possibility to exert influence, for example through informal means, such as agenda-setting, or legal proceedings to defend its prerogatives. Members of parliament may however choose not to use these means (e.g., for electoral gain) (Reslow, 2020, pp.555-558). As such, while traditionally

parliaments have been described as the “moral tribunes” of international relations (Reslow, 2020, p. 547), this is not the case per se.

### **3.3 The politicisation, mediatisation and securitisation of migration in the EU**

Widespread scholarly agreement exists about migration being “successfully securitised” in the EU (Léonard & Kaunert, 2020, p.2). Accordingly, Loschi and Russo (2020) argue that the European crisis response in Libya reflects a wider policy shift from “transformation to stabilisation”, and goes hand-in-hand with a move away from normative incentives, towards more security-based arguments (Loschi & Russo, 2020, pp.18-19). And even the commonly used discourse of a “refugee crisis” has politicising, and possibly securitising, effects, by generating feelings of urgency and implying that migration is a crisis that must be remedied (Krzyżanowski, Triandafyllidou & Wodak, 2018, pp.2-3).

In recent years, migration has become one of the most politicised topics in public debates. This *politicisation* of immigration refers to “a process of competition between its various political framings that are, in the end-effect, almost always either economic or security related in nature” (Krzyżanowski et al., 2018, p.5). Within this politicisation, political actors regularly portray themselves as being “in control”, which directly implies that migration is something that must be controlled, or is a problem to be tackled. This negative depiction spreads to other public spheres, most importantly the media, which qualifies as “one of the main carriers of contemporary immigration discourses and of their long-term politicization” (Krzyżanowski et al., 2018, p.6). Through the *mediatisation* of an issue, its politics increasingly rely on media discourses (in both mass and social media), which turns political practices into “mediated attention-seeking”, at times depending more on media than objective reality. As such, social media enables the spread of simplistic explanations of complex social and political phenomena, such as migration, while appearing neutral. In doing so, both right-wing and mainstream politicians often portray a certain policy response as essential, spread anti-immigration discourses and normalise extreme-right attitudes. Through this, social media has played a large role in the spread of “anxious politics” (i.e., mobilisation through fear and imaginaries) across the European political spectrum (Krzyżanowski et al., 2018, pp.6-7), and hence enabled the securitisation of migration (management).

The media however is not the only factor increasing the securitisation of migration in the EU. The securitisation of migration is a spiralling phenomenon dependent on an array of different actors, policies and discourses, who employ prejudiced narratives that construct migration as a security threat (Bello, 2020, p.2). These prejudicial narratives derive from the

idea that, to successfully build a nation state, different classes – with different interests – must be united, which in turn can only be achieved by collectively fighting external threats. Consequently, any outsider (e.g., migrant) is portrayed as a potential threat, and states – and migration – are generally governed through ethnic and nationalistic discourses (Bello, 2020, p.5). In line with this, the European countries that experience most prejudice (e.g., Hungary, Italy and the UK) have dealt with the migration “crisis” the hardest (Bello, 2020, p.8).

### 3.3.1 *Securitising policies and practices*

One of the actors involved in the spiralling of securitisation is Frontex, whose security practices intensified in response to the 2015 migration “crisis” (Léonard & Kaunert, 2020, p.2). As Frontex’s mandate was expanded, the deployment of securitising practices, that is, practices that are inherently related to security issues, increased in two forms: i) through practices regularly used to address threats, such as collecting intelligence, making risk analyses and combatting human smuggling, drug trafficking and “hard” security issues such as terrorism; and ii) by cooperating with (other) security organisations, such as NATO and Europol. These security practices are generally associated with notions of: survival, existential threat and militarisation, and hence increase the securitisation of migration (Léonard & Kaunert, 2020, pp.8-11). In line with this, Bello (2020) argues that securitisation practices are self-fulfilling: by describing migration as a threat to security, it is inherently treated as a risk. For instance, by detaining undocumented migrants they become criminalised, which in turn both self-fulfils and reinforces the perceived security threat (Bello, 2020, pp.9-10).

Another European domain in which the securitisation of migration prevailed is the preservation of Schengen. The establishment of Schengen irrevocably turned the EU into a security actor, as it is generally believed that opening internal frontiers requires strengthened external borders (Ceccorulli, 2019, p.304). This was amplified during the 2015 “Schengen crisis” (Lavenex, 2018, p.1197), which turned the migration “crisis” into a threat to the EU’s *ontological security* (i.e., a threat to the basis of what constitutes the EU), which provoked the collective securitisation of Schengen and, hence, efforts to preserve and protect it against an existential challenge. While at the beginning of the “crisis” two security discourses existed (i.e., securing borders and preventing the loss of lives), the preservation of Schengen, and hence the strengthening of external borders, eventually prevailed. This securitisation was however not a response to the increased arrivals of migrants alone, but a consequence of a number of sequential interactions, both external and internal to the EU. This had both short- and long-term implications, which, according to Ceccorulli (2019), shows that, during the 2015 migration

“crisis”, security has acquired a more prominent role in European migration management (Ceccorulli, 2019, pp. 316-317).

Lastly, it is important to note that, despite the increasing prominence of securitisation in migration management, it is also possible to deconstruct the notion of migration as a threat, and hence to *de-securitise* migration. This happens, for instance, through the inclusive attitude towards migration of NGO’s and civil society organisations, but is also achieved by “public non-state actors with collective interests”, such as the European Court of Justice, who generally hold less prejudicial cognitions (Bello, 2020, p.13).

The successful securitisation of migration, as outlined above, has potential worrying effects, as “[t]he securitisation of migration, and the framing of the latter as a crisis with destabilising potential, have led to the EU’s normative commitments being overlooked, if not abandoned, in spite of their relevance precisely in times of crisis” (Loschi, Raineri & Strazzari, 2018, p.24).

### **3.4 Conclusion**

This chapter sought to trace the contextual factors that have contributed to the externalisation of migration management to Libya, and the conclusion of the MoU and MD. The preceding sections revealed the turbulent history of EU-Libyan relations, in which periods of hostility alternate with cooperation. A key event in recent history is the 2012 *Hirsi*-ruling (Vari, 2020, pp.127-128); a potential turning point in the design of search and rescue programmes that may have contributed to the determination to bolster the LCG. Additionally, the outbreak of conflict in Libya led to the “implosion” of governance structures (Gaub, 2014, p.48) and prompted increased migration to Europe. Which, in turn, put great pressure on the EU and the relations between its Member States, whose disagreement led to policy stalemates (Panebianco, 2020, p.8), multiple crises (e.g., Grigonis, 2016, p.95; Lavenex, 2018, p.1197; Loschi & Russo, 2020, p.19) and so, perhaps, resulted in organised hypocrisy. In addition, during the migration “crisis”, security and threat management became more prominent, as migration was “successfully securitised” (Léonard & Kaunert, 2020, p.2) through a variety of simultaneous processes, discourses and practices by multiple actors and agencies (Bello, 2020, p.2). Increasingly migrants were perceived as outsiders or a potential threat, which in turn may have pushed normative considerations aside (Loschi et al., 2018, p.24).

## 4. The externalisation of migration management to Libya

In a context where migration is securitised, the interests of Member States differed considerably and the influx of migrants to Europe persisted, in early 2017 the MoU and MD were concluded. The following chapter outlines and reflects on the content and objectives of the two agreements.

### 4.1 Agreeing to externalise migration management

The Central Mediterranean functions as the main migration route to Europe and saw a record number of casualties in 2016. In light of this, on 25 January 2017, the European Commission issued the Joint Communication *Migration on the Central Mediterranean route: Managing flows, saving lives*. This Joint Communication identified a broad range of key actions and policy suggestions<sup>5</sup> to “save lives, fight smuggling, improve the conditions of migrants and refugees in the countries of transit in North Africa, encourage return to countries of origin and ultimately stem the flows” (European Commission, 2017, p.16). In the following week, both the Italy-Libya Memorandum of Understanding and the Malta Declaration were concluded.

#### 4.1.1 *The Italy-Libya Memorandum of Understanding*

On 2 February 2017 the Italian President of the Council of Ministers, Paolo Gentiloni, and the President of the Presidential Council of the Libyan Government of National Accord, Fayez Mustafa al-Serraj, signed the *Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic* (Uselli, 2017), thereby renewing the alliance between the two countries. The Memorandum is a short document, composed of a preamble and eight Articles that combined cover three pages<sup>6</sup>.

The preamble of the Memorandum expresses the determination to work together to address regional challenges to peace, security and stability, specifically in the fields of “clandestine immigration”, terrorism, human trafficking, and fuel smuggling. The shared historical and cultural heritage, and friendship between the two countries is referred to as the basis to address the contemporary challenges posed by migratory flows. In addition, the awareness of the sensitivity of the current transition phase in Libya, as well as the determination to implement agreements previously signed by the two parties (with a special reference to the

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<sup>5</sup> Due to limited capacity, this thesis will not elaborate further on the Joint Communication.

<sup>6</sup> The MoU was drafted in Arabic and Italian. As there is no official English translation, I have consulted the commonly cited translation by Sandra Uselli (2017) (revised by Marcello Di Filippo, Elena Marati and Anja Palm).

2008 Friendship Treaty) is expressed, and the importance of border control and security to reduce said challenges is highlighted (Uselli, 2017, pp.1-2).

Furthermore, the preamble reaffirms the determination to resolve the issue of “clandestine migrants” crossing to Europe, “through the provision of temporary reception camps in Libya, under the exclusive control of the Libyan Ministry of Home Affairs, pending voluntary or forced return to the countries of origin” (Uselli, 2017, p.1), for which additional agreements with the concerned countries may be concluded. Hereafter, Italy and Libya agree, with regard for international customary law and agreements signed by the parties (e.g., Italy’s EU membership), on eight provisions through this Memorandum (Uselli, 2017, pp.1-2).

The first two Articles of the Memorandum contain the objectives to which the two parties commit themselves.

Article 1 concludes that:

- (i) the parties cooperate in accordance with programmes of the Libyan Presidential Council and GNA, and in support of Libyan military and security institutions in order to stem migratory flows and to address their consequences, as set out in the Friendship Treaty;
- (ii) Italy provides support and financing for development programmes in Libyan regions affected by migration (e.g., in the fields of infrastructure, health, renewable energy and teaching);
- (iii) Italy provides technical support to Libyan institutions fighting migration, represented by the border and coast guard, and “the competent bodies and departments of the Ministry of Home Affairs” (Uselli, 2017, p.2).

Article 2 commits the parties to:

- (i) the completion of a border control system in South Libya;
- (ii) the “adaptation and financing” of reception centres, through funding of both Italy and the EU. Italy will contribute to the improvement of health care (e.g., medicine and equipment delivery, treatment of communicable diseases);
- (iii) the training of reception centre personnel “to face the illegal immigrants’ conditions”, and support Libyan research centres with identifying adequate methods to address migration and human trafficking;
- (iv) propose, within three months, “a wider and more complete view of Euro-African cooperation”, aiming to eliminate the causes of migration, support countries of origin with strategic development projects, improve the standard of living and health conditions, and reduce poverty and unemployment;
- (v) support international organisations operating in Libya’s migration sector, “in order to continue the efforts that are also aimed at returning migrants to their countries of origin”;
- (vi) the creation of development programmes through job creation initiatives as “income replacement”, in regions affected by migration, fuel smuggling or human trafficking (Uselli, 2017, pp.2-3).

Article 3 then establishes the creation of a mixed committee, with members of both parties, to identify “the priorities in action and the instruments to finance, implement and monitor the commitments undertaken”. Article 4 stipulates that Italy provides the financial means for the initiatives proposed in the Memorandum and by the mixed committee, for which European funding can be utilised but “without additional obligations for the Italian State’s budget in respect of the allocations already foreseen”. And in Article 5 the parties declare to implement the Memorandum “in respect of the international obligations and the human rights agreements to which the two Countries are parties”. The last three articles contain organisational commitments (e.g., how to amend the MoU, triennial validity) (Uselli, 2017, p.3). The MoU came into force on 2 February 2017 and was – without amendments – renewed three years later (Amnesty International, 2020b).

In brief, the MoU thus addresses migration, fuel smuggling and human trafficking in Libya and is partly a continuation of the 2008 Friendship Treaty, whereby Italy provides technical and development assistance, and finances the proposed initiatives. These initiatives include actions against the causes of migration, as well as against its consequences (e.g., reception centres, return programmes) (Uselli, 2017). While some elements of these proposals are concrete, such as the Libyan Ministry of Home Affairs’ exclusive control over the reception centres (preamble) or Italy’s commitment to finance the proposed initiatives (Article 4), other components remain somewhat unclear, for example what exactly is meant by the “adaptation and financing” of the reception centres (Article 2.ii) or how the mixed committee operates (Article 3). This ambiguity allows for multiple interpretations of the agreement.

Moreover it is worth highlighting that, with the exception of Article 5, no attention is paid to human rights, in general or to the situation in Libya specifically. Additionally, regarding Article 5 and the commitment to implement human rights agreements signed by the parties (Uselli, 2017, p.3), it is important to reiterate that Libya is not a signatory to the Refugee Convention (UNHCR, 2015). Furthermore, throughout the Memorandum, the use of the term (im)migrant paired with the words “illegal” and “clandestine” stands out, as both words tend to have a potentially criminalising effect. In the text, the words (im)migrant, (im)migration and migratory are used nineteen times, fourteen of those are in conjunction with “illegal” and “clandestine” (Uselli, 2017). In addition, the text only references to (im)migrants, which neglects the crucial distinction between refugees and – for example – labour migrants, as was the case in previous agreements between Italy and Libya (Vari, 2020, p.112). This distinction becomes even more critical considering that reception centres accommodate migrants pending

their return (preamble), which then raises the question as to what will happen to those migrants who are in need of protection (i.e., refugees)?

4.1.2 *The Malta Declaration*

The following day, on 3 February 2017, the *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route* was issued. The Malta Declaration is only one and a half pages long and consists of nine statements on the European Council’s priorities regarding migration in the Central Mediterranean (European Council, 2017).

The Malta Declaration opens with the determination to respect human rights, international law and European values and cooperate with the UNHCR and IOM. Hereafter, reference is made to the effective control of external borders and stemming of illegal flows to Europe as essential in sustainable migration policy. And the commitment to the EU-Turkey Statement and support for countries along the Balkan route is expressed (European Council, 2017). Subsequently, the Council expresses its determination “to take additional action to significantly reduce migratory flows along the Central Mediterranean route and break the business model of smugglers”, as migration through the Central Mediterranean – in contrast to the Eastern Mediterranean – remained high throughout 2016. For this, they will “step up” their work with Libya, the main country of departure. Additionally, the Declaration refers to deepened long-term cooperation with partner countries, “through a solid partnership based on mutual trust”, and welcomes the Joint Communication (European Council, 2017).

The Declaration then stipulates that stabilising Libya is crucial and that “capacity building is key for the authorities to acquire control over the land and sea borders and to combat transit and smuggling activities”. Furthermore, the Council declares it continues to support the Libyan Presidency Council and the Government of National Accord, and that the EU will assist and cooperate with local communities and international organisations on the ground. Hereafter, a number of priorities is formulated (European Council, 2017).

- Priority is given to:
- (i) supporting, training and providing equipment to the Libyan Coast Guard “and other relevant agencies”, by enhancing the intensity and amount of complementary training programmes (e.g., through operation SOPHIA), and making funding and planning sustainable and predictable (e.g., through the Seahorse Mediterranean Network);
  - (ii) disrupting smuggling networks, through an integrated approach involving – among others – Libya, Member States, Europol and the European Border and



- Coast Guard;
- (iii) supporting development, and improving the resilience and socio-economic situation of Libyan communities along migration routes;
  - (iv) ensuring “adequate reception capacities and conditions in Libya for migrants”, in cooperation with the UNHCR and IOM;
  - (v) supporting “significantly stepping up” the IOM’s voluntary return programmes;
  - (vi) improving information and outreach campaigns to migrants, in Libya and other transit countries, to disrupt smuggling businesses;
  - (vii) reducing pressure on Libyan borders, including by improving border management capacities;
  - (viii) detecting alternative routes and smugglers’ activities, through cooperation with neighbours, EU agencies and Member States, and “by making available all necessary surveillance instruments”;
  - (ix) supporting initiatives by individual Member States’ in Libya, “in this respect, the EU welcomes and is ready to support Italy in its implementation of the Memorandum of Understanding signed on 2 February 2017”;
  - (x) expanding cooperation on migration with Libya’s neighbours and improving cooperation with Member States and the European Border and Coast Guard to both prevent departure and manage return (European Council, 2017).

Financial resources will be made available to facilitate these objectives. A number of which will be funded through the already existing EU Trust Fund for Africa (EUTF). The Council therefore supports the Commission’s decision to allocate an additional €200 million to EUTF-North Africa, with specific attention for migration-related projects in Libya. Furthermore, the Council expresses the intent to further develop its “external migration policy in order to make it resilient for future crises”, by identifying obstacles and enhancing return capacities (European Council, 2017).

In the final statement of the Declaration, the Council agrees to act “determinedly and speedily” to achieve the outlined objectives. And sets out that the Maltese Presidency of the Council, together with the Commission and High Representative, will: propose a plan for implementation, proceed with its execution and monitor the results. All of these will be evaluated during the Council’s meetings in March and June 2017 (European Council, 2017).

Immediately, a number of things stand out. The first is that the Declaration both welcomes the Joint Communication and expresses support for the implementation of the – at the time one day old – MoU. Equally important is that the Council extends its support to the GNA (European Council, 2017), one of Libya’s three governments (Kruashvili, 2020, pp.129-130). Furthermore, the Declaration contains a variety of different objectives, which, although more concrete than those in the MoU, are in some cases still relatively unclear. For example, “adequate reception capacities and conditions” and “significantly stepping up” (European

Council, 2017) are open to multiple interpretations. Additionally, the cooperation with Libya and provision of support has not been conditioned upon human rights guarantees. This is particularly salient because one of the targeted partners, the Libyan Coast Guard, is believed to partly consist of armed militias (Kruashvili, 2020, p.131) and possibly even human traffickers (Reviglio, 2020, p.7). And lastly, the MD refers to the success in the Eastern Mediterranean and the EU's commitment to the EU-Turkey Statement (European Council, 2017), which suggests a parallel with the present Declaration. It is important to stress, however, that the Malta Declaration is very different from the EU-Turkey Statement, not only because Libya is not a party to this Declaration, but also because conflict in Libya is still ongoing and a unified authority is absent, which is referred to only briefly in the MD (i.e., only indirectly by emphasising the need for stabilisation and capacity-building).

#### 4.1.3 *Orchestrating to externalise migration management*

The externalisation of migration management refers to the outsourcing of migration related policies and practices to a third party. The above agreements achieve this externalisation collectively, whereby the Joint Communication introduces a broad strategy, the MoU establishes advanced cooperation between Italy and Libya, and the MD endorses and assists this cooperation and furthers applies the Joint Communication's strategy. Following this collective, it is thus through the strengthening of borders and capacity-building of Libyan authorities (e.g., to intercept migrants (inland and at sea), and host reception centres), that responsibilities are outsourced and attempts are made to stem migration flows. In return, both the EU and Italy support initiatives to assist development and improve the socio-economic situation of Libyan communities (European Council, 2017; Uselli, 2017).

These efforts are in line with the previously introduced orchestration techniques (see chapter 2.1.1), which are used when policy is outsourced to a third party that is not (legally) competent to execute the agreed tasks (Müller & Slominski, 2020, pp.4-6). When applying these techniques to the MoU and MD, one finds that the EU *assists* in the execution of tasks through training, equipment, financing and technical support; *endorses* the GNA's authority and recognition as the one legitimate government of Libya; and *coordinates* and *convenes* the activities by mobilising different actors, such as the IOM, UNHCR and LCG. As such, the EU provides Libya with "ideational and material support in pursuit of a certain governance goal" (Müller & Slominski, 2020, p.1), and so enables the externalisation of migration management to Libya.

## 4.2 Reflecting on the agreement to externalise migration management

This section will reflect on the two agreements by situating and discussing them within their wider context. In particular, the focus will be on a number of (human rights) issues that have seemingly been overlooked, the complex structures in which the interventions are located, and the difficulty of adequately evaluating them.

### 4.2.1 *Overlooked issues*

By situating the MoU and MD in the context in which they were concluded, some vital issues appear to be overlooked, or simply not addressed. First of all, in both agreements, very little attention is paid to human rights, with no explicit reference to the human rights situation of migrants in Libya at all. This is remarkable because knowledge of the atrocities migrants endure in Libya is widespread (see for example Amnesty International, 2020a, 2021; Human Rights Watch, 2019; OHCHR, 2017; MSF, 2017; Palm, 2020, pp.13-14), and many of these human rights violations are suffered in places controlled by Libyan authorities (e.g., in the migrant reception centres) (Amnesty International, 2020a, 2021). Yet neither one of the agreements makes the provision of financial or technical support conditional on human rights compliance (for a discussion of this regarding the MoU see for example: Ferstman, 2020, p.462).

Secondly, neither the MoU nor the MD addresses the issue of Libya's divided government structure. Since 2017, Libya is subjected to three competing governments, each without full authority over its own forces: i) the Government of National Accord (GNA), supported by the UN; ii) the House of Representatives, supported by General Khalifa Haftar; and iii) the Government of National Salvation (Kruashvili, 2020, pp.129-130), whom dispute over territory and are supported by multiple armed militias and foreign actors (e.g., Turkey, NATO, the United Arab Emirates) (Kuschminder & Triandafyllidou, 2020, p.209). While it makes sense that both agreements cooperate with – or express support for – the GNA, as this is the government backed by the UN, it is not the only authority on Libyan territory. Which means the agreements are concluded with a government that rules over only limited part of the country (Revilgio, 2020, p.4); an issue that both the MoU and MD<sup>7</sup> seem to ignore.

Thirdly, and partly due to the aforementioned human rights and government issues, Libya cannot be considered a “safe third country” (UNHCR, 2020, pp.16-17). Nonetheless, the return of migrants to Libya has increased. This can be attributed to both the commitment of the

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<sup>7</sup> While the MD does appoint capacity-building as essential for the authorities to obtain control over Libya's borders (European Council, 2017), no attention is devoted to the consequences the current lack of capacity and authority may have on the implementation of the agreement.

EU and Italy to enhance the capacity of the LCG (as set out in the agreements), and to the simultaneous withdrawal of European naval rescue operations (Amnesty International, 2020a, pp.16-20). This European contribution to the return – or pushback – of migrants to an unsafe third country, then, raises questions regarding the *principle of non-refoulement*, and the breach thereof.

In line with this, on 3 February 2017 – the day the Malta Declaration was concluded – UN Special Rapporteurs stated that preventing departure from Libya “simply means accepting and legitimizing the human suffering prevailing in Libya”, and expressed concern that “by agreeing to a deal with Libya, whereby migrants trying to flee human rights violations are being pushed back to those same conditions, the principle of non-refoulement will be violated” (OHCHR, 2017). The UNHCR, in its position paper on Libya’s designation as an unsafe third country, “recalls that the principle of non-refoulement applies wherever a state exercises jurisdiction, including where it exercises effective control in the context of search and rescue operations outside its territory” (2020, p.17). Which means that if a state’s involvement in search and rescue operations “is likely to determine the course of events”, human rights obligations, including non-refoulement, are likely engaged (UNHCR, 2020, p.17). It is thus possible that, by supporting the LCG and enabling returns to Libya, the EU is engaging in refoulement.

#### 4.2.2 *A complex web of interventions*

Focussing on the structures in which the agreements are located shows how the interventions are executed within a complex web of multiple actors and consecutive policies. Within this web, a number of things stand out. First and foremost that is the sequencing and coordination of the agreements, as the MoU and MD were concluded on consecutive days one week after the Joint Communication was issued, and endorse one another. Through this sequencing, what at first may seem like fragmented initiatives is transformed into one comprehensive and univocal policy to externalise migration management to Libya. This in turn does not seem as a coincidence, but suggests prior coordination.

Secondly, pertinent to the structure of the interventions is that they are executed in coordination with a number of different actors and organisations, including the UNHCR, IOM, LCG, Europol and EUTFa (European Council, 2017; Uselli, 2017). While this is generally beneficial for the coordination and, hence, impact of an intervention, in this particular case, it may also have a muddling effect and create a complexity of responsibilities and interests. For instance, the dependence on Libyan actors – although essential for the success of the agreements

– may lead to a conflict of interests. This is not only because the LCG allegedly is involved with militias and human traffickers (Kruashvili, 2020, p.131; Reviglio, 2020, p.7), but also because it is uncertain whether partner countries such as Libya will actually benefit from addressing migration and trafficking networks. This, put simply, is because large revenues are derived from migrant smuggling, the provision of services along migration routes, and European financial and development aid (e.g., as directed through the MoU and MD). As such, it is likely “Libyan interests that continue to benefit most as irregular migration thrives” (Phillips, 2020, p.92), while this is exactly what the agreements aim to reduce.

Thirdly, the “layering” of the intervention structure may complicate holding those responsible accountable for (wrongful) policy. This criticism extends not only to determining whether responsibility lies with the European Council or the executive bodies, but also to the further fragmentation within these agencies. This becomes apparent, for instance, in the case of the EUTFa. The EUTFa, administered by the European Commission, is a multi-donor trust fund, which means that involvement of additional parties and donors, such as Member States or international organisations, is required. While this financing method has a number of great advantages, such as its fast decision-making process, the availability of additional resources, and better coordination and impact of the interventions (i.e., through the bundling of resources) (European Commission, n.d.), these same advantages have also led to criticism. The European Court of Auditors (ECA), for example, issued an audit in 2018 which concluded that the EUTFa’s objectives were too broad and general. They also suffered from: insufficient monitoring, inconsistent project selection and lacking needs and means analyses (Amnesty International, 2020c, p.6). Additionally, a collective of civil society organisations claims the EUTFa’s limited transparency and supervision reduce the possibilities of holding decision-makers accountable for their policies (Amnesty International, 2020c, p.4). While this potential lack of accountability in itself is troubling, it becomes even more blatant considering the contested nature of the policy, the (potentially) severe consequences of the interventions (e.g., refoulement) and the vulnerability of the people it affects.

#### *4.2.3 Contesting and monitoring the agreements*

Although many civil society organisations have expressed criticism towards European cooperation with Libya, there seems to be “a troubling lack of monitoring and impact evaluation schemes across most of the EU crisis response initiatives in Libya” (Loschi et al., 2018, p.23), which the MD is part of. This monitoring-gap may occur through a number of factors, of which I will highlight two: the avoidance of parliamentary scrutiny and remote management.

Turning to the role of parliaments first, it appears the European Parliament – a generally critical EU institution – has been excluded from the MD in two ways: i) through the soft law-format of the Declaration, which was concluded by the European Council and did not require parliamentary approval; and ii) by allocating funding through the EUTFa, over which the EP has no budgetary authority (Reslow, 2020, p.555). This exclusion of parliamentary scrutiny from budgetary decisions became particularly salient last spring, when a complaint was filed before the ECA about one of the EUTFa projects<sup>8</sup> in Libya for violating the EU’s financial regulations and human rights obligations, and breaching the principle of “do no harm” (Amnesty International, 2020c, pp.4-7). Through the simplified (soft law) implementation procedure of the MoU, the Italian parliament – and thereby its scrutiny – was excluded as well. This led to contestation, as Article 80 of the constitution obliges the Italian government to involve parliament in international agreements, and resulted in a judgement of the Tribunal of Trapani that the MoU was indeed “ineffective” (Reviglio, 2020, p.4). The agreement, however, is still in force today. It thus appears that, through the avoidance of parliamentary involvement in both agreements, an important control mechanism was – at least partly – eliminated from the externalisation process.

Additionally, the remote management of the interventions and lack of access on the ground have created a monitoring-gap. This lack of access includes areas where EUTFa projects run (Loschi et al., 2018, p.17) and may be explained, on the one hand, by the GNA not having full authority over Libyan soil, and on the other hand, by the outsourcing of responsibilities to Libyan actors. For instance, because the migrant reception centres in Libya fall under the full authority of the Libyan Ministry of Home Affairs (as determined in the MoU preamble) (Uselli, 2017), the Ministry is in a position to deny Italy, the EU and international organisations access to the centres, making it impossible to monitor the conditions migrants are in (Reviglio, 2020, p.4). This access- and monitoring-gap then makes it difficult to assess the impact of policies and to identify unforeseen (side-)effects, which in turn risks “widening the gap between the ambitions on paper, and realities on the ground, between intention and implementation, and between security discourses and security practices of the EU” (Loschi et al., 2018, p.17). And therefore may enhance a hypocrisy embedded in the agreements.

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<sup>8</sup> A collective of civil society organisations issued a complaint before the ECA against the “Support to Integrated border and migration management in Libya”-project, which focusses primarily on enhancing the capacity of Libyan maritime surveillance, commenced in July 2017 and received a total of €91.3 million (Amnesty International, 2020c, p.3).

### **4.3 Conclusion**

Outlining the agreements' content showed how through orchestration, the strengthening of border control and capacity-building of Libyan authorities, the EU externalises migration management to Libya. The outline showed the broad intentions set out in the agreements, which address numerous aspects of both the causes and consequences of migration. Although many of these objectives – at first glance – seem well-intentioned, reflecting on the broader setting in which they are implemented reveals they are often fairly contested. This is because crucial (human rights) issues are overlooked, the complex structures make accountability possibly unattainable, and the evaluation and monitoring of the agreements is inadequate. The confluence of this incompleteness and avoidance of contestation fits into the counter-coupling of rhetoric and action, and, thereby, resembles a structure of organised hypocrisy.

## 5. Conclusion

In February 2017 the Italy-Libya Memorandum of Understanding and the Malta Declaration were concluded: two soft law agreements that together establish the externalisation of European migration management to Libya, inter alia, through the enhancement of border control and capacity-building of Libyan authorities, and support for reception centres and migrant return programmes (European Council, 2017; Uselli, 2017). This collaboration has been highly contested for the harmful impact it has on migrants' lives and the (indirect) European support for, and enabling of, the atrocities migrants endure, through which the EU potentially has become complicit to human rights violations such as refoulement (e.g., Amnesty International, 2020b; ECRE, 2017; UNHCR, 2020). This thesis aimed to contribute to the debate on this externalisation of migration management by conducting explaining-outcome process tracing and compiling existing knowledge on the corresponding practices and agreements, in order to answer the question: *how and why did the externalisation of European migration management to Libya arise and subsist, despite widespread moral and practical critique?*

Throughout recent history Libya, Italy and, to a lesser extent, the EU have maintained close relations. This shared history has had considerable influence on contemporary relations. For instance, the 2008 Friendship Treaty, a formal reparation for Italy's colonisation of Libya (De Cesari, 2012, p.319), was reinstated through the MoU (Uselli, 2017, p.1). And the 2012 *Hirsi et al. v. Italy*-ruling of the ECtHR, which found Italy guilty of refoulement, reiterated the need to uphold European and international legislation in international waters (Vari, 2020, pp.127-128), and so may have contributed to the decision to outsource search and rescue operations and hence to the capacity-building of the Libyan Coast Guard.

With the onset of the Arab Spring, the numbers of migrants crossing into Europe (Vari, 2020, p.108) and consequently the number of casualties on the Mediterranean Sea (Panebianco, 2020, p.6), increased significantly. This affected the political climate in the EU. In particular, there was growing disagreement among Member States, with some leaders calling for solidarity and a humanitarian response, while others pursued protectionist motives and closed their borders. These diverging interests led to a policy stalemate (Panebianco, 2020, pp.7-8). Similarly, various European institutions reacted differently to the increased pressures, with the European Parliament retaining humanitarian incentives while other institutions increasingly relied on security-based arguments (Gürkan & Coman, 2021, p.293). As such, in the period preceding the MoU and MD, the EU found itself not only in a migration "crisis" but also in a



“migrant policy crisis” (Grigonis, 2016, pp.93-95), a “Schengen crisis” (Lavenex, 2018, p.1197) and a “crisis of the EU’s liberal project” (Loschi & Russo, 2020, p.19).

Furthermore, in recent years, migration has been highly securitised in the EU, which has turned the topic into a “crisis” that needed to be prevented or stopped (Krzyżanowski et al., 2018, pp.2-3). This securitisation is not dependent on one actor or EU institution alone, but involves an array of actors and discourses (Bello, 2020, p.2) and is reinforced through a variety of policies and practices (Ceccorulli, 2019, p.304; Léonard & Kaunert, 2020, p.2). It thus likely that the ambience that existed in the EU at the time – that is: an ambience of diverging political interests and preferences, and a strong securitisation of migration from various sources – contributed to the decision to externalise migration management to Libya.

Subsequently, this thesis’ reflection of the content of the agreements revealed how orchestration enabled the externalisation of migration management to Libya. Furthermore, the reflection showed that a number of vital elements are absent from the agreement texts. For instance, no attention has been paid to migrants’ human rights, the GNA’s lack of authority was neglected, and the issue of Libya not being a safe third country ignored. In addition, the sequencing of the agreements created a fragmented yet univocal policy, and their layered nature combined with the many actors involved established a complex web of cooperation. While this generally improves the coordination and effectiveness of interventions, in this case it also led to a divergence of interests (Phillips, 2020, p.92) and a potential lack of accountability (Amnesty International, 2020c, p.4). Moreover, the lack of monitoring and evaluation of the agreements, caused not only by the limited access to Libya and its migrant reception centres (Loschi et al., 2018, p.17; Reviglio, 2020, p.4), but also by the avoidance of parliamentary scrutiny (Reslow, 2020, p.555), potentially hampers the interventions’ adequate implementation, impact evaluation and ability to protect migrants’ human rights.

Given the findings presented in this research, I argue that the answer to this thesis question consists of several components, which together form an “eclectic conglomerate mechanism”. As to *why* migration management was externalised to Libya: this can be attributed in part to the fact that the EU was overwhelmed by the increased number of arrivals, for which it was unprepared (Grigonis, 2016, p.93). This led to diverging perceptions, pressures, interests and decisions of the Member States, and eventually resulted in a failure “to Europeanize the refugee crisis” (Panebianco, 2020, p.7). In addition, multi-level securitisation created an image of migration as it being a wrong, evil or threat, and therefore – by all means – had to be stopped. The MoU and MD are one of these means.

This brings me to *how* migration management was externalised to Libya, which happened through the formation of the MoU and MD soft law instruments. Whereby – be it intentional or not – the sequencing of different agreements created a fragmented yet uniform policy, which: was not always clear on its content, omitted a number of essential elements, largely excluded parliamentary involvement, and made it unclear who – in the end – could be held accountable. It is likely through the combination of these elements that the externalisation of migration management to Libya became – and remains – possible.

Thus securitisation can be said to be partly responsible for why migration management is externalised to Libya. This securitisation is not necessarily embedded in the text of the agreements<sup>9</sup>, but flows from the policies and practices that are derived from them (e.g., the mobilisation of the LCG). Nor is securitisation necessarily caused directly by European actors, but may arise from national processes as well, to which is simply responded at the European level (Reviglio, 2020, p.1). In addition, a degree of organised hypocrisy is clearly present in the agreements. This hypocrisy is found in both the details and incompleteness of the agreements, which causes inconsistency as well as potentially reduced effectiveness. For instance, this inconsistency is found in the lack of monitoring, through which policy designs do not correspond to the situation on the ground (Loschi et al., 2018, p.17); and in the decoupling between policy purpose and effect, whereby policy directed at saving lives at sea subsequently – and knowingly – exposes those same lives to inhumane suffering in reception centres.

### **5.1 Generalisations, limitations and recommendations**

An important component of explaining-outcome process tracing is identifying the (non-)systematic mechanisms within the larger conglomerate, to define which findings may be generalisable (Beach & Pederson, 2011, pp.22-23). In this study, the contextual aspects of the case are most likely generalisable, as securitisation, diverging political interests and the EU's unpreparedness do not affect cooperation with Libya alone, but will also have influenced other cooperation agreements concluded at the time (e.g., the 8 February 2017 Italy-Tunisia agreement to cooperate on fighting illegal migration (De Guttry et al., 2018, p.55)). The reflection of the agreements' content has in turn identified a number of non-systematic mechanisms, that specifically enabled the conclusion of the MoU and MD. This is, for instance, the neglect of the potential influence of internal conflict, the role of the GNA, and the situation

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<sup>9</sup> Securitisation speech is however also directly visible in the MoU, through references made to migration as a challenge to peace, security and stability; a negative influence and criminal phenomenon (i.e., by referring to “clandestine”, “irregular” and “illegal” migration) (Uselli, 2017).

in the reception centres: all specific to the Libyan case. This however does not mean that similar omissions might not occur in other agreements as well. Furthermore, while one might expect other factors, such as the lack of monitoring and complexity of the intervention structure to be present in other cases too, and hence form systematic mechanisms, this cannot be asserted from the present study.

When discussing this thesis' findings, one ought to keep some limitations in mind. The main limitation of this thesis project is the inaccessibility of evidence, shaped by a lack of access to both necessary documents and policy processes, as these generally take place behind closed doors. For this reason, I have focused primarily on compiling academic literature and secondary sources. Despite having been able to trace several mechanisms that have contributed to the formation of the MoU and MD, I do not exclude the possibility that, with more time, resources and access, other – more specific – factors may be identified. In addition, the process tracing method used is both an advantage and limitation: while it allows the research to be tailored to the case at hand, it complicates generalisation and leaves room for interference by the researcher, through both the choices made and potential biases.

Future research will benefit from more in-depth studies of the EU's internal processes and the conjunction of process tracing, literature studies and other research methods (e.g., framing and discourse analysis). By understanding the trade-offs and choices made, future policy and cooperation on migration management can be improved to be fairer and respectful of migrants' human rights, while ensuring accountability for those who hold responsibility.

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**Annex I – Declaration of Originality/Plagiarism Declaration**  
**MA Thesis in Conflict Studies & Human Rights Utrecht University**  
(course module GKMV 16028)

I hereby declare:

- that the content of this submission is entirely my own work, except for quotations from published and unpublished sources. These are clearly indicated and acknowledged as such, with a reference to their sources provided in the thesis text, and a full reference provided in the bibliography;
- that the sources of all paraphrased texts, pictures, maps, or other illustrations not resulting from my own experimentation, observation, or data collection have been correctly referenced in the thesis, and in the bibliography;
- that this Master of Arts thesis in Conflict Studies & Human Rights does not contain material from unreferenced external sources (including the work of other students, academic personnel, or professional agencies);
- that this thesis, in whole or in part, has never been submitted elsewhere for academic credit;
- that I have read and understood Utrecht University’s definition of plagiarism, as stated on the University’s information website on “Fraud and Plagiarism”:


*“Plagiarism is the appropriation of another author’s works, thoughts, or ideas and the representation of such as one’s own work.” (Emphasis added.)<sup>10</sup>*

Similarly, the University of Cambridge defines “plagiarism” as “... submitting as one’s own work, irrespective of intent to deceive, that which derives in part or in its entirety from the work of others without due acknowledgement. It is both poor scholarship and a breach of academic integrity.” (Emphasis added.)<sup>11</sup>

- that I am aware of the sanction applied by the Examination Committee when instances of plagiarism have been detected;
- that I am aware that every effort will be made to detect plagiarism in my thesis, including the standard use of plagiarism detection software such as Turnitin.

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Signature 	Date of Submission <i>1 August 2021</i>
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<sup>10</sup> <https://students.uu.nl/en/practical-information/policies-and-procedures/fraud-and-plagiarism>

<sup>11</sup> <http://www.plagiarism.admin.cam.ac.uk/what-plagiarism/universitys-definition-plagiarism>