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The migration dimension in EU-Libya relations: fading justice

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2 The migration dimension in EU-Libya relations

Fading justice

Michela Ceccorulli and Arturo Varvelli

Introduction

The Libyan quagmire is set to be one of the biggest challenges facing the European Union (EU) for the years to come. This is nothing new apart from the fact that since the toppling of the Gaddafi regime back in 2011, the downward spiraling situation has turned even worse, if possible.

Not only is Libya ever more torn and divided internally; it has also become a focal point for regional and global powers as they profit from the window of opportunity occasioned by the lack of security, guidance, governance, legitimacy and authority which characterizes the North African country. Indeed, the situation presents the Union with multiple puzzles if one is to think what a divided, insecure and barely governable Libya might imply. The EU's influence on the Mediterranean country has never been decisive, for Libya does not have specific chapters of cooperation with the Union. However, some efforts have been made and especially so with the attempt to reduce the number of migrants heading for the Union since the civil conflict began to flare up in 2014. More precisely, the EU's strategy has connected Libya's faltering statehood with migrants' smugglers' increasing margin of manoeuvre: the EU's key objective has been to build up capacities to control Libya's own territory (borders included) (Ceccorulli, 2021). After a phase in which Italy, backed up politically and financially by the EU, took the lead in approaching Libya, bringing cooperation to a peak in 2017, the EU's initiative started to slip away due to political issues within and among the Member States (Italy and France mainly). These deepening internal fractures could not be remedied by external brokering initiatives. Parallely, a new activism emerged among regional and global powers which began to intrude into the mess caused by years of ungovernability. This stalled yet rapidly changing scenario has had many consequences for the EU's governance of migration and for the direction this governance has been taking over the last years. Considering these elements from a justice perspective is the objective of this chapter.

Following the theoretical backbone of this book, our assessment of EU's policies on migration in the case of Libya addresses three conceptions of political justice, each of which describes a specific priority put forward by the Union: justice as non-domination, as impartiality and as mutual recognition (see the introduction to this book). As Sjursen (2017: 1) points out, we should expect different

policies to emanate from different normative prioritizations even though all of them are concerned with justice. Non-domination eschews arbitrary interference and pursues this end supporting those institutions that prop up states' equal status. According to this understanding of justice, human rights considerations are not discarded altogether; on the contrary, they are better served by full-fledged state structures acting as "freedom enabling institutional frameworks" (Sjursen, 2017: 7). International interference in domestic matters is hence counterproductive in so far as it negatively affects third states' roles and responsibilities towards their own populations. Justice as impartiality requires a much greater focus on individuals, their rights, their autonomy and their freedom, well beyond political communities. Accordingly, institutional settings should ensure that individuals are rightful claimants of justice by opening up to forms of supranational authority that override states' authority. Finally, justice as mutual recognition does not demand a universal conception of justice, for differences heavily impact individuals and groups. Therefore, this understanding of justice calls for due hearing of specific identities, circumstances and instances, aiming for context-sensitive solutions. Thus, this chapter tries to uncover which priorities of justice (if any) have been advanced in the field of migration governance in the case of Libya, examining not only the period of most intense contact with the country (2016–2017) but mainly the period following this, when the EU's initiative was either replaced or repeatedly obstructed by its own and others' actions.

The analysis develops as follows: the first section underscores the relevance of Libya in the EU's attempt to govern irregular inflows to its shores. It briefly touches on the main initiatives undertaken to come to terms with the North African country and on the problems that surfaced. The second section lingers on internal and external challenges obstructing EU initiatives, underlining the progressive urge to assist the de-escalation process. Building on the previous considerations, the third section reconnects events unfolding with migration governance implications in terms of justice, questioning which conception of justice has been emerging, purposefully or not, from the EU's initiatives and the contemporary lack thereof. A final section briefly concludes.

Libya in the EU's governance of migration

Formally encapsulated within the Agenda on Migration published in May 2015 (European Commission, 2015a), the EU's priorities on securing its external borders and saving migrants' lives were aimed at guiding the Union's planning on migration in the immediate future and for the years to come (Ceccorulli and Lucarelli, 2018). The document emerged amidst the eruption of the code-named 'refugee or migration crisis', despite the fact that a comprehensive vision was long overdue. The reactive stance of the Union was finally prompted by increasing arrivals on European shores in numbers which were perceived to be hardly manageable. At more than a million throughout 2015, inflows kept troubling policymakers even after the Statement between the EU and Turkey of March 2016. While the eastern corridor had been sealed with EU funding and NATO's patrolling activities

along Turkey's shores, the Central Mediterranean one gave no sign of relenting, touching a new peak in 2016 when more than 181,000 migrants landed on Italian shores.¹ Not that numbers could be comparable to what was experienced a year before, but inflows were still substantial, coupled with a simultaneous rise in the number of migrants dying at sea mainly off the Libyan coast, while Italian (already poor) reception capacities were stretched to the maximum.

Outflows towards the Union along the Central Mediterranean route had been increasingly related to the dire security situation in Libya, the main gate to the Mediterranean. Since the toppling of the Gaddafi regime in 2011 the country was torn by internal divisions and failed attempts by the international community to work on reliable plans for disarmament and reconciliation. The spiralling security situation made considerations around Libya's future increasingly urgent: the lack of statehood and sovereign capacity was not only affecting Libyans but allowing criminal activities to thrive, from terrorist infiltration to the smuggling of migrants, now eager to head for Europe to escape an increasingly insecure environment. By backing UN initiatives, the EU supported the commitment to fostering political dialogue and ending hostilities as well as the contemporaneous objective of avoiding the astonishing number of deaths in the Mediterranean through a crackdown on the smuggling phenomena, as prescribed in UN Resolution 2240 (2015). The EU's practical action hence consisted of an expanded mandate for its naval operation EUNAVFOR MED Sophia (European Council, 2015), deployed in the spring of 2015 to tackle the smuggling phenomenon, and the launch of dedicated programmes for Libya under a major trust fund to enhance stability and address the root causes of irregular migration and displacement in Africa (European Commission, 2015b). When with Resolution 2259 (2015) the Security Council recognized the newly established Government of National Accord (GNA) as the sole and legitimate government of Libya, the EU's efforts were ready to be directed more tangibly to a political actor inside the country. Yet the EU seemed to lack the political will (and unity) to take its support to a further stage. Indeed, already deployed operations could serve the effort; such was the case, for example, of EUNAVFOR MED Sophia and the border assistance operation EUBAM Libya, both called on to support capacity building and, in the case of Sophia, to help train the Libyan Coast Guard. But when Italy took the lead in 2017 and engaged in a strengthened path of cooperation with the North African country so as to reduce the amount of immigrants arriving on its shores, the EU fully endorsed the move, financially and politically supporting the plan (European Commission, 2017; European Council, 2017).

Italy's plan was built upon previous agreements with Libya for managing irregular immigration and had as its aims stabilization, political reconciliation and the opening of economic opportunities. Proceeding along this pattern, it was believed, would reduce the space for smuggling and hence arrivals to the EU, while improving the situation of migrants and the local population within the country (Governo Italiano, 2017). Part of this plan was to train the Libyan Coast Guard to intercept migrants, to respect their rights, as well as providing the coast guard with

equipment. In August 2017, this support was strengthened when, overburdened by rapidly soaring arrivals and lack of support from other European countries on disembarkments, a vessel of the Italian navy was deployed to help control Libya's external border, following the GNA's request for improved help to cope with the smuggling phenomenon (Senato della Repubblica, 2017). Indeed, flows reduced drastically beginning in August 2017 in accordance with Italy's and the EU's wishes, but there were many more problems on the horizon. On the one hand, as some authors have pointed out, the immediate need to reduce inflows might have induced to the hasty co-option of militias previously engaged in smuggling activities into the new-born institutions, such as the Coast Guard. At the same time, however, there was a failure to co-opt these militias on a political level and to retain them under state control, hence undermining the prospect of future stability (Varvelli and Villa, 2019). As one scholar put it, the EU's migration priorities differ from Libyans' security priorities in the country (Herbert, 2019), a fact that the EU has to face up to. Adding to that, the urgency of militias' cooperation in order to meet migration priorities may have diminished their responsiveness with respect to migrants' rights in Libya (Varvelli and Villa, 2019). Indeed, that was not the only concern related to migrants, as the policy (which was questioned in the first place) was based on the assumption that Libya could be considered a safe place to return and keep those intercepted at sea (Amnesty International, 2020). On the other hand, a political turnaround in Italy in 2018 brought to power a majority with a much more hard-line attitude towards migration, aiming to keep cooperation with Libya strongly centred on control of the Mediterranean border just when the security situation was getting even worse, if possible (Strazzari and Grandi, 2019). Matteo Salvini, the League's new minister for the interior's first trip abroad to Libya of all countries, was precisely to testify to his commitment to keep migrants away from Italian shores. When that proved hard to accomplish – flows kept arriving in Italy albeit at far lower levels than the previous year – Salvini asked to change Sophia's rules, asking to rotate ports among EU Mediterranean states to disembark migrants. The request dismissed, he decided to close Italian ports to NGOs and foreign-flagged merchant vessels (Cusumano and Gombeer, 2020). Italy's opposition to landings on its shores eventually led to the lifting of the naval component of Sophia, a paradox for an operation with a mandate to fight human smuggling. Partly due to the increasing unease among EU Member States with respect to the issue of migration and partly due to the increasingly chaotic security scenario in Libya, the EU's initiative towards the country progressively focused on stability, sidelining the aspect of migration governance that was more attentive to migrants' rights and safety. This shift in focus was clearly reflected by the replacement of EUNAVFOR MED Sophia, dismissed in 2019, with a new initiative. The main focus of the new Operation Irini is not the fight against smuggling, but rather to enforce the UN arms embargo at sea off the coast of Libya. With Italian ports closed (at least in principle) and no plan for rotating disembarkations the issue of where to locate potential migrants rescued at sea was hard to solve. The new Operation Irini left this dilemma purposefully obscure, while making clear that

migration-related tasks had been placed on the back burner. Ultimately, this also served the cause of those considering the EU's naval presence at sea as a pull factor for migrants.

Irini's goal was to relaunch the EU initiative on de-escalation (Megerisi and Varvelli, 2020) but the weaknesses of the operation are evident and ultimately prone to further jeopardize the credibility of the EU's commitment to this specific objective (Megerisi, 2020a). Firstly, its deployment far from Tripolitania's shores has been precisely to avoid the pull-factor challenge. Secondly, its oversight role seems to be mostly at the expenses of some states supplying arms to Libya's multiple factions (primarily Turkey, see in the following sections)(Megerisi, 2020c). More in general, the EU's action is impaired by clear divisions among the Member States regarding which faction to support in the country, a factor that had the added effect of dragging in external powers – as discussed later. Overall, and apart from some important exceptions such as the German-sponsored Berlin Conference, the EU's initiative seems to be slipping away, becoming less and less in tune with the evolution of events on the ground. This fact, for the sake of our analysis, has diriment implications for the governance of migration and for justice, as the next section clarifies.

Inside the Libyan rebus

While the EU and Italy were urgently requesting a constructive dialogue with Libya mostly to halt the inflow of immigrants to European shores, the Libyan crisis featured a continuous and often chaotic alternation of periods of fighting and negotiations. In late 2015, the Tripoli-based General National Congress (GNC) and the Tobruk-based House of Representatives (HoF) signed a comprehensive agreement in the city of Skhirat (Morocco) which paved the way for the formation of the GNA, mentioned earlier. However, the lack of broad national consensus resulted in flawed implementation of the deal. Two years later, in 2017, the leader of the eastern-based Libyan National Army (LNA), Khalifa Haftar, declared the agreement null and void and started a military operation advancing to the west of Libya. Because of the increase in political violence, the UN launched several initiatives on the local level to handle the crisis, within the framework of the Libyan National Conference Process. The advance of LNA troops in 2019, which ultimately reached the outskirts of Tripoli, marked the virtual end of negotiations. Since then, however, international leaders have increasingly recognized the influence of external powers in the conflict on a diplomatic level (Mezran and Varvelli, 2017; Badi, 2019). Progressively, the focus of the talks on the Libyan crisis shifted from local to international actors, in some ways highlighting how the EU/Europe's role had become merely a component in a much more complex equation. In 2020, for example, several countries in the region launched their own peace initiatives. In January, Turkey and Russia promoted the Moscow peace process, which was shortly followed by the UN-endorsed Berlin conference mentioned earlier, organized by the German government. Following the military defeat of Haftar in Tripoli, Egypt launched the Cairo initiative. In recent months the local UN peace process has also

restarted. The current ceasefire has enabled local representatives to meet within the three-point plan framework. The representatives of the two rivals discussed the Libyan crisis in Bouznika (Morocco) and finally met in Tunis in November 2020, even though they were not able to form a new unity government.

Both domestic efforts and international negotiations revolve around immediate and pressing problems related to the need to find, implement and maintain a minimum of security and stability on the ground, as well as mid-long-term issues concerning the future political, institutional and economic framework of the country and the potential role of domestic and international actors. Where the governance of migration stands with respect to these issues can only be speculated on at the moment.

Domestic issues and actors

At the domestic level, the key contentious issues at the centre of the current Libyan crisis are all deeply interconnected. Nonetheless, for analytical purposes it is possible to single out some of the more fundamental issues by breaking them down into political, economic and security dimensions.

At the political level the main point of contention has been the Libyan power structure. On paper, there is a general agreement about the three legitimate political authorities for the transitional period: the HoR in Tobruk, the GNA in Tripoli and the High State Council (HSC) in Tripoli. More specifically, the Skhirat agreement assigned executive authority to the GNA, legislative jurisdiction to the HoR and a consultative role to the HSC. However, in practice there is mutual rivalry and distrust among political authorities. The HoR does not currently recognize the GNA, and the chances are remote that this will change in the future. In an attempt to solve this problem, new elections were set for 24 December 2021 at the recent round of negotiations in Tunis (United Nations, 2020).

Another divisive point is the appointment of the so-called sovereign positions which include the governor of the central bank of Libya and the head of the Libyan supreme court. These two authorities are critical in the national power share. The central bank pays public salaries across the country, and the supreme court is the highest judicial authority. The Skhirat agreement states that the HoR should nominate the head of both institutions in consultation with the HSC. However, their headquarters are located in Tripoli, an area controlled by the GNA, which can easily oppose the process. Moreover, there is also opposition within the HoR which has led the Tobruk-based authorities to set up de facto independent institutional bodies in the east, without the HSC's formal recognition (Al Jazeera, 2020).

On the economic side, most tensions are related to Libya's massive dependency on hydrocarbons, which represent 95 per cent of total exports. Oil and gas revenues pay for most of public wages, and politicians can distribute them to increase or secure political support (Varvelli and Lovotti, 2019). The Skhirat agreement calls for equal distribution of resources but does not provide a detailed description of how to achieve this goal. The Berlin conference has suggested that representatives of intra-Libyan dialogue should handle grievances over distribution of the revenues.

Several local meetings have been discussing the distribution of revenues from the resource. The conclusive document of the UN-endorsed National Conference Process initiative includes some helpful suggestions for principles that could guide the distribution: nominating a commission of independent eminent persons in the process, including local authorities; paying attention to demographic factors and the specific needs of the population; and direct transfer of resources to citizens. However, as of today no significant steps have been taken in this direction, and the distribution of hydrocarbon revenues remains one of the most hotly contested issues, strictly connected to the political economy of smuggling (Ceccorulli and Fassi, 2019).

Security continues to be the most pressing problem in Libya, and the definition and implementation of the country's future security framework are certainly a contentious point. The Skhirat agreement includes several provisions on this aspect, starting with prohibiting the establishment of paramilitary formations outside the legitimacy of the state. The agreement also calls for the integration of irregular armed forces into civil and military institutions (Varvelli and Villa, 2018). At the international level, the conclusive document of the Berlin conference points to building a unified military under civilian authority. At the local level, the Libyan National Conference Process also calls for the dismantlement of militias and for a unified army. Thus, dealing with the militias is a key issue for stability, but once again, as seen before, this might have been endangered by efforts to reduce irregular immigration to the EU.

All these political, economic and security issues affect the local dynamics between different actors and forces and, as a consequence, Libya's overall capacity to act as a unitary, sovereign state – able to control its territory and borders and to implement national policies. Hence, this is exactly where the project to count on Libya to reduce inflows as already attempted to with Turkey in the eastern Mediterranean is set to derail. Moreover, all these aspects are also intertwined with international actors' interests and actions, which are becoming increasingly relevant both for the equilibrium currently emerging on the ground and for the possibility to solve these issues in the future.

International actors

The increasing influence of regional actors

To complicate matters further, Libya's internal quarrels have recently become the trigger of a much wider confrontation. The recent change in the Libyan conflict epitomizes the increasing influence of Middle Eastern and North African powers vis-à-vis global and European ones. As Dacrema (2020: 15–36) correctly points out, the current distribution of forces in Libya reflects one of the main geopolitical rifts in the region, revolving around the political, economic and symbolic leadership of the Arab Sunni majority states. On the one hand, Turkey and Qatar endorse a model based on an interpretation of political Islam inspired by the Muslim Brotherhood. This translates into support for a bottom-up political change in the

region through electoral victories of Islamist parties within republican systems – challenging the status quo for military-led regimes and monarchies alike. On the contrary, Saudi Arabia, the United Arab Emirates (UAE) and Egypt aim to preserve the current political status quo and support a more conservative understanding of political Islam. They thus advocate a top-down approach to political Islam in which governments preserve the public morality of their citizens. As a consequence, they oppose any political group, including Islamist parties, which calls for societal change inspired by their own interpretation of political Islam. In the Libyan context, Turkey and, to a lesser extent, Qatar back the GNA, which is also supported by militias ideologically linked to the Muslim Brotherhood. On the other hand, Egypt, the UAE and, to a lesser extent, Saudi Arabia are among the main sponsors of the HoR-LNA.

Support from regional actors is not just political. Ankara recruited thousands of mercenaries to support the GNA and, perhaps more importantly, provided it with weapons, defence systems and unmanned aerial combat vehicles. Thanks to its NATO membership, Turkey enjoys access to more advanced technology than that of its rivals in Libya, and this has been a real game-changer in the conflict (Megerisi, 2020b). Turkish intervention should be explained by its ideological support not only for the Islamist-inspired militias of the GNA, but also for political and economic reasons. From a political perspective, Turkey perceives itself as an assertive regional power with legitimate ambitions in the Eastern Mediterranean region, and it considers Egypt its main rival. The main economic motivation driving Turkey's intervention in Libya can be understood in light of the current rivalry for gas in the Eastern Mediterranean. An agreement between Ankara and the GNA on delimiting the exclusive economic zone (EEZ), which shortly preceded Turkish intervention in Libya, contains a clause providing for gas exploration in an area Greece considers part of its EEZ. This clause has a double objective: drilling in that portion of the sea and avoiding the purposeful exclusion of Turkey from energy routes to Europe (Colombo and Dentice, 2020). Another economic motivation behind the Turkish intervention in Libya is to lay its hands on the local energy market.

On the opposite side, Egypt and the UAE have provided strong political and military support to the LNA of General Haftar, which was decisive for its advance on Tripoli in 2018–2019. These states treated the Tobruk-based chamber as the legitimate representative of Libya and have established strong links with the main political actors of the HoR. Moreover, they have supposedly provided military equipment, including several jets, and might have even carried out operations. Along with the regional and ideological struggle against the Turkish-Qatar front, these two states have several political and economic interests in Libya. Politically, Cairo sees the establishment of a GNA government with an Islamist component in a neighbouring country as a threat to its internal security due to its harsh contraposition to the Muslim Brotherhood. Egypt also aims to prevent the risk of instability on its border, from where attacks of jihadist groups on its national territory may be launched. From an economic point of view, Egypt is concerned about its Libya-based citizens, numbering around 750,000 in 2015 out of a population

of just under 7 million inhabitants. Furthermore, Cairo would be interested in exploiting Libyan oil in the future, as its internal production does not cover overall demand (although it is not currently possible for the HoR to sell oil on the international market). Similarly, given the UAE's attempts to diversify its income sources, Libya is an investment opportunity for the energy, logistics and transport sectors, as well as a gateway to the Mediterranean region (Melcangi and Mezran, 2020).

Thus, Libya is far from being only a theatre of internal confrontation, and these external actors' engagement further complicates the EU's strategy.

The position of European states and global powers

Recent developments in the Libyan conflict have resulted in a decrease in European countries' influence, with relevant consequences for the EU's overall approach to the country and for migration governance in particular. While Germany seems to be able to play the role of honest broker, Italy and France have stood at opposite sides, diluting the EU's cohesiveness. On the pro-GNA side, until 2019 Italy was the Tripoli government's main ally, as seen in the first section. Rome is still one of Fayez al-Serraj's key supporters but has lately also opened up a channel for dialogue with General Haftar. As a result, the GNA perceives the Italian stance as ambivalent and has therefore strengthened its relationship with Turkey, as seen previously (Megerisi and Varvelli, 2020). Despite the current setback, Italy remains a key player in Libya, as a large number of the local oil and gas fields are operated by ENI, Italy's main energy company. In July 2019 the Italian ambassador to Libya, Giuseppe Buccino Grimaldi, estimated that ENI still controls around 45 per cent of Libyan oil and gas production (Askanews, 2019). Moreover, Rome still has a specific stake in collaborating with Libya to fight migrant smuggling and curb irregular arrivals, an objective seemingly not shared by other European countries, which look at the possible partnership through other lenses. Besides Italy, two other states have a potential mediation role in the Libyan crisis thanks to their existing channels of dialogue with both sides: Germany and the United States. Germany, as mentioned, has been the main promoter of the Berlin conference, while the United States is gradually regaining interest in the Libyan issue, as its participation in the Berlin conference indicates. Due to the shift in Middle East policy expected with the Biden administration, at some point Washington may take on a more assertive role in mediation.

On the pro-HoR-LNA side, France and Russia have opened dialogue with the ruling powers in the east, including General Haftar. For Moscow, such support has translated into the deployment of mercenaries from the Wagner Group and jet fighters, according to US sources. France has also been accused of providing weapons to General Haftar. The main strategic interest for both countries has been to limit Turkey's efforts to increase its influence in the entire Mediterranean region. Indeed, both Russia and France have specific political and economic motives. Russia's political goal in the area mostly revolves around increasing its overall political and economic influence in the Mediterranean region, eventually

by establishing a naval base in the Cyrenaican city of Tobruk. Furthermore, Russia is interested in having a stake in the energy sector and, potentially, in the reconstruction of the country (Alaaldin and Badi, 2020). For France, the political reason for supporting HoR-LNA has been mostly associated with its ambition to gain influence in the country and the region. The main economic reason reflects the political one, which is to gain a greater share in the local economy, especially in the energy sector. Turkey's current confrontational actions put France in an uneasy position, as it prevents Paris from profiting from its political investment. France lodged a formal complaint to NATO, requesting an investigation into an incident in which Turkish frigates targeted a French navy vessel with their radar, the last step before actually firing a missile, because the French navy was seeking to inspect a cargo ship suspected of carrying weapons to Libya. But to Paris's dismay, only 8 out of 30 Member States supported its criticism of Turkey, with the United States and the United Kingdom siding with Turkey. After NATO concluded on 1 July 2020 that the French claims could not be verified, Paris announced that it would pull out of the NATO mission Operation Sea Guardian in the Mediterranean Sea.

Clearly, the lack of cohesiveness within the EU about future arrangements in Libya and the intruding role of other countries cannot but complicate the security scenario, deepening divisions and diverting attention away from migration governance. The consequences for the EU are considered in the next section.

Consequences for the EU

The situation described so far bears a number of consequences for the EU's approach to the country and, in particular, for Brussels' goal of including Libya in its overall strategy of external migration governance. Three aspects in particular stand out as the most relevant.

First of all, external forces – regional actors, global powers and European states – have contributed to perpetuating and exacerbating domestic cleavages, fuelling both the immediate conflict among the local actors and the underlying reasons for conflict (political, economic, ethnic, tribal and religious). In this perspective, they have actively contributed to the already existing fragmentation of the country, negatively impacting its prospects for unity and stability. The consequence has been to further weaken Libyan sovereignty and statehood.

An important corollary of this process has been the empowerment of domestic sub-state actors – from the highest levels of the GNA and HoR to the micro level of specific groups and local militias – both in the (non)governance of the country and, in consequence, as referents for international actors. This in turn has revealed the difficulties the EU has had in dealing with an actor that is not unitary, especially in a context in which individual Member States have different agendas and develop autonomous relationships with sub-state actors who are often in conflict with each other. Economically, such armed groups often obtain vital financial resources from illicit trafficking or external sources of funding. As relations between local armed groups and criminal networks grow stronger,

such formations become harder and harder to eradicate or disarm. For this reason, Italy's collaboration programmes with some local communities, for example, Libyan municipalities, aimed to weaken links between local militias and criminal networks dedicated to illicit trafficking (Varvelli and Villa, 2018).

A second important element that emerges from this situation is, in fact, the possible – and indeed probable – derailment of EU migration policy towards the country. On the one hand, in the face of pressing security problems, including an armed conflict of varying intensity but apparently never completely dormant, and a clash over geopolitical objectives between the major regional and global players, the migration agenda always risks taking second place. This happens, once again, when European institutions and Member States are not aligned in terms of interests, objectives and strategies. Moreover, it is amplified by the fact that among the other big players in the field, none seem to share the same perspective as the EU (and more precisely some EU Member States) on migration in terms of relevance, magnitude and urgency.

On the other hand, there is also the very concrete risk that the migration issue will not be simply put aside by powerful states with other agendas but, on the contrary, will become hostage to actors with interests and values that are not aligned with those of the EU – and even less of the migrant themselves. Turkey is clearly a case in point here. With its expanding role in Libya, Ankara could try once again to exploit the migration card, potentially blackmailing the EU both on the eastern Mediterranean route – as it already did (see Kaya in this book) – and somehow influencing flows on the central Mediterranean one. Overall, this could give to Turkey growing influence within the external dimension of the EU's system of migration governance, while pushing the EU's migration agenda further in the direction of the Libya's stability and security as foremost objectives, sidelining issues concerning migrants' lives, treatment and destiny and thus having clear consequences in terms of perspectives of justice.

A third important aspect has to do with EU action as an international actor, not only in the field of migration. What the Libyan case highlights is the risk that what happens in the Mediterranean is less and less determined by the EU and even less so monitored by it. Although the 2015 migrant crisis was a defining moment for the EU, 5 years later it seems that its capacity to affect migration dynamics, particularly in this case on the central Mediterranean route with Libya as the epicentre, is not growing at all. On the contrary, the affirmation of other global and regional powers and the divergences between Member States have concretely reduced the scope of action for Brussels. This will ultimately have major consequences not only for the migration governance options at hand but also for understandings of justice that the EU's governance could direct into possible options.

On political justice: from bad to worse

The analysis of the events of recent years has revealed the significant changes in the Libyan scenario and the actors playing a role in that context. As seen, the picture has changed markedly since the first attempts were made to cope with

the situation in the country, with grim implications for migration. This section looks specifically at which priorities have been behind the EU's actions towards the country and at the same time considers how the EU's lost ground seemingly impacts the governance of migration. In order to provide nuances to the otherwise black-and-white assessment often conducted by migration scholars, the concepts of justice as non-domination, impartiality and mutual recognition help discover which type of migration governance the EU is contributing when considering relations with Libya.

In line with other chapters in this book (see, for example, Dimitriadi, Brouillet, Kaya and Ceccorulli) justice as non-domination has long dominated the EU's relations with Libya. This has been invariably demonstrated in the wake of the refugee crisis and holds the same value today, albeit with important differences. As briefly seen in the first section of this chapter, the years of the 2015 refugee crisis and its aftermath were accompanied by the attempts by the Union to support the efforts of the international community in favour of political reconciliation and disarmament. With reference to migration, shipwrecks in the Mediterranean and the mounting loss of lives were perceived as the direct consequence of Libya's escalating security situation and the lack of international plans to cope with it. In this uncertain scenario human smugglers were in fact able to make significant profit, completely disinterested in the fate of migrants escaping Libya (Ceccorulli and Fassi, 2019). UN resolutions in this respect perfectly mirrored the EU's wishes: building up Libya's capacities to detect smuggling activities would serve both the objective of saving lives where it was most needed, that is, in Libyan waters where no foreign vessels could navigate, and to reduce irregular arrivals in the EU. In this sense, by supporting Libya's statehood prerogatives, UN-like solutions had the clear effect of advancing an understanding of justice as non-domination. The EU's moves both anticipated and followed UN resolutions attempts, but mostly worked to support them, at least until internal divisions started to undermine a unitary approach to the matter. When Italy took clear leadership in approaching Libya this strategy was brought to its apex, financially and politically supported by the EU. The intended objective was not only to restore control capacities but also to develop economic opportunities for local communities and improve the treatment of migrants. The idea, hence, collimated with a conception of justice that tries to enhance states to be "freedom enabling institutions" (Sjursen, 2017). Moreover, as seen before, the strategy of co-opting militias without strong political control may have inadvertently weakened the Italian and European effort.

The EU has not modified its idea since, as testified by the backing of initiatives such as the Berlin Conference sponsored by Germany, but simultaneous events have made its role less relevant in pushing such a strategy: on the one hand, Italy's losing ground in the North African country and on the other hand, divisions among Member States on the direction political reconciliation and de-escalation should take. All this, coupled with the progressive intrusion of foreign players, had a clear effect on the EU's contribution to justice. Support for different factions in Libya seemed to displace the objective of soon-to-be-restored statehood, and

foreign actors' initiatives for de-escalation configured the EU as a passive spectator and opened up the likelihood of enduring others' decisions and their potential effects on migration. If that is so, and given that flows are mostly directed towards Europe, the practice of domination *against* the EU could arise whereby the Union may not be involved as an equal party to discussions.

With respect to justice as impartiality, in contrast, the evaluation is more clear-cut. Throughout the process, migrants' rights have been not only impaired but increasingly disregarded. The idea of talks with Libya, a profoundly torn and insecure country, on the governance of migration, has been questioned from day one. Italy and the EU's strategy as implemented in 2017 have been largely denounced, as seen. And this despite, Rome's efforts to improve migrants' situation in the country, working to improve migrants' treatment, opening access to international organizations previously not allowed in the country, working on humanitarian corridors to Europe and on emergency evacuations to other countries (Varvelli and Villa, 2019). The limits of this strategy need no further explanation: the short-term objective to cut inflows has led to decisions which have inevitably impaired migrants' treatment and rights, from the full involvement of militias (with the consequences already seen) to the implicit recognition of Libya as a safe country. The fact that the country has not even signed the 1951 Geneva Refugee Convention further obscures the EU's performance on advancing this type of justice and on the EU's support of such international conventions. Since then, migrants' security has only gotten worse. As seen, the political turnaround in Italy has further deflected attention away from migrants in Libya, while irreducible quarrels among Member States over burden-sharing have favoured solutions in which the problem has been ignored altogether. This has been the net result of the passage from Operation Sophia to Irini. Deeply criticized, the EU's anti-smuggling operation was surely better than having no EU presence of such scale and scope at sea where it is most needed, that is, in the high seas close to Libyan shores (Sunderland, 2020). Besides, the admonition that Irini vessels could be withdrawn if the operation is proved to be a pull factor somehow clashes with international conventions such as the Law of the Sea prescribing the duty to save people in distress at sea and particularly so if one considers the security situation in Libya. As the EU's initiative faltered and internal fractures deepened as a result of partisan policies implemented by foreign players (which de facto only worsened security by providing weapons to both factions) migrants' security was further endangered, as fighting was purposefully extended to detention facilities as they stood close to militia bases (Human Rights Watch, 2019). Indeed, the EU's efforts to keep migrants in Libya are less and less justifiable as the security situation escalates and international organizations clearly recognize that Libya is not a safe place. In this sense, the EU's actions may run contrary to what justice as impartiality would prescribe, that is, alignment with institutions that expand/protect individuals (and more so in conflict zone) and human rights protection more in general. The possibility that foreign players' assertiveness replaces the EU's role (or lack thereof) casts an even darker shadow on the prospect of migrants' protection and rights: it is hard to believe that actors such as Turkey or Russia will put the issue

upfront. With its expanding role in Libya, Ankara could try to once again exploit the migration card, both potentially blackmailing the EU on the eastern Mediterranean route – as it already did (see Kaya in this book) – and somehow influencing flows on the central Mediterranean one. Overall, this might give Turkey growing influence within the external dimension of the EU migration system of governance, while pushing the EU's migration agenda further in the direction of the country's stability and security as foremost objectives, sidelining issues concerning migrants' lives, treatment and destiny.

Finally, as far as a conception of a justice attentive to the voices of the actors involved, EU's performance strikes again poorly. As seen before, initiatives undertaken in 2017 were cognizant, at least in principle, of the composite nature of the country and the need to repair the country's social fabric. This is exemplified by the effort at strengthening tribes' political dialogue (Longo, 2017) or to involve different municipalities to envisage plans for economic development. However, the hidden aim to reduce immigration cast serious doubt on the effectiveness of the strategy (Ceccorulli and Fassi, 2019): plans to control migrants have given prominence to specific (security) institutions in the country, which have in fact been either empowered (militias) or refurbished (the Coast Guard) with consequences already seen for migrants (Den Hertog, 2016). Besides, the EU's requests to strengthen Libya's external borders are doomed to have a negative impact on local communities benefitting from transnational activities (Strazzari and Raineri, 2015; Tinti and Reitano, 2017; Triandafyllidou, 2018). Furthermore, according to some scholars, socio-economic differences on the ground could hardly be reconciled with whatever top-down plan may be conceived to 'substitute' smuggling activities (Micallef and Reitano, 2017). With the rise to power of a hard-line political majority in Italy, chances to devote as much attention to local actors and migrants were inevitably further jeopardized. At the same time Member States' avoidance of even discussing issues related to migrants' inflows (as testified by the passage from Sophia to Irini) further distanced the advancement of a conception of justice as mutual recognition. Indeed, how Libya's situation will be dealt with in the future even on chapters not strictly related to migration will have an impact on the latter theme. For example, the distribution of hydrocarbon revenues is a key and yet undefined conundrum, one that clearly impacts smugglers' margin of manoeuvre (Saini Fasanotti and Varvelli, 2019). However, the progressive intrusion of foreign players, and the potential for a final say on Libya's political and economic settings, leaves the EU less and less able to mould the process in a way that could be attentive to the needs of the actors impacted by migration flows.

Conclusion

An analysis of the EU's governance of migration in relations with third states sheds light on which priorities the Union is moved by. In this chapter, we identify those priorities through the lens of political justice, specifically a tripartite understanding of the concept: as non-domination, impartiality and mutual recognition. Indeed, a mix of these understandings encapsulated in EU's actions is a possible

finding. They are not mutually exclusive, and the right balance between them may be a good compromise between what should be accomplished and what is actually feasible. Our analysis, however, suggests a different outcome.

The inclusion of Libya within the EU's migration governance has been characterized by important steps forward as well as relevant setbacks. After a phase of active engagement, we are now seeing a Union that is struggling to advance a coherent strategy towards the country, obstructed in this sense by both internal quarrels and the increasing relevance of external actors. What seems evident is that without the EU's active engagement, one of three scenarios (or simultaneous ones) is likely to emerge: further division of the North African country into opposing factions, a pronounced shift in focus towards mostly security/geopolitical considerations, or the EU's side-stepping with respect to arrangements in the Mediterranean. In all these scenarios the issue of migration would simply be disregarded with deep consequences for the Union, for migrants and for all those actors involved in migration flows. Apart from the obvious and counterproductive blunders in the Union's approach towards Libya in the field of migration (such as the empowerment of militias) the Union seems to have advanced non-domination, that is, restored sovereign prerogatives, as the lynchpin of migration governance; to a certain extent this cannot be questioned as it is difficult to see how flows can be governed (from preventing flows to improving migrants' treatment) without a reliable interlocutor. However, this would leave a series of other key stakes for the Union unaddressed, such as support for human rights beyond political communities, and the aim of differentiating itself from other external actors, avoiding neo-colonial attitudes and providing a voice to affected parties. Thus far, the Union has performed poorly with respect to these latter objectives, while current trends tell us that even non-domination, which is supposed to be advanced in relations with Libya, is at stake if the Union is less and less able to influence its own backyard.

Note

- 1 www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/cruscotto_statistico_giornaliero_31_gennaio_2017_1.pdf.

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