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ESTUDIOS

The naval Operation *Irini* of the European Union: a step backwards of the CSDP in the fight against the illegal immigration and search and rescue activities in the Mediterranean

La Operación naval *Irini* de la Unión Europea: un paso atrás de la PCSD en la lucha contra la inmigración ilegal y las actividades de búsqueda y salvamento en el Mediterráneo

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**The naval Operation *Irini* of the European Union:
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in the Mediterranean**

*La Operación naval Irini de la Unión Europea: un paso atrás
de la PCSD en la lucha contra la inmigración ilegal y las actividades
de búsqueda y salvamento en el Mediterráneo*

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Summary: I. Introduction.—II. The achievements of the Operation *Sophia* in their context.—III. Lights and shadows of Operation *Irini*. 1. The achievements of the Operation *Irini* in their context. 2. The abandonment of the search and rescue activities and the situation with regard to the respect of human rights of the migrants.—IV. Conclusions.—V. Bibliography.

Abstract: Operation *Irini* is a new EU naval operation, in the framework of CSDP, to address violations of the arms embargo and illicit export of petroleum products in Libya, imposed by the United Nations Security Council. As a second objective, the Operation contributes to the training of Libyan coastguards in their fight against illegal immigration, as well as combating the mafias involved in the smuggling of migrants in the Central Mediterranean. From the outset, the naval operation has had scant resources and, unsurprisingly, its results have been poor in these first three years. In short, this new Operation, in the wake of *Sophia*'s poor results in the last months of its activity, represents a new setback for the CSDP and for the EU's ambition to become a relevant actor in contemporary international society. Unfortunately, moreover, allegations of significant violations of migrants' human rights by Libyan coast guard forces cast a shadow over the EU, which is assisting and training these security forces.

Keywords: Operation *Irini*, CSDP, naval operations, search and rescue, Libya, human rights.

Resumen: *La Operación Irini es una nueva operación naval de la UE, en el marco de la PCSD, para tratar de luchar contra las violaciones del embargo de armas y de exportación ilícita de productos derivados del petróleo en Libia, impuesto por el Consejo de Seguridad de las Naciones Unidas. Como segundo objetivo, la Operación contribuye a la formación de los guardacostas libios en su lucha contra la inmigración ilegal, así como a luchar contra las mafias dedicadas al tráfico de migrantes en el Mediterráneo Central. La Operación naval cuenta desde el principio con escasos medios y, como no podía ser de otro modo, sus resultados son pobres en estos primeros tres años. En definitiva, que esta nueva Operación, en la estela de los malos resultados de Sophia en los últimos meses de su actividad, supone un nuevo revés para la PCSD y para la ambición de la UE de convertirse en un actor relevante en la Sociedad Internacional Contemporánea. Desgraciadamente, además, las acusaciones de importantes violaciones de los derechos humanos de los migrantes, por parte de los cuerpos de Guardacosta libios, ensombrecen a la UE, que está asistiendo y formando a esas fuerzas de seguridad.*

Palabras clave: *Operación Irini, PCSD, operaciones navales, búsqueda y salvamento, derechos humanos.*

I. Introduction

In recent years we have witnessed a major migration crisis in Europe, the most dramatic scene of which has been the Mediterranean, with thousands of deaths of people trying to reach our shores in search of a more promising future. Perhaps the high point of the crisis was the sinking on 18 April 2015, off the coast of Libya, of a fishing boat with more than 800 people on board. This event shocked the consciences of the European leaders of the various institutions, bodies and agencies of the European Union (EU), who began to reflect on how to deal with the crisis. Thus, on 13 May 2015, the European Commission adopted the European Agenda on Migration, which calls for a common European migration policy, bringing together the efforts of the EU institutions, Member States and local authorities, in cooperation with third countries and other international organisations¹.

This call did not fall on deaf ears, and the EU began to make plans for action alone or in conjunction with other international organisations or third States. In fact, this instrument already announced that the EU's High Representative for Foreign Affairs and Security Policy had outlined possible operations under the Common Security and Defence Policy (CSDP) aimed at identifying, capturing and destroying vessels used by people smugglers². In this respect, it should be recalled that the Lisbon Treaty had given a strong impetus to CSDP in general and to crisis management operations in particular³. In relation to the latter, Article 42 (1) of the Treaty on European Union notes that the CSDP "shall provide the Union with an operational capacity drawing on civilian and military assets [...]", which may be used "[...] on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter". In theory, that impetus was intended to give the EU the necessary competences to play an increasingly important role on the world stage.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, Brussels, 13 May 2015 COM(2015) 240 final.

² *Ibid.*, p. 3.

³ It also creates a mutual assistance clause, a solidarity clause and provides for the creation of permanent structured cooperation. On the historical evolution of the CSDP, see, among other works: Panos Koutrakos. *The EU Common Security and Defence Policy*. Oxford: Oxford European Union Law Library, 2013; online edn, Oxford Academic, 23 May 2013. On the present and future of the CSDP, see, among other works: José Luis de Castro Ruano y Diego Borrajo Valiña, «El futuro de la seguridad y la defensa en la UE post-brexit: el salto a la integración», *Cuadernos Europeos De Deusto* 60 (2019): 187-217.

In the framework of the CSDP, the Council of the European Union decided on 18 May 2015 to launch a CSDP naval military crisis management operation, initially called EUNAVFOR MED⁴, but later renamed *Sophia*⁵, in order to curb illegal migration to Europe via the central Mediterranean.

The choice of a military operation to combat illegal migration will be better understood if one takes into account that Operation *Sophia* was established at a time when there was a pressing need for swift action in the face of the scale of the tragedy unfolding across the Mediterranean basin, and when the positive results of Operation *Atalanta* —the naval operation of the EU against maritime piracy in the waters of the Gulf of Aden— were already evident to all⁶. The launch of an EU naval operation was thought to be a good measure, both as a complement to the work of search and rescue, which was already underway with the European Border and Coast Guard Agency's (Frontex) Operation *Triton*, as well as to combat trafficking in human-beings in international spaces or in third States, which necessarily had to be placed in the framework of the CSDP with the support of the United Nations Security Council (UNSC)⁷.

However, as long as this article focuses on EU naval operations in the Mediterranean, particularly in the waters around Libya, it is worth mentioning that, also under the umbrella of the CSDP, the EU had already launched the European Union Integrated Border Assistance and Management Mission to Libya (EUBAM Libya) on 22 May 2013. The aim of that Mission is to cooperate with the Libyan authorities to strengthen the

⁴ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), OJ L 122/31, 19 May 2015.

⁵ Council Decision (CFSP) 2015/1926 of 26 October 2015 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), OJ L 281/13, 27 October 2015.

⁶ Indeed, if in 2011 —the peak in terms of the number of pirate attacks recorded since the start of the operation in 2008— there were a total of 176 attacks, in 2015, none were confirmed, and thereafter the same trend has continued. See in this regard: EUNAVFOR Somalia, Facts and Figures. Accessed on 2 August 2023. Available at: <https://eunavfor.eu/key-facts-and-figures/>.

⁷ On the inspiration of Operation *Sophia* in Operation *Atalanta*, see also: Félix Arteaga Martín y Carmen González Enríquez, “La respuesta militar a la crisis migratoria del Mediterráneo”, *Real Instituto Elcano*, *ARI* 40 (2015): 4-5 and Giovanni Faleg and Steven Blockmans, “EU Naval Force EUNAVFOR MED sets sail in troubled waters”, *Centre for European Policy Studies Commentary*, 26 June 2015, (2015): 2-4. Likewise, on the timeliness and relevance of launching a military operation to solve the migration problem of migration see: Miguel Ángel Acosta Sánchez, “Sobre el ámbito competencial de las operaciones de paz: el enfoque integral de la operación militar Sophia de la UE ante la crisis migratoria”, *Revista del Instituto Español de Estudios Estratégicos* 12 (2018): 15-48, or Julia Himmrich, “Beyond operation Sophia What role for the military in migration policy?”, *Dahrendorf Forum Policy Brief*, 4 march 2019 (2019): 3).

security of its land, sea and of its land, maritime and air borders in the short term, and in the longer term to develop a comprehensive integrated border management strategy⁸. Until 31 December 2018, EUBAM Libya's mandate was focused on facilitating security sector reform in Libya and paving the way for a possible civilian CSDP mission, working closely with the United Nations Support Mission in Libya (UNSMIL)⁹. However, on 17 December 2018, the Council of the European Union extended the mandate of EUBAM Libya until 30 June 2020 and expanded its competences so as to assist the Libyan authorities in dismantling the organised criminal networks involved in smuggling of migrants, trafficking in human-beings and terrorism¹⁰. Since then, the Council has extended the mandate of the Mission¹¹ on several occasions, the most recent extension being until June 2025.

As outlined above, the initial objective of Operation *Sophia* was to disrupt the business model of smuggling and trafficking networks in the southern central Mediterranean by making systematic efforts to detect, capture and eliminate the vessels and means used by those criminals, in accordance with applicable international law, including the United Nations Convention on the Law of the Sea (UNCLOS) and United Nations Security Council (UNSC) resolutions to this effect. Subsequently, the EU Council

⁸ Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya), OJ L 138 of 24 May 2013, pp. 15-18.

⁹ Of course, the EU is well aware that it cannot solve the root problem of migration from Africa on its own, so it tries to act in cooperation with other international actors, such as the aforementioned UNSMIL Mission, the African Union or the North Atlantic Treaty Organisation (NATO). See: Council of the European Union, Doc. 11471/18, EEAS, Strategic Review on EUNAVFOR MED Operation Sophia, NSCEUBM Libya & EU Liaison and Planning Cell of 27 July 2018 [EEAS (2018) 835], p. 22. Furthermore, EUBAM Libya and the naval operations of the EU work in coordination with CSDP missions in the Sahel and with some EU Member States, as well as with other EU actions and other European international organisations, such as the EU Delegation to the Council of Europe (EUDEL), the EU Liaison and Planning Cell (EULPC), Europol, Eurojust, the Integrated Border and Migration Management Support Programme in Libya (EUTF), Frontex and Project Seahorse (private sector). See *ibid.*, p. 49.

¹⁰ Council Decision (CFSP) 2018/2009 of 17 December 2018 amending and extending Decision 2013/233/CFSP on the European Union Integrated Border Assistance and Management Mission (EUBAM Libya), OJ L 322 of 18 December 2018, pp. 25-26.

¹¹ See: Council Decision (CFSP) 2020/903 of 29 June 2020 amending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya), OJ L 207, 30 June 2020, p. 32; Council Decision (CFSP) 2021/1009 of 18 June 2021 amending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya), OJ L 222/18, 22 June 2021 and Council Decision (CFSP) 2023/1305 of 26 June 2023 amending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya), OJ L 161/68, 27 June 2023.

extended Operation *Sophia* and added new objectives, as directed by the UNSC. Thus, in June 2016¹², two new support tasks were added: on the one hand, training and capacity-building of the Libyan Coast Guard and Navy to carry out maritime control activities, in particular against human trafficking; and, on the other hand, the implementation of the arms embargo imposed on the high seas off the coast of Libya by UNSC Resolution 2292 (2016) of 14 June 2016.

A few months later, in July 2017, *Sophia* was mandated by the UNSC through UNSC Resolution 2146 (2014) of 19 March 2014 to carry out surveillance activities and collect information on the illegal trade in crude oil and other products that finance human trafficking mafias¹³.

However, in the months that followed, *Sophia* ran into a crisis, mainly for political reasons. In fact, the future of *Sophia* was called into question by Italy's threat to veto the Operation if a general decision on migration was not reached, which would provide for the distribution of migrants among the different Member States after their disembarkation in Italian ports. Thus, as expected, the Council decided on 21 December 2018¹⁴ to extend the Operation, but this time for only three months, until 31 March 2019.

For the last time, on 26 September 2019, it was decided to extend the mandate of Operation *Sophia* by six months, in the same conditions¹⁵. And finally, when that extension expired, taking into account the situation in Libya and the decisions adopted during the Berlin Conference about the Libyan War in January 2020, the EU decided that *Sophia* was to cease its activities¹⁶ and launched a new naval operation in the central Mediterranean sea, called *Irimi*¹⁷.

¹² Council Decision (CFSP) 2016/993 of 20 June 2016 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 162, 21 June 2016, pp. 18-20.

¹³ Council Decision (CFSP) 2017/1385 of 25 July 2017 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 194, 26 July 2017, pp. 61-62.

¹⁴ Council Decision (CFSP) 2018/2055 of 21 December 2018 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 327 I/9, 21 December 2018, pp. 9-10.

¹⁵ Council Decision (CFSP) 2019/1595 of 26 September 2019 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 248/73, 27 September 2019.

¹⁶ Council Decision (CFSP) 2020/471 of 31 March 2020 repealing Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 101/3, 1 April 2020.

¹⁷ Council Decision (CFSP) 2020/472 of 31 March 2020 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI), OJ L 101, 1 April 2020, pp. 4-10.

Regarding the situation in Libya, we recall that, in February 2011, a peaceful protest in Benghazi, eastern Libya, against the rule of Colonel Muammar Gaddafi was met with a violent crackdown that claimed the lives of dozens of protesters within days. As the protests spread beyond Benghazi, the number of victims increased. In response, the UNSC adopted Resolution 1970 on 26 February 2011, expressing its “[...]grave concern at the situation in the Libyan Arab Jamahiriya and condemning the violence and use of force against civilians [...]”. The Security Council also referred the situation in the Libyan Arab Jamahiriya to the Prosecutor of the International Criminal Court and imposed an arms embargo on the country¹⁸. Following the further deterioration of the state of affairs in Libya, the UNSC adopted Resolution 1973 on 17 March 2011, which condemned “[...] the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions”. At the same time, the Security Council introduced active measures, including a no-fly zone, and authorised Member States, acting through regional organisations as appropriate, to use “all necessary measures” to protect Libyan citizens and civilian populated areas¹⁹. Following the adoption of UN Security Council Resolution 1973, a military operation was launched by a multinational coalition, initially led by the United States of America and, since 31 March 2011, by NATO²⁰, in order to prevent a bloodbath. After several months of fighting, during which, for example, the International Criminal Court (ICC) issued an arrest warrant against Gaddafi²¹, the civil war ended up with the deposition of the Gaddafi regime.

After the fall of Gaddafi’s regime, there was a central power vacuum and the situation escalated into fighting between different factions and groups, which over time took on the dimensions of a civil war²².

¹⁸ United Nations Security Council, Resolution 1970 (2011), Doc. S/RES/1970 (2011), 26 February 2011.

¹⁹ United Nations Security Council, Resolution 1973 (2011), Doc. S/RES/1973 (2011), 17 March 2011.

²⁰ See: NATO, Press briefing by NATO Spokesperson Oana Lungescu, joined by NATO Military Committee Chairman Admiral Giampaolo Di Paola and Commander of Operation Unified Protector, Lieutenant General Charles Bouchard (Opening remarks), 31 March 2011. Accessed on 2 August 2023. Available at: https://www.nato.int/cps/en/natolive/opinions_71897.htm.

²¹ International Criminal Court, Warrant of Arrest for Muammar Mohammed Abu Minyar Gaddafi, ICC-01/11-13, 27 June 2011 | Pre-Trial Chamber II | Decision.

²² Regarding the situation in Libya after Gaddafi’s fall, see: Javier Soto Reyes; Youssef Hadiq Bouajaj; Aitor Lecumberri Iribarren, “La distribución del poder en la Libia post-Gadafi: un análisis desde la Sociología del poder”, *Revista de Estudios Internacionales Mediterráneos* 23 (2017): 47-75.

The signing of the agreement to form a government of national consensus on 17 December 2015 in Sjirat, Morocco, was perhaps a step forward in stabilising the political situation, although it certainly did not serve to restore state authority throughout Libyan territory, as the events of recent years have made abundantly clear. In fact, as everyone knows, political instability prevented the holding of legislative elections at the end of 2018 and prompted the United Nations Special Envoy for Libya to convene a national conference, which was to have taken place on 16 and 17 April 2019, in order to achieve national reconciliation between the various factions. Unfortunately, that national conference was eventually suspended in early April 2019 when General Hafter, who had created the so-called Libyan National Army, launched a military offensive aimed at taking control of Tripoli. In order to put an end to this situation, which has been exacerbated by foreign intervention in the civil war, a conference organised by the German government took place in Berlin on 19 January 2020. The aim of the conference was to provide new political impetus and international support for a solution to the Libyan conflict. In addition to the UN Secretary-General and Germany, the conference was attended by eleven countries and three other international organisations: China, France, Russia, the United Kingdom, the United States of America, Egypt, the United Arab Emirates, Italy, Congo, Turkey, Algeria, the EU, the African Union and the Arab League²³.

Some months afterward, on 23 October 2020, a ceasefire agreement, sponsored by UNSMIL, was signed between the Libyan Army of the Government of National Accord and the Libyan National Army of the General Command of the Armed Forces²⁴. By the terms of the agreement, all armed forces should withdraw from confrontation lines and that all mercenaries and foreign fighters should depart from the Libyan territory within three months. Along with that, the parties “[...] agreed to form a limited joint military force to deter ceasefire violations and develop, in conjunction with UNSMIL, a mechanism to monitor the implementation of the agreement. [...]”²⁵. Nevertheless, as the final report of March 2021 of

²³ See: United Nations Security Council, Letter dated 22 January 2020 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council, Doc. S/2020/63, 22 January 2020.

²⁴ United Nations Security Council. Letter dated 27 October 2020 from the Secretary-General addressed to the President of the Security Council. Doc. S/2020/1043, 27 October 2020. Agreement for a complete and permanent ceasefire in Libya between the Libyan Army of the Government of National Accord and the Libyan National Army of the General Command of the Armed Forces, signed below by their authorized representatives and witnessed by the United Nations Support Mission in Libya (UNSMIL). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/287/98/PDF/N2028798.pdf?OpenElement>.

²⁵ *Ibid.*

the Panel of Experts on Libya established pursuant to Security Council Resolution 1973 (2011) noted in its summary, “[...] their commitment to its implementation remains questionable. [...]”²⁶. In any case, both the Government of National Accord-Affiliated Forces (GNA-AF) and the Hafter Affiliated Forces (HAF) have disrupted terrorist cells and arrested leaders of the Islamic State of Iraq and the Levant and the Organisation of Al-Qaeda in the Islamic Maghreb, which has contributed to the decline in terrorist attacks²⁷. According to a report by the United Nations Secretary-General, the ceasefire continued to hold in April 2023, although the security situation remained tense throughout the country²⁸.

It was in this context that the EU decided to put an end to *Sophia* and to launch *Irini* on 31 March 2020, after the Berlin Conference on Libya. It should be underlined that the new military operation took over most of the remaining tasks of its sister *Sophia*: on the one hand, and primarily, it aimed at implementing the UNSC arms embargo on Libya using air, satellite and maritime assets; on the other hand, as secondary tasks, *Irini* was set up to contribute to the implementation of UNSC measures to prevent the illicit export of oil from Libya, to the capacity building and training of the Libyan Coast Guard and Navy, and to the disruption of the business model of human smuggling and trafficking networks²⁹.

Three years after the start of Operation *Irini*, it’s time to reflect on the initial results of the Operation in the light of the continuity of the efforts of the Operation *Sophia*. The opportunity for this research is all the greater given that, according to the International Organization for Migration (IOM), the Central Mediterranean has once again become “[...] the deadliest known migration route in the world³⁰”, and the number of shipwrecks in this area is not decreasing. On the contrary, in 2023 about 2500 people died or disappeared in this area³¹. Moreover, one of the worst disasters in this tragic cycle occurred in June 2023, when a fishing boat sank off the coast of Greece with around 700 migrants on board, most of whom were reported dead or

²⁶ United Nations Security Council. Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council, Doc. S/2021/229, 8 March 2021. Summary.

²⁷ *Ibid.*, p. 6.

²⁸ United Nations Security Council, United Nations Support Mission in Libya, Report of the Secretary-General. S/2023/248, 5 April 2023, p. 12.

²⁹ Council Decision (CFSP) 2020/472 of 31 March 2020 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI), OJ L 101/4, 1 April 2020, arts. 1-5.

³⁰ International Organization for Migration, Missing Migrants Project. “Overview of Migrants Deaths in the Mediterranean”. Accessed on 12 January 2024. Available at: <https://missingmigrants.iom.int/region/mediterranean>.

³¹ *Ibid.*

missing³². That is why we are going to pay special attention, firstly, to the issue of *Irimi*'s fight against illegal migration and its roots and, secondly, to search and rescue in the Mediterranean. This is our main objective. Indirectly, however, we understand that the consequences of this examination of the EU's level of ambition in this new operation may have implications for the present and future of the CSDP. And that would be our secondary purpose.

To achieve these objectives, our paper will be structured as follows: in the second section, we will present the results of Operation *Sophia*, which should provide a good basis for understanding the mandate of Operation *Irimi* as a continuation of CSDP operations in the Mediterranean. In section three, we will examine the first results of Operation *Irimi*. First, in terms of the achievement of its objectives, mainly in the field of combating illegal migration in the Mediterranean. Secondly, we will try to elaborate on its shortcomings and negative aspects, especially its neglect of search and rescue activities, as well as violations of migrants' human rights. In relation to the issue of the violation of the human rights of migrants, it should be noted that in this section we will address the analysis of the situation with regard to Operations *Sophia* and *Irimi* together, as the facts, accusations and consequences overlap in time. Finally, in the fourth section, we will present our conclusions.

II. The achievements of the Operation *Sophia* in their context

As for the number of irregular migrants attempting to reach Europe via the central Mediterranean route, according to data provided by Frontex, a total of 170664 people were counted in 2014, while the number rose to 153946 in 2015, the year Operation *Sophia* began. The peak was reached in 2016, when 181376 people attempted to cross the Mediterranean irregularly by this route. In 2017, a total of 118962 people were registered. On the other hand, 2018 and 2019 saw a significant decrease in the number of attempts to reach Italian shores, with 14874 people counted in 2019, “[...] its lowest yearly number of irregular migrants since before the Arab Spring [...]”³³.

³² International Organization for Migration, “IOM and UNHCR Call for Decisive Action Following Mediterranean Tragedy”. Accessed on 12 January 2024. Available at: <https://www.unhcr.org/news/press-releases/unhcr-and-iom-call-decisive-action-following-mediterranean-tragedy#:~:text=UNHCR%20and%20IOM%20call%20for%20decisive%20action%20following%20Mediterranean%20tragedy,-16%20June%202023&text=UNHCR%2C%20the%20UN%20Refugee%20Agency,the%20worst%20in%20several%20years.>

³³ All figures quoted are from: Frontex. “Illegal border crossings on the Central Mediterranean route (including Apulia and Calabria) in numbers. Situation in 2019”. Accessed on 2 August 2023. <https://frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/central-mediterranean-route/>.

Nevertheless, when the ships of *Sophia* were in their ports, in 2020, according to Frontex, “[...] the number of irregular migrants detected on this route increased significantly, making it the most-used path to Europe [...]” and “[...] Libya was the most common departure point [...]”³⁴.

More important, and of course dramatic, is the number of people who lost their lives trying to cross to Europe from Africa via the central Mediterranean route. More specifically, in 2014, 3165 people died; in 2015, 3149; in 2016, 4581; in 2017, 2853; and in 2018 the figure dropped by about half, with 1314 people perishing, and in 2019, 1262 people perished³⁵.

In any case, according to official EU sources, thanks to the operation of *Sophia* 44916 persons were rescued³⁶.

In the light of these data, it would be unfair not to acknowledge that, at least in terms of search and rescue, Operation *Sophia* has not done a bad job³⁷. However, it would be necessary to consider whether it is appropriate to use warships, which are essentially deterrent in nature, for tasks that other types of ships and personnel may be better able to perform.

Another question is the effectiveness of Operation *Sophia* in the fight against human trafficking and smuggling. However, it has to be acknowledged that the situation is complex and largely beyond the EU’s control, as most smugglers are not based in Europe and those who are eventually apprehended on vessels crossing the Mediterranean are only the

³⁴ Frontex. “Illegal border crossings on the Central Mediterranean route (including Apulia and Calabria) in numbers. Situation in 2020”. Accessed on 2 August 2023. <https://frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/central-mediterranean-route/>.

³⁵ International Organization for Migration, Missing migrants in the Central Mediterranean Route in 2019. Accessed on 2 August 2023. Available at: https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&year%5B%5D=2502&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=

³⁶ See: Council of the European Union, Infographic-Lives saved in EU Mediterranean operations (2015-2023). Accessed on 2 August 2023. Available at: <https://www.consilium.europa.eu/en/infographics/saving-lives-sea/>.

³⁷ That was also the view of the EU High Representative for Foreign Affairs and Security Policy, as she pointed out in a letter of 26 July 2017, in which she disagreed with the House of Lords’ assessment that the operation was a failure. Accessed on 2 August 2023. Available at: <https://www.parliament.uk/globalassets/documents/lords-committees/eu-external-affairs-subcommittee/operation-sophia-failed-mission/Response-Federica-Mogherini.pdf>. In that sense, see also: Antonio Ponce de Sacho, “EUNAVFOR MED Operación SOPHIA: un instrumento de la Política Exterior y de Seguridad Común de la Unión Europea”, *Documento de Opinión IEEE 05/2019*. Instituto Español de Estudios Estratégicos, 13 (2019): 11. According also to Marius Pricopi, the Operation would have been a major success, see: Marius Pricopi, “The Military Operation EUNAVFOR MED IRINI-A Downscale of the EU’S Involvement in the Migration Crisis”, *Land Forces Academy Review XXV* (2020), 4: 303.

last link in the criminal chain³⁸. Final official data on these aspects of the Operation is difficult to know with certainty, but in July 2018, official EU documents stated that around 148 suspected traffickers had been arrested and around 550 gang assets had been seized³⁹.

These figures are clearly out of line with the Operation's resources. As a result, they have naturally been heavily criticised by some observers, including the authors of the UK House of Lords report on the subject, who argue that the EU naval operation has failed to disrupt the business model of traffickers and smugglers. In fact, according to this report, the operation has had the perverse effect of encouraging them to use lower quality vessels in their criminal activities than before EU vessels entered the Mediterranean, with the result that the percentage of fatalities has increased⁴⁰.

In the eyes of a 2018 strategic review drafted by the European External Action Service (EEAS), such criticism is overblown, as the presence of *Sophia's* vessels on the high seas has significantly reduced traffickers' activity in the region, limiting them to operating in Libyan territorial waters and severely impacting their business model⁴¹. On the other hand, according to the same source, *Sophia's* actions on the high seas have had a positive impact on the activity of merchant ships in the area, relieving them of some of the task of search and rescue, thus avoiding the interruption of the route⁴².

Finally, in terms of the other objectives that have been added to *Sophia's* mandate over time, we can see how, according to official sources of the

³⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, Brussels, 13 May 2015 COM(2015) 240 final. Over the traffickers and smugglers and their *modus operandi* see: Monserrat Pi Llorens, "La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia: balance tras el fin de la operación Sophia", *Revista electrónica de estudios internacionales*, 40 (2020): 4-5.

³⁹ Council of the European Union, Doc. 11471/18, EEAS, Strategic Review on EUNAVFOR MED Operation Sophia, EUBM Libya & EU Liaison and Planning Cell of 27.07.2018 [EEAS (2018) 835], p. 25.

⁴⁰ See in that sense: House of Lords, European Union Committee, 2nd Report of Session 2017-19, *Operation Sophia: a failed mission*, par. 45. Accessed on 2 August 2023. Available at: https://publications.parliament.uk/pa/ld201719/ldselect/lddeucom/5/506.htm#_idTextAnchor010. In contrast, Federica Mogherini, the EU's High Representative for Foreign Affairs and Security Policy, in her letter of 26 July 2017, disagreed with the House of Lords' assessments. In the same line of the view of the British House of Lords, professor Pi Llorens pointed out that the figure of 150 people arrested thanks to the huge resources of the operation is extremely low, not to say ridiculous; see: Pi Llorens, "La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia", 12-13.

⁴¹ Council of the European Union, Doc. 11471/18, EEAS, Strategic Review on EUNAVFOR MED Operation Sophia..., *op. cit.*, p. 26.

⁴² *Ibid.*, pp. 5-6.

Operation, some 580 members of the Libyan Coast Guard and Navy were trained⁴³. This could undoubtedly enable the Libyan security forces to maintain order in the areas under their jurisdiction in the future, when the political situation in Libya normalises. Moreover, this improvement would prevent the EU from having to act as a kind of global gendarme, thus undermining the principle of non-intervention in the internal affairs of other States. In addition, according to estimates by the United Nations Secretary-General in May 2018, from June 2016 to June 2017, “[...]more than 1,200 hailings, more than 70 friendly approaches and three vessel inspections were conducted, leading to two seizures of prohibited items [...]”. On the other hand, from June 2017 to May 2018, there were no reports of the military operation detecting arms smuggling activity in international waters⁴⁴.

However, it would not be fair to place all the responsibility on Operation *Sophia*, but rather to look for the failure in a number of factors linked to the complexity of the legal framework involved when it comes to maintaining public order or security in international or territorial waters of third States. Among other factors, we can set forth the shortcomings of the international law of the sea in regulating the rescue of migrants and the problematic of Search and Rescue (SAR) areas, in particular the issues of disembarkation and the protection of human rights of migrants and refugees⁴⁵, or the limitations of the CSDP⁴⁶. In this latter regard, it should be noted, for example, that none of the previous UNSC resolutions on combating trafficking in human beings in the Mediterranean, or on combating arms trafficking and the illicit export of oil from Libya, have granted UN Member States, either individually or through regional international organisations, the authority to act in Libya’s territorial waters or on its land territory. This circumstance therefore made it impossible to proceed to the more advanced phases⁴⁷ of Operation *Sophia* without the

⁴³ EUNAVFOR MED, Operation Sophia, “Mission at a glance”. Accessed on 2 August 2023. Available at: <https://www.operationsophia.eu/mission-at-a-glance/>.

⁴⁴ Security Council. Implementation of resolution 2357 (2017). Report of the Secretary-General. Doc. S/2018/451, 11 May 2018.

⁴⁵ In that sense, see: Alejandro del Valle Gálvez, “Sobre la inviabilidad del modelo de fronteras exteriores europeas en el mediterráneo”, *Revista Española de Derecho Internacional Foro-El rescate de personas en el Mediterráneo* 72 (2020), 1, enero-junio 2020: 188.

⁴⁶ In that sense see: Carlos Espaliú Berdud, “Los buques de la operación Sophia en el dique seco: elementos de un revés para la Política Común de Seguridad y Defensa”, *Revista de Derecho Comunitario Europeo* 64 (2019): 829-858.

⁴⁷ The Operation was to take place in three consecutive phases. In the first phase, *Sophia* was to support the detection and tracking of migration networks by gathering intelligence and conducting patrols on the high seas, in accordance with international law. In the second phase, the naval operation was initially to conduct high seas boarding, searches, seizures and diversions of vessels suspected of being used for smuggling or trafficking in human

consent of the coastal State. But the situation in Libya made this impossible for the time being.

On the other hand, the failure of Operation *Sophia*, which has always had a strong Italian flavour, as is logical given its geographical proximity to Libya, is due to the gradual fatigue of the transalpine country in the fight against illegal immigration in the Mediterranean and to the Operation itself. In fact, from the outset, the EU operation was based on the assumption that all those rescued at sea would disembark in Italian ports⁴⁸, and this was precisely one of the elements that made it most burdensome for that State⁴⁹. Thus, Italy began to seriously question the EU's migration policy in general and Operation *Sophia* in particular, calling for a review of the basis of the Operation so that people rescued at sea would disembark in other ports and then be distributed to other Member States. In this regard, the European Council of 28 June 2018, in its conclusions on migration, firstly stated the need to relax the disembarkation rules of Operation *Sophia*. Secondly, it also raised the possibility of setting up regional disembarkation platforms in third countries, in close cooperation with the United Nations High Commissioner for Refugees (UNHCR) and the IOM, where a kind of triage between asylum seekers and non-asylum seekers would take place⁵⁰. A few days later, the Italian Minister for Foreign Affairs wrote to the High Representative of the Union for Foreign Affairs and Security Policy requesting a review of the

beings, under the conditions provided for in applicable international law, including UNCLOS and the Smuggling of Migrants Protocol. Subsequently, at a later point in the second phase, the Operation, in accordance with any applicable UNSC resolution or the consent of the coastal State concerned, was to proceed to board, search, seize and divert, on the high seas and in the internal waters of that State, vessels suspected of being used for smuggling or trafficking in human beings, under the conditions set out in that resolution or by the expected State consent. Finally, in the third phase, in accordance with the relevant UNSC resolutions or the consent of the coastal State concerned, the Operation was to take all necessary measures, including removal or disabling, against vessels and related means suspected of being used for smuggling or trafficking in human beings in the territory of that State, under the conditions set out by such UNSC resolutions or by the expected State consent. See, Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), OJ L 122/31, 19 May 2015, arts. 1-2.

⁴⁸ See, in that sense: Council of the European Union, Doc. 11471/18, EEAS, Strategic Review on EUNAVFOR MED Operation *Sophia*..., *op. cit.*, p. 29.

⁴⁹ See, for example: Frontex, Press Release, "EU Member States and Frontex show support for Italy at meeting to discuss Operation Triton", 20 July 2017. Accessed on 2 August 2023. Available at: <https://frontex.europa.eu/media-centre/news/news-release/eu-member-states-and-frontex-show-support-for-italy-at-meeting-to-discuss-operation-triton-BQUaRu>.

⁵⁰ European Council. Press release 29 June 2018. European Council conclusions, 28 June 2018. Migration. Point 5. Accessed on 2 August 2023. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/#:~:text=The%20European%20Council%20reconfirms%20that,with%20our%20principles%20and%20values.>

operational plan for Operation *Sophia*, in accordance with the conclusions of the European Council of 28 June⁵¹. However, no agreement was reached in the following months, which explains why the Operation was extended in December 2018 for only three months, and in March 2019, as seen above, it was extended until September 2019, albeit without its maritime dimension, and finally terminated.

On the other hand, the lack of improvement in the political situation in Libya has dealt a fatal blow to *Sophia* and prevented it from achieving good results in the fight against mafias smuggling migrants in the Mediterranean. It should be recalled that on 20 June 2016, the EU Council, through its Resolution 2016/9939⁵², mandated the Operation *Sophia* team to train and equip the Libyan Coast Guard and the Libyan Navy to carry out law enforcement tasks at sea, in particular to combat smuggling and trafficking in human beings.

This is consistent with the line set out in the Action Plan under the EU Maritime Security Strategy of December 2014, which aims to more effectively combat migrant smuggling and human trafficking in the maritime domain by developing security capacity building programmes with third States, focusing on priority countries and routes⁵³. And of course, that policy was also in accordance with the more general EU tendency to prioritising the strengthening of the EU's external borders and preventing illegal migrants from entering the EU territory. To this end, the strengthening of the EU's partnerships with third countries, in particular with Turkey⁵⁴ and Libya⁵⁵, has been crucial.

Thus, in the summer of 2017, the Libyan authorities declared the establishment of a SAR zone, which was subsequently withdrawn and

⁵¹ In that sense, see: Council of the European Union, Doc. 11471/18, EEAS, Strategic Review on EUNAVFOR MED Operation Sophia..., *op. cit.*, pp. 12-13.

⁵² Council Decision (CFSP) 2016/993 of 20 June 2016 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 162, 21 June 2016, pp. 18-20.

⁵³ See point 1.3.2 of the Action Plan in the framework of the EU Maritime Security Strategy: Council of the European Union, European Union Maritime Security Strategy (EUMSS)-Action Plan, adopted on 16 December 2014 by the General Affairs Council.

⁵⁴ For example, on the Migratory Statement of 19 March 2016, see: Jorge Urbaneja Cillán, "The European Union-Turkey Cooperation on Migration Matters: towards a Review of the Migratory Statement of 18 March 2016", *PEACE & SECURITY-PAIX ET SÉCURITÉ INTERNATIONALES (EuroMediterranean Journal of International Law and International Relations)* 8 (2020): 211-250.

⁵⁵ See, for instance: European Parliamentary Research Service, Katrien Luyten, "Addressing pushbacks at the EU's external borders", October 2022. Accessed on 2 August 2023. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI\(2022\)738191_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf)

replaced on 14 December 2017. The establishment of the Libyan SAR zone⁵⁶, in which foreign vessels should not operate, was supported operationally by the National Coordination Centre for Maritime Rescue of the Italian Coast Guard and with financial assistance from the European Commission⁵⁷.

Thus, the Libyan military authorities, with the training of Operation *Sophia* and Italian personnel, gradually took over the fight against smugglers and rescue operations, first in their own waters and then increasingly in international waters⁵⁸. In this way, already in 2017, they were able to intercept or rescue around 15000 people — figures that have been reached again in 2018⁵⁹ — who were systematically disembarked in Libyan ports.

Despite these positive achievements, in parallel there have been serious allegations of violations of migrants' human rights by the Libyan Coast Guard. Circumstances that may engage the EU's responsibility, and which we will address, as mentioned in the introduction, in the section on Operation *Irini*.

III. Lights and shadows of Operation *Irini*

1. *The achievements of the Operation Irini in their context*

As we already know, the EU Council launched Operation *Irini* as a new CSDP military crisis management operation in the Mediterranean by Council Decision (CFSP) 2020/472 of 31 March⁶⁰. The core mission of the Operation

⁵⁶ On the establishment of the Libyan SAR zone, see, among others: Claudia Jiménez Cortés, “La desnaturalización de la zona SAR en el Mediterráneo central: de pieza clave para salvar vidas a instrumento contra los derechos humanos”, *Revista Española de Derecho Internacional* 74 (2022) 2 (July-December 2022): 245-270.

⁵⁷ United Nations Support Mission in Libya, Office of the High Commissioner for Human Rights, “Desperate and dangerous: Report on the Human Rights situation of migrants and refugees in Libya”, 20 December 2018, p. 17. See also the question in the European Parliament by Sabine Lösing on the SAR zone in Libya and the answer of Commissioner Avramopoulos. Accessed on 2 August 2023. Available at: https://www.europarl.europa.eu/doceo/document/E-8-2018-002163-ASW_EN.html. See, as well: Council of the European Union, Doc. 11471/18, EEAS, Strategic Review on EUNAVFOR MED Operation *Sophia*..., *op. cit.*, p. 15.

⁵⁸ Over the formation of the Navy and Libyan Coast Guard by Operation *Sophia*, see: Pi Llorens, “La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia”, 25-26.

⁵⁹ European Commission. Communication from the Commission to the European Parliament, the European Council and the Council. Progress report on the Implementation of the European Agenda on Migration. Bruxelles, 6 March 2019, Doc. COM(2019) 126 final, p. 3.

⁶⁰ Council Decision (CFSP) 2020/472 of 31 March 2020 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI), OJ L 101, 1 April 2020, pp. 4-10.

is to contribute to the implementation of the UN arms embargo on Libya, implemented in accordance with UNSCR 1970 (2011) and subsequent resolutions on the arms embargo on Libya, including UNSCR 2292 (2016) and UNSCR 2473 (2019), using air, satellite and maritime assets⁶¹. For that purpose, the Operation should carry out, “[...] within the agreed Area of Operation on the high seas off the coast of Libya, inspections of vessels bound to or from Libya where there are reasonable grounds to believe that such vessels are carrying arms or related materiel to or from Libya, directly or indirectly, in violation of the arms embargo on Libya [...]”. Moreover, *Irini* should “[...] take relevant action to seize and dispose of such items, including with a view to diverting such vessels and their crews to a suitable port to facilitate such disposal, with the consent of the port State, in accordance with relevant UNSCRs including UNSCR 2292 (2016)”⁶².

As a *secondary task*⁶³, the Operation should “[...] conduct monitoring and surveillance activities and gather information on illicit exports from Libya of petroleum, including crude oil and refined petroleum products, which are contrary to UNSCR 2146 (2014) and subsequent UNSCRs, in particular UNSCR 2509 (2020), thereby contributing to situational awareness in the Area of Operation and in the Area of Interest [...]”⁶⁴.

According to the Council Decision (CFSP) 2020/472, as a *further secondary task*⁶⁵, the military operation should “[...] assist in the development of the capacities and in the training of the Libyan Coast Guard and Navy in law enforcement tasks at sea, in particular to prevent human smuggling and trafficking [...]”⁶⁶. In principle, that task should be carried out on the high seas in *Irini*'s agreed area of operation⁶⁷. Nonetheless, this last task may be also “[...] carried out in the territory, including the territorial waters, of Libya or of a host third State neighbouring Libya where the [Political and Security Committee] so decides following an assessment by the Council on the basis of an invitation by Libya or the host State concerned, and in accordance with international law [...]”⁶⁸.

Furthermore, as *another secondary task*⁶⁹, “[...] and in accordance with UNSCR 2240 (2015), EUNAVFOR MED IRINI shall support the detection and monitoring of human smuggling and trafficking networks through

⁶¹ *Ibid.*, Articles 1-2.

⁶² *Ibid.*, Article 2.3.

⁶³ The italics are ours.

⁶⁴ *Ibid.*, Article 3.1.

⁶⁵ The italics are ours.

⁶⁶ *Ibid.*, Article 4.1.

⁶⁷ *Ibid.*, Article 4.2.

⁶⁸ *Ibid.*, Article 4.2.

⁶⁹ The italics are ours.

information gathering and patrolling carried out by aerial assets above the high seas, in the agreed Area of Operation [...]”⁷⁰.

The new EU military operation, like *Sophia*, continues to have a strong Italian character, with the operation commander expected to be Italian and the headquarters based in Rome⁷¹.

As we can see, disrupting the business model of human smuggling and trafficking networks in the southern central Mediterranean, which was *Sophia*’s main objective⁷², has become just *another secondary task*⁷³ for *Irimi*. Furthermore, the training and capacity building of the Libyan Coast Guard and Navy in maritime law enforcement, particularly in the prevention of human smuggling and trafficking, is also a secondary task for *Irimi*.

We find it significant that search and rescue operations are not even mentioned in the provisions of Council Decision (CFSP) 2020/472. What is even more decisive for the perception of the EU’s voluntarism in this area is that, when Article 8.3 of the decision mentions the possible involvement of maritime assets in the operation, it is presented in a somewhat negative way, as if it could have a pull effect⁷⁴.

According to the information provided by the Operation itself, *Irimi* was launched on 31 March 2020, after the force generation process and despite the Covid-19 pandemic, the Operation effectively started its activity at sea on the 4 May 2020. On 10 September 2020, the first boarding activity at sea took place and the full operational capability was declared⁷⁵. *Irimi* has its headquarters in Rome, Italy, as it was foreshadowed and it is led, at present, January 2024, by Rear Admiral Stefano Turchetto as EU Operation Commander.

What was clear from the outset, however, was that the lack of consensus among Member States on Libya meant that the Operation would lack the

⁷⁰ *Ibid.*, Article 5.1.

⁷¹ *Ibid.*, Articles 6 and 7.

⁷² Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), OJ L 122/31, 19th May 2015, Article 1.1.

⁷³ The italics are ours.

⁷⁴ “3. Notwithstanding the period set out in Article 15(2), the authorisation of the operation shall be reconfirmed every four months. The PSC shall prolong the operation unless the deployment of maritime assets of the operation produces a pull effect on migration on the basis of substantiated evidence gathered according to the criteria set in the Operations Plan”. In this same sense, see: Pi Llorens, “La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia”, 16-17.

⁷⁵ EUNAVFOR MED. Operation Irimi. Home. About us. Accessed on 2 August 2023. Available at: <https://www.operationirini.eu/about-us/#mission>.

means to carry out the mission it had been given⁷⁶. When *Irini*, on 4 May 2020, commenced its activities at sea counted only with the French naval vessel *Jean Bart* and a maritime patrol aircraft contributed by Luxembourg⁷⁷. According to the last information available, dating from December 2023, the Operation counts exclusively with two Surface Vessels: the Italian *Grecale* and the Greek *Aegean*; four aircrafts: a French *Falcon 50*, a Greek *EMB-145*, a Polish *28B1R Antonov Bryza* and a Portuguese *P3C Orion*; together with an unmanned aerial vehicle: an Italian *Predator B*⁷⁸. Satellite imagery support is provided by the European Satellite Centre (SatCen).

In January 2024, 23 Member States participate in the operation. Denmark, Malta and Spain⁷⁹ never took part. For its part, the Netherlands decided in June 2022 to end its participation in the mission, citing the operation's lack of capacity, the fact that not all the actors involved in the mission area accepted *Irini*'s mandate and the lack of political will and cooperation on the part of the Libyan authorities⁸⁰.

In order to assess the results achieved so far by *Irini*, we will first examine its contribution to the arms embargo in Libya, its main objective. According to the official sources of the Operation, since its launch it has boarded and inspected 26 suspect vessels. As a result of these inspections, *Irini* has on three occasions seized the cargo deemed to be in violation of

⁷⁶ In that sense see: Hugo Decis and Amanda Lapo, "Operation Irini: EU's latest Libya mission short on assets", *The International Institute for Strategic Studies, Online Analysis, Military Balance Blog*. Accessed on 2 August 2023. Available at: <https://www.iiss.org/online-analysis/military-balance/2020/07/operation-irini-eu-libya-mission-assets/>.

⁷⁷ EUNAVFOR MED. Operation Irini. Operation EUNAVFORMED Irini: the Operation sets sail. Press release 002/2020 Rome, 7 May 2020. Accessed on 2 August 2023. Available at: https://www.operationirini.eu/wp-content/uploads/2020/05/2020_002-The-Operation-sets-sail.pdf.

⁷⁸ See: EUNAVFOR MED. Operation Irini. Assets. Accessed on 11 January 2024. Available at: https://www.operationirini.eu/media_category/assets/.

⁷⁹ Spain rules out participation in the EU operation, arguing that its legal framework is undefined. In that sense, see the opinion of the Minister of Defence in: Cortes Generales. Diario de sesiones del Congreso de los Diputados. XIV Legislatura. N.º 101. Comisiones. Defensa. Sesión núm. 4 celebrada el lunes 8 de junio de 2020, p. 34; See also the opinion of the Minister in: ABCblogs, "España no participará por ahora en la misión naval de la UE en Libia", 13 July 2020. Accessed on 2 August 2023. Available at: <https://abcblogs.abc.es/tierra-mar-aire/espana/espana-no-participara-por-ahora-en-la-mision-naval-de-la-ue-en-libia.html>.

⁸⁰ See: Tweede Kamer der Staten-Generaal. Vergaderjaar 2021–2022. Brief regering: Samenhangende Nederlandse inzet in het kader van de collectieve verdediging en in missies en operaties ter bevordering van de internationale rechtsorde 2022-2025. 29 521 Nederlandse deelname aan vredesmissies. Nr. 446 Brief van de Ministers van Buitenlandse Zaken, van Defensie, voor Buitenlandse Handel en Ontwikkelingssamenwerking en van Justitie en Veiligheid. Aan de Voorzitter van de Tweede Kamer der Staten-Generaal Den Haag, 17 juni 2022. Accessed on 2 August 2023. Available at: https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2022Z12463&did=2022D25755.

the UNSC arms embargo and diverted the vessels to a port of a Member State⁸¹. In this regard, it is noted that Turkey, as the flag State, has on eleven occasions refused consent to board and inspect suspect vessels⁸². Along with that, the EU military operation has so far investigated 12490 merchant vessels through request of information via radio calls (hailing) and visited 593 vessels upon their Masters's consent⁸³. Furthermore, *Irimi* men and women have investigated 1310 suspicious flights, 25 airports and 16 ports⁸⁴. Finally, through the embedded Crime Information Cell, the operation issued 83 recommendations to the relevant law enforcement authorities for inspections of suspect vessels in EU Member States' ports, of which 64 were carried out⁸⁵.

In the light of these data, one can only conclude that the results, at least in terms of combating violations of the arms embargo, are rather poor. In this context, it is worth noting that, at least as of March 2021, the arms embargo remained completely ineffective for the Panel of Experts on Libya established pursuant to UNSC Resolution 1973 (2011)⁸⁶. Moreover, that report of March 2021 of this panel of experts added that for those United Nations Member States directly supporting the parties to the conflict in Libya, “[...] the violations [were] extensive, blatant and with complete disregard for the sanctions measures [...]”⁸⁷. On top of that, that final report cites several States —Egypt, Jordan, the Syrian Arab Republic, Turkey and the United Arab Emirates— as violating some of the obligations of UN Security Council resolutions related to the arms embargo in Libya⁸⁸. However, in the latest final report of the experts, the situation is somewhat better. In this occasion, according to them: “Only one Member State is

⁸¹ EEAS. Operation EUNAVFOR MED IRINI Results Report, December 2023. Accessed on 11 January 2024. Available at: https://www.eeas.europa.eu/eeas/operation-eunavfor-med-irini-results-report-december-2023_en. Regarding the results of Irimi's activities in order to implement the arms embargo in Libya see also the account included in the Panel of Experts on Libya established pursuant to resolution 1973 (2011) of the UNSC. See: United Nations Security Council. Letter dated 14 September 2023 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council. Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011). pp. 24-25.

⁸² EEAS. Operation EUNAVFOR MED IRINI Results Report, December 2023..

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council. Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011). Summary.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, pp. 14-15.

known to have initiated legal action against individuals and entities reported as violating the arms embargo and that meet the designation criteria. Any deterrent effect of the sanctions regime remains negligible and some Member States even ignore the relevant Council resolutions with impunity”⁸⁹.

Along with that weak contribution with regard to the halt of illegal arms traffic, the Operation has been accused of lack of impartiality by the faction of Fayez al-Sarraj, claiming that it will only monitor the movements of the Government of National Accord and its allies, ignoring the activities of the rival faction led by Haftar⁹⁰.

Similarly, when the renewal of the authorisation to inspect ships suspected of violating the Libyan arms embargo was discussed in the UNSC in June 2022, the Russian representative stated that the inspection regime had not contributed to a reduction in the illicit arms trade, since the inspection of ships had been taken over by the European Union⁹¹. And he added that “[...] Operation IRINI over recent years has not been particularly effective in helping implement the provisions of the Libya arms embargo [...]”⁹². In any event, the UNSC eventually extended the authorisations set out in Resolution 2578 (2021), adopting Resolution 2635 (2022) by a vote of 14 in favour to none against, with the abstention of the Russian Federation⁹³ and Resolution 2684 (2023), under the same conditions. On the latter occasion, the Russian representative, in June 2023, put forward similar arguments⁹⁴.

With regard to the prevention of illicit exports or imports of petroleum, according to the 2021 report of the Panel of Experts on Libya established pursuant to UNSC Resolution 1973 (2011), fuel smuggling by sea had

⁸⁹ Letter dated 14 September 2023 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council. Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011). Summary.

⁹⁰ Henar Hernández, “Los desafíos de la Operación Irini de la Unión Europea”, *Atalayar*, 23 May 2020. Accessed on 2 August 2023. Available at: <https://www.atalayar.com/articulo/politica/desafios-operacion-irini-union-europea/20200522110919145903.html>.

⁹¹ United Nations. Meetings Coverage and Press Releases. “Security Council Renews Authorization to Inspect Vessels Suspected of Violating Libya Arms Embargo, Adopting Resolution 2635 (2022)”. Accessed on 2 August 2023. Available at: <https://press.un.org/en/2022/sc14920.doc.htm>.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ United Nations. Meetings Coverage and Press Releases. “Security Council Renews Authorization to Inspect Vessels Suspected of Violating Libya Arms Embargo, Adopting Resolution 2684 (2023)”. Accessed on 11 January 2024. Available at: <https://press.un.org/en/2023/sc15303.doc.htm>.

decreased significantly during the first steps of Operation *Irini*, mainly due to the lack of activity caused by the global pandemic, while the fuel diversion by land remained scarce⁹⁵. Nevertheless, in their last report, in September 2023, those figures increased considerably⁹⁶.

Turning to the task of supporting the capacity building and training of the Libyan Coast Guard and Navy, in the official internet site of the Operation *Irini*, it is stated that the implementation of that activity has not yet started due to the political fragmentation in Libya⁹⁷. Nevertheless, the EU's support for the Libyan authorities' capacity to manage their borders has continued, including through the activities of EUBAM Libya, whose mandate was extended for two years in June 2023, until 30 June 2025⁹⁸. The Council Decision extending EUBAM's mission for this period explicitly states that, in carrying out its tasks, the Operation "[...] shall provide technical advice, capacity building activities at the operational and technical levels and shall carry out projects, complemented as appropriate and on a case-by-case basis by specialised training"⁹⁹. For example, EUBAM Libya announced, on 11 June 2023, that thanks to that cooperation the Libyan Border Guard Training Center in Tripoli was inaugurated that day¹⁰⁰. In parallel, EU support and training to Libya's Coast Guard, along with that of Italy, Malta and Turkey, has been confirmed also by the 2021 report of the Panel of Experts on Libya established pursuant to UNSC Resolution 1973 (2011)¹⁰¹.

⁹⁵ Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council. Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011). Summary.

⁹⁶ Letter dated 14 September 2023 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council. Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011). Summary.

⁹⁷ See: EUNAVFOR MED. Operation Irini. About us. Mission. Accessed on 11 January 2024. Available at: <https://www.operationirini.eu/about-us/>.

⁹⁸ Council Decision (CFSP) 2023/1305 of 26 June 2023 amending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya).

⁹⁹ *Ibid.*, new Article 3, paragraph 1a.

¹⁰⁰ EEAS. EUBAM LIBYA. Libyan Border Guard Training Center: A significant milestone. Press Release. 19 June 2023. Accessed on 2 August 2023. Available at: https://www.eeas.europa.eu/eubam-libya/libyan-border-guard-training-center-significant-milestone_en?s=327.

¹⁰¹ United Nations Security Council. Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council. Doc. S/2021/229, 8 March 2021, pp. 11-12.

2. *The abandonment of the search and rescue activities and the situation with regard to the respect of human rights of the migrants*

In recent years, as we noted in the introduction, the Central Mediterranean migration route has once again become the deadliest in the world, with thousands of lives lost each year. According to a briefing by the European Parliament's research service, this type of event is explained by the fact that "[...] the lack of coordination in SAR activities, solitary action by individual countries and criminalisation of NGOs active in SAR in the Mediterranean led to migrants being forced to stay for several days and sometimes weeks on boats [...]"¹⁰².

We can add to these reasons the abandonment of search and rescue efforts in the last period of *Sophia*'s life and the absence of a specific mandate from the EU Council in the design of the operation *Irini* in its Decision (CFSP) 2020/472 in relation to search and rescue operations¹⁰³. In the list of achievements published on *Irini*'s website¹⁰⁴, or in the monthly reports that appear on the EEAS website¹⁰⁵, there is not even a mention of the number of people that *Irini*'s few ships have been able to save in the Mediterranean. This is particularly intolerable given that the IOM documented 441 migrant deaths in the Central Mediterranean in the first quarter of 2023, the deadliest first quarter on record since 2017, and we already know all too well that the second half of the year was even worse¹⁰⁶.

In fact, when the IOM tries to explain on its website why the central Mediterranean is the deadliest in the world, it points out that this is due to, among other things, the following factors: "[...] gaps in search-and-rescue capacity and restrictions on the life-saving work of NGOs."¹⁰⁷. Alongside this, the IOM states that in years prior to 2016, interceptions by Tunisian

¹⁰² European Parliamentary Research Service, Anita Olav, "Search and rescue efforts for Mediterranean migrants". Accessed on 12 January 2024. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733712/EPRS_BRI\(2022\)733712_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733712/EPRS_BRI(2022)733712_EN.pdf)

¹⁰³ Over the decreased direct involvement of the EU in maritime operations, see: Patrick Müller and Peter Slominski, "Breaking the legal link but not the law? The externalization of EU migration control through orchestration in the Central Mediterranean", *Journal of European Public Policy* 28 (2021) 6, 807.

¹⁰⁴ See: EUNAVFOR MED. Operation *Irini*. About us. Mission. Accessed on 11 January 2024. Available at: <https://www.operationirini.eu/about-us/>.

¹⁰⁵ EEAS. Operation EUNAVFOR MED IRINI Results Report, December 2023.

¹⁰⁶ IOM. Deadliest Quarter for Migrants in the Central Mediterranean Since 2017. Press Release, 12 April 2023. Accessed on 2 August 2023. Available at: <https://www.iom.int/news/deadliest-quarter-migrants-central-mediterranean-2017>.

¹⁰⁷ IOM. Missing Migrant Project. Migration within the Mediterranean. Central Mediterranean. Accessed on 12 January 2024. Available at: <https://missingmigrants.iom.int/region/mediterranean>.

and Libyan coast guards accounted for a low percentage of total search and rescue operations in the Central Mediterranean, but in 2018, 49 % of the total number of people recorded attempting to cross were returned to Tunisia or Libya. It explains that this change can be attributed to several factors, such as the decrease in the maritime patrol area of the Italian authorities and the shift of EU/Frontex assets from maritime vessels to drones, which are not able to carry out rescues at sea¹⁰⁸.

The current situation is so alarming that, as the aforementioned document claims, even “[...] EU Member States and EU agencies (Frontex) have also been accused of pushbacks of asylum-seekers and other migrants to the high seas and towards Libya and Turkey”¹⁰⁹. Not only that, but as the 2023 final report by the Independent Fact-Finding Mission on Libya, which was requested by the Human Rights Council in its resolution 50/23, pointed out: “[...] the Mission found that crimes against humanity were committed against migrants in places of detention under the actual or nominal control of Libya’s Directorate for Combating Illegal Migration, the Libyan Coast Guard and the Stability Support Apparatus [...]”¹¹⁰. In addition, and more seriously, that final report also states that these entities “[...] received technical, logistical and monetary support from the European Union and its member States for, inter alia, the interception and return of migrants [...]”¹¹¹. Serious allegations, therefore, that point in the direction of EU operations and missions in Libya.

The state of affairs seems to have reached such a point that, even on 8 May 2018, seventeen survivors of a maritime rescue incident carried out by the Libyan Coast Guard on 6 November 2017, filed an application against Italy at the European Court of Human Rights (ECtHR) invoking its responsibility for deaths at sea and for allowing migrants to land in Libya, where they are at risk of serious human rights violations¹¹². It should be recalled that the ECtHR has already condemned Italy, for example in the case of *Hirsi Jamaa and others v. Italy*, for violations of Art. 3 of the European Convention on Human Rights (ECHR). The reason for the conviction was that, under a bilateral agreement between the two countries, the Italian Coast Guard had returned some 200 migrants intercepted at sea

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Human Rights Council. Report of the Independent Fact-Finding Mission on Libya, Doc. A/HRC/52/83, 3 March 2023, par. 4.

¹¹¹ *Ibid.*

¹¹² Global Legal Action Network, “Legal Action Against Italy over its Coordination of Libyan Coast Guard Pull-backs Resulting in Migrant Deaths and Abuse”, May 2018. Accessed on 2 August 2023. Available at: <https://www.glanlaw.org/single-post/2018/05/08/legal-action-against-italy-over-its-coordination-of-libyan-coast-guard-pull-backs-resulti>.

to Libya, where they were at serious risk of suffering significant violations of their fundamental rights¹¹³.

In this regard, it is not excluded that not only the Member States of the Union, but also the EU itself, may find their international responsibility compromised by possible violations of human rights deriving from the ECHR, the Charter of Fundamental Rights of the European Union or other international instruments and customary international law, as has already been underlined by several commentators¹¹⁴.

For example, according to Article 14 of the Draft Articles on the Responsibility of International Organisations of the International Law Commission (ILC)¹¹⁵,

“An international organization which aids or assists a State or another international organization in the commission of an internationally wrongful act by the State or the latter organization is internationally responsible for doing so if: (a) the former organization does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that organization”.

In particular, the ILC, in its commentary on Article 14, mentioned as a possible example of the international responsibility of an international organisation for aiding and abetting the commission of an internationally wrongful act, the case mentioned in a document issued by the United Nations Legal Counsel on 12 October 2009, of the support provided by the United Nations Organisation Mission in the Democratic Republic of the

¹¹³ European Court of Human Rights. *Hirsi Jamaa and Others v. Italy* [GC]-27765/09. Judgment 23.2.2012 [GC]. Accessed on 2 August 2023. Available at: <https://hudoc.echr.coe.int/fre?i=002-102>.

¹¹⁴ See, for example: Giuseppe Cataldi, “Búsqueda y rescate: la necesidad de equilibrar el control de fronteras con las obligaciones en materia de derecho del mar y de los derechos humanos”, *Revista de Estudios Jurídicos y Criminológicos* 2 (2020): 203; Claudia Jiménez Cortés, “La desnaturalización de la zona SAR en el Mediterráneo central”, 258-65; Violeta Moreno-Lax and Martin Lemberg-Pedersen, “Border-induced displacement: The ethical and legal implications of distance-creation through externalization”, *Questions of International Law, Zoom-in* 56 (2019): 18-31; Müller and Slominski, “Breaking the legal link but not the law? The externalization of EU migration control through orchestration in the Central Mediterranean”, 809-813; Pi Llorens, “La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia”, 29-32; Ángel Sánchez Legido, “Externalización de controles migratorios versus derechos humanos”, *Revista electrónica de estudios internacionales*, 37 (2019):10-13.

¹¹⁵ International Law Commission. Annual Reports. Report on the work of the sixty-third session (2011). Chapter V. Responsibility of international organizations. Accessed on 2 August 2023. Available at: <https://legal.un.org/ilc/reports/2011/english/chp5.pdf>.

Congo (MONUC) to the armed forces of the Democratic Republic of the Congo (FARDC) and the risk of violations of international humanitarian, human rights and refugee law by the FARDC. And the ILC quotes the above-mentioned United Nations Legal Counsel document as follows:

“If MONUC has reason to believe that FARDC units involved in an operation are violating one or the other of those bodies of law and if, despite MONUC’s intercession with the FARDC and with the Government of the [Democratic Republic of the Congo], MONUC has reason to believe that such violations are still being committed, then MONUC may not lawfully continue to support that operation, but must cease its participation in it completely ... MONUC may not lawfully provide logistic or ‘service’ support to any FARDC operation if it has reason to believe that the FARDC units involved are violating any of those bodies of law ... This follows directly from the Organization’s obligations under customary international law and from the Charter to uphold, promote and encourage respect for human rights, international humanitarian law and refugee law”.

In my view, it is difficult not to project this consideration of the United Nations Legal Counsel, cited by the ILC in the context of its commentaries on Article 14, to the case of the training and financing by the EU and its operations in Libya of the Libyan Coast Guard and other Libyan entities. Where appropriate, the division of competences between the Union and its Member States, and thus the degree of responsibility of each for the acts and omissions of the EU and its Member States in relation to the violation of the human rights of migrants in Libya and in Libyan waters, should be analysed in depth¹¹⁶. This task is of course highly complex due to the *sui generis* nature of the EU as a supranational entity that assumes important competences normally exercised by States and received from its Member States. Perhaps that task is even more complex than in the case of other international organisations¹¹⁷. In this respect, it should be clarified that SAR and disembarkation activities of EU Member States are currently not covered by a common EU legal framework due to the lack of EU

¹¹⁶ On the other hand, to deepen into the possibilities that exist for individuals to hold the EU responsible for violations of human rights abuses in its CSDP missions, see: Joyce De Coninck, “Effective Remedies for Human Rights Violations in EU CSDP Military Missions: Smoke and Mirrors in Human Rights Adjudication?”, *German Law Journal* 24 (2023): 342-363.

¹¹⁷ In that sense see: Sari, Aurel, and Ramses A Wessel, “International Responsibility for EU Military Operations: Finding the EU’s Place in the Global Accountability Regime”, in Bart Van Vooren, Steven Blockmans, and Jan Wouters (eds), *The EU’s Role in Global Governance: The Legal Dimension*, Oxford: Oxford, 2013; online edn, Oxford Academic, 23 May 2013): 126. <https://doi.org/10.1093/acprof:oso/9780199659654.003.0009>.

competence in this field¹¹⁸, with the exception of activities carried out in the context of joint maritime operations led by Frontex or EU naval operations.

However, I do not believe that the international responsibility of the EU under Article 15 of the ILC Draft Articles on the Responsibility of International Organisations could be invoked for “directing” or “controlling” a State or other international organisation in the commission of an internationally wrongful act by relying on the training or support of the Libyan Coast Guard or Navy. In the case at hand, EU operations and missions, this is not in principle “directing” or “controlling”, but rather, as we know, having much less influence on human rights violations that may be committed by some elements of the Libyan security forces and corps.

In this context, it is worth to mention the recital 13 of the Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, that underlines that:

“The possible existence of an arrangement between a Member State and a third country does not absolve Member States from their obligations under Union and international law, in particular as regards compliance with the principle of *non-refoulement*, whenever they are aware or ought to be aware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a serious risk of being subjected to inhuman or degrading treatment or where they are aware or ought to be aware that that third country engages in practices in contravention of the principle of *non-refoulement*.”

In my view, this principle, which is undoubtedly inspired by the ECtHR case law in *Hirsi Jamaa and others v. Italy*, could be applied mutatis mutandi to the EU in its international operations, as in the case of EUBAM, *Sophia* or *Irini*.

Recently, an ECtHR decision may shed some light on the EU’s possible responsibility in cases where it could be accused of complicity or contributing to the violation of migrants’ human rights by Libyan security forces. The applicant, a Libyan national, was refused asylum, in 2017, in Sweden, which he sued on the grounds that his expulsion to Libya violated

¹¹⁸ In that sense see: European Parliamentary Research Service, Anita Olav, “Search and rescue efforts for Mediterranean migrants”: 4.

Articles 2 and 3 of the Convention because the insecurity in the African country endangered his life. The ECtHR, in its 2023 decision, noted in general that, while recognising that violations of human rights and international humanitarian law have continued and that the overall situation in Libya remains serious and fragile, there was no reason to question the conclusion of the Swedish authorities and courts that the security situation in Libya is not such that there was a general need for international protection of Libyan nationals¹¹⁹. Therefore, for the ECtHR, it could not be said “[...] that the general violence is so extreme, that there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return [...]”¹²⁰. In the end, the Court did not recognise Sweden’s responsibility in this case because the applicant had failed to prove that he would be in danger of being killed or ill-treated if he returned to Libya¹²¹. Therefore, in my view, if the EU’s international responsibility for complicity in human rights abuses against migrants in Libya were to be examined by an international court, this decision would contribute to reducing or potentially removing the EU from responsibility, but only for facts and circumstances from 2017 onwards. This is because that was the period that the ECtHR took into account in the case to assess the legality of the administrative and judicial actions of the Swedish institutions. As the conditions of violence in Libya had been more severe in previous years, the ECtHR might have judged differently in relation to facts and circumstances of those years. In our view, this ruling of 2023 in the *Case of A.A. v. Sweden* may have an important impact on the qualification of Libya as a safe place within the framework of international search and rescue standards. This is with all the consequences for the EU’s possible international responsibility for its collaboration with the Libyan authorities.

* * *

To conclude this section on a positive note, we should refer to the adoption of some encouraging instruments on issues related to Operation *Irimi* activity. In this regard, we should mention, first of all, the adoption, in order to avoid the criminalisation of SAR humanitarian operations, of the Commission Recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by

¹¹⁹ European Court of Human Rights. *Case of A.A. v. Sweden*, 4677/20, Judgment (Merits and Just Satisfaction), Court (First Section), 13.07.2023. Accessed on 12 January 2024. Available at: <https://hudoc.echr.coe.int/eng?i=001-225773>, par. 43.

¹²⁰ *Ibid.*, par. 52.

¹²¹ *Ibid.*, par. 55.

vessels owned or operated by private entities for the purpose of search and rescue activities¹²², in the context of the negotiation of the New Pact on Migration and Asylum of the EU¹²³. The Pact, proposed in September 2020 and agreed between the European Parliament and the Council in December 2023, during the Spanish Presidency of the Council, aims, according to the Commission, to manage and normalise migration in the long term, ensuring safety, clarity and dignity for those arriving in the EU. It also sets out a common approach to migration and asylum, based on solidarity, responsibility and respect for human rights¹²⁴.

Secondly, at the same time, due to the significant increase in migratory pressure on the route, the European Commission presented an EU Action Plan for the Central Mediterranean in November 2022. This instrument proposes 20 measures aimed at reducing irregular and unsafe migration, providing solutions to the new challenges in the field of search and rescue, and strengthening solidarity balanced with responsibility between Member States¹²⁵.

Thirdly, the Commission launched the Global Coalition Against Smuggling of Migrants, a partnership that will focus on prevention, response and alternatives to irregular migration, including addressing the root causes of irregular migration and facilitating legal channels¹²⁶. This Commission initiative has already resulted in a proposal for a Directive of the European Parliament and of the Council establishing minimum provisions aimed at preventing and suppressing the facilitation of unauthorised entry, transit and residence in the European Union¹²⁷.

¹²² Commission Recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities, OJ L 317/23, 1 October 2020.

¹²³ In that sense, see: European Commission. Migration and Home Affairs. "What is the New Pact on Migration and Asylum of the EU?". Accessed on 12 January 2024. Available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum_en.

¹²⁴ *Ibid.*

¹²⁵ European Council. Council of the European Union. Migration flows on the Central Mediterranean route. EU Action Plan for the Central Mediterranean. Accessed on 2 August 2023. Available at: <https://www.consilium.europa.eu/en/policies/eu-migration-policy/central-mediterranean-route/>

¹²⁶ In that sense, see: https://commission.europa.eu/news/new-ways-fight-migrant-smuggling-2023-11-28_en#:~:text=To%20fight%20this%20deadly%20criminal,migration%20and%20facilitating%20legal%20pathways.

¹²⁷ European Commission. Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, COM/2023/755 final.

It remains to be seen whether any of this will be put into practice, or whether, on the contrary, they will continue to be part of the grand rhetoric that underpins the major political declarations that have backed the development of European action to combat irregular immigration across the Mediterranean¹²⁸.

IV. Conclusions

Alarmed by the tragic sinking of boats carrying large numbers of migrants in the Mediterranean in 2015, the EU sought to remedy the situation by, among other things, launching a naval operation under the CSDP in the wake of the successful Operation *Atalanta* to combat maritime piracy in the waters off Somalia. The new operation, called *Sophia*, was aimed at combating mafias involved in the smuggling of migrants, mainly in international waters and in Libyan waters and territory. However, as it was necessary to have the authorisation of the UNSC and/or the consent of the coastal State to operate in Libyan waters or on Libyan territory, and this was never forthcoming, the Operation gradually lost momentum. It also became entangled in the complicated political situation in the EU, as Italy tired of fighting irregular immigration virtually alone, without the solidarity of other Member States. In any case, *Sophia* achieved little in terms of tackling the roots of people-smuggling in the Mediterranean, but it did make significant efforts in the area of search and rescue of people in distress at sea.

Sophia eventually died in March 2020 and was replaced by *Irimi*, a new CSDP military operation aimed more at combating violations of the UNSC arms embargo in Libya, preventing and deterring the illegal export of Libyan petroleum products, training and strengthening the Libyan Coast Guard and Navy to manage its borders, and, to a lesser extent, combating migrant smuggling in the central Mediterranean and in Libya. The Council decision launching the Operation was silent on the operation's activities to search for and rescue migrants in distress in the Mediterranean. This lack of voluntarism shown by the EU in this area in the context of Operation *Irimi* is in line with other EU policies and actions in recent years aimed at managing irregular immigration, which have rather sought to externalise and move the fight against irregular immigration away from its borders, with a focus on security.

¹²⁸ In that sense, see also: Sánchez Legido, "Externalización de controles migratorios versus derechos humanos", 2.

Not surprisingly, given the scarcity of resources available to date, the results of the first three years of Operation *Irini* have been very limited, almost testimonial. For example, by its own admission, it had not yet started training the Libyan Coast Guard and Navy in border management, even though this task is being carried out by other EU missions, such as EUBAM Libya. Moreover, none of the information provided by the EU on its achievements in Operation *Irini* mentions the lives its personnel have saved in the Mediterranean. This coincides with a significant increase in 2022 and 2023 in the number of people attempting to reach Europe via the Central Mediterranean route, which has sadly once again become the deadliest in the world, according to IOM sources.

On the other hand, perhaps as a result of the EU's policy to combat irregular immigration in the Mediterranean, the problem of human rights abuses against migrants in Libya has been growing. There are very serious allegations, well documented by multiple and reliable sources, about the treatment of migrants by the Libyan Navy and Coast Guard. For now, the EU continues to look the other way, but it is not inconceivable that its international responsibility will be compromised by funding and training these security forces and by failing to protect the human rights of migrants.

In my opinion, the EU must provide Operation *Irini* with more resources so that it can achieve its mandated objectives. For instance, *Irini* has so far had very few vessels and other maritime assets at its disposal. This makes it impossible to inspect vessels suspected of carrying arms or related materiel in violation of the Security Council embargo. Still less will it be possible to take appropriate steps to seize and dispose of such items, including with a view to diverting such vessels and their crews to a suitable port to facilitate such disposal. Something similar could be said of *Irini*'s ability to impose the embargo on oil and oil products. If it fails to do so, *Irini*'s image, and with it that of the EU, will suffer. *Irini* gives the impression of being a sticking plaster on a large wound.

In addition, it is imperative that the EU, either through *Irini* or EUBAM, ensures, by all means, that the human rights of migrants are respected in the training and formation of Libya's coastguard services.

Furthermore, the EU, in conjunction with the Member States, must ensure that search and rescue efforts in the Mediterranean are effective. Even if these tasks are then mainly implemented by the Member States, as this is their competence, with the help, if necessary, of Frontex. And of course with the parallel efforts of NGOs, which can in no case be demonised and criminally prosecuted, as long as it can be shown that they are engaged in truly humanitarian life-saving work.

Let us hope that EU policy will change and concrete and effective measures will be taken to protect the human rights of migrants in the

Mediterranean. There is no doubt that the problem of combating irregular immigration from Africa is huge and extremely complex, and its origin does not depend on the EU, but the implementation of one of the EU's identifying values¹²⁹ —respect for human rights— is also at stake, which must also be reflected in the EU's external action and, of course, in the CSDP.

In any case, the ultimate weakness of Operation *Sophia* and the near-failure of Operation *Irimi* belies the ambition of a strong and credible CSDP. If *Atalanta* and the first steps of *Sophia* led to the conception, in parallel to other circumstances, of a CSDP with growing aspirations to give the EU a prominent role in the theatre of nations, the end of *Sophia* and the beginning of *Irimi* represent a step backwards in the fulfilment of these dreams.

V. Bibliography

- Acosta Sánchez, Miguel Ángel. “Sobre el ámbito competencial de las operaciones de paz: el enfoque integral de la operación militar Sophia de la UE ante la crisis migratoria”. *Revista del Instituto Español de Estudios Estratégicos* 12 (2018): 15-48. <https://revista.ieee.es/article/view/745>.
- Arteaga Martín, Félix y González Enríquez, Carmen. “La respuesta militar a la crisis migratoria del Mediterráneo”. *Real Instituto Elcano, ARI* 40 (2015). <https://www.realinstitutoelcano.org/analisis/la-respuesta-militar-a-la-crisis-migratoria-del-mediterraneo/>
- Cataldi, Giuseppe. “Búsqueda y rescate: la necesidad de equilibrar el control de fronteras con las obligaciones en materia de derecho del mar y de los derechos humanos”. *Revista de Estudios Jurídicos y Criminológicos* 2 (2020): 197-204. DOI: <http://dx.doi.org/10.17103/redi.72.1.2020.2a.02>
- De Castro Ruano, José Luis y Borrajo Valiña, Diego. “El futuro de la seguridad y la defensa en la UE post-brexit: el salto a la integración”. *Cuadernos Europeos De Deusto* 60 (2019): 187-217. <https://doi.org/10.18543/ced-60-2019>.
- Decis, Hugo and Lapo, Amanda. “Operation Irimi: EU's latest Libya mission short on assets”. *The International Institute for Strategic Studies, Online Analysis, Military Balance Blog*. <https://www.iiss.org/online-analysis/military-balance/2020/07/operation-irini-eu-libya-mission-assets/>.
- Espaliú Berdud, Carlos. “Los buques de la operación Sophia en el dique seco: elementos de un revés para la Política Común de Seguridad y Defensa”. *Revista de Derecho Comunitario Europeo* 64 (2019): 829-858. <https://doi.org/10.18042/cepc/rdce.64.02>.

¹²⁹ In this sense, see also: Pi Llorens, “La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia”, 34 and Alejandro del Valle Gálvez. “Inmigración, derechos humanos y modelo europeo de fronteras. Propuestas conceptuales sobre ‘extraterritorialidad’, ‘desterritorialidad’ y ‘externalización’ de controles y flujos migratorios”, *Revista de Estudios Jurídicos y Criminológicos* 2 (2020): 146.

- Faleg, Giovanni and Blockmans, Steven. "EU Naval Force EUNAVFOR MED sets sail in troubled waters". *Centre for European Policy Studies Commentary*, 26 June 2015, (2015). <https://bit.ly/32vX5UY>.
- Hernández, Hénar. "Los desafíos de la Operación Irini de la Unión Europea". *Atalayar*, 23 May 2020. <https://www.atalayar.com/articulo/politica/desafios-operacion-irini-union-europea/20200522110919145903.html>.
- Himmrich, Julia. "Beyond operation Sophia What role for the military in migration policy?". *Dahrendorf Forum Policy Brief*, 4 march 2019 (2019). <https://bit.ly/327EDly>.
- Jimenez Cortes, Claudia. "La desnaturalización de la zona SAR en el Mediterráneo central: de pieza clave para salvar vidas a instrumento contra los derechos humanos". *Revista Española de Derecho Internacional* 74 (2022) 2 (July-December 2022): 245-270. <https://www.revista-redi.es/redi/article/view/109/181>.
- De Coninck, Joyce. "Effective Remedies for Human Rights Violations in EU CSDP Military Missions: Smoke and Mirrors in Human Rights Adjudication?". *German Law Journal* 24 (2023): 342-363. doi:10.1017/glj.2023.19.
- Koutrakos, Panos. *The EU Common Security and Defence Policy*. Oxford: Oxford European Union Law Library, 2013; online edn, Oxford Academic, 23 May 2013. <https://doi.org/10.1093/acprof:oso/9780199692729.001.0001>.
- Moreno-Lax, Violeta and Lemberg-Pedersen, Martin. "Border-induced displacement: The ethical and legal implications of distance-creation through externalization". *Questions of International Law, Zoom-in* 56 (2019): 5-33. <http://www.qil-qdi.org/border-induced-displacement-the-ethical-and-legal-implications-of-distance-creation-through-externalization/>
- Müller, Patrick and Slominski, Peter. "Breaking the legal link but not the law? The externalization of EU migration control through orchestration in the Central Mediterranean". *Journal of European Public Policy* 28 (2021) 6: 801-820. DOI: 10.1080/13501763.2020.1751243.
- Poncela Sacho, Antonio. "EUNAVFOR MED Operación SOPHIA: un instrumento de la Política Exterior y de Seguridad Común de la Unión Europea". *Documento de Opinión IEEE 05/2019*. Instituto Español de Estudios Estratégicos, 13 (2019). https://www.ieee.es/Galerias/fichero/docs_opinion/2019/DIEEEO5_2019ANTPON-Sophia.pdf.
- Pricopi, Marius. "The Military Operation EUNAVFOR MED IRINI — A Downscale of the EU'S Involvement in the Migration Crisis". *Land Forces Academy Review* XXV (2020), 4: 302-306. DOI: 10.2478/raft-2020-0036.
- Pi Llorens, Monserrat. "La Unión Europea y la lucha contra los traficantes y tratantes de migrantes en Libia: balance tras el fin de la operación Sophia". *Revista electrónica de estudios internacionales*, 40 (2020). DOI: 10.17103/reei.40.07.
- Sánchez Legido, Ángel. "Externalización de controles migratorios versus derechos humanos". *Revista electrónica de estudios internacionales*, 37 (2019). DOI: 10.17103/reei.37.03.
- Sari, Aurel and Wessel, Ramses A. "International Responsibility for EU Military Operations: Finding the EU's Place in the Global Accountability Regime". In Bart Van Vooren, Steven Blockmans, and Jan Wouters (eds), *The EU's Role in Global Governance: The Legal Dimension*, Oxford: Oxford, 2013; online edn,

- Oxford Academic, 23 May 2013): 126-142. <https://doi.org/10.1093/acprof:oso/9780199659654.003.0009>.
- Soto Reyes, Javier; Hadiq Bouajaj, Youssef; Lecumberri Iribarren, Aitor. “La distribución del poder en la Libia post-Gadafi: un análisis desde la Sociología del poder”. *Revista de Estudios Internacionales Mediterráneos* 23 (2017): 47-75. <https://doi.org/10.15366/reim2017.23.004>.
- Urbaneja Cillán, Jorge. “The European Union-Turkey Cooperation on Migration Matters: towards a Review of the Migratory Statement of 18 March 2016”. *PEACE & SECURITY-PAIX ET SÉCURITÉ INTERNATIONALES (EuroMediterranean Journal of International Law and International Relations* 8 (2020):211-250. <https://revistas.uca.es/index.php/paetsei/article/view/6828/6901>.
- Del Valle Gálvez, Alejandro. “Inmigración, derechos humanos y modelo europeo de fronteras. Propuestas conceptuales sobre ‘extraterritorialidad’, ‘desterritorialidad’ y ‘externalización’ de controles y flujos migratorios”. *Revista de Estudios Jurídicos y Criminológicos* 2 (2020): 145-210. DOI: <https://doi.org/10.25267/REJUCRIM.2020.i2.07>.
- Del Valle Gálvez, Alejandro. “Sobre la inviabilidad del modelo de fronteras exteriores europeas en el mediterráneo”. *Revista Española de Derecho Internacional Foro-El rescate de personas en el Mediterráneo* 72 (2020), 1, enero-junio 2020: 187-196. <https://www.revista-redi.es/redi/article/view/509/493>.

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