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Sharing the dirty job on the southern front?

Italian–Libyan relations on migration and their impact on the European Union

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Abstract

Until recently, discussions with Libya on migration have taken place largely at bilateral level, i.e. almost exclusively with Italy. Since the late 1990s, Italy has engaged in a number of formal and informal diplomatic initiatives with the northern African country in order to bring under control irregular migration across the Mediterranean. This has started to change with the increasing role being played by the European Union (EU). Notably, on 12–13 November 2008 the negotiations for the EU–Libya framework agreement were officially launched. These aim to strengthen relations between the European Community, its member states and Libya. The deepening interaction between Libya and the EU alongside established bilateral cooperative arrangements is one of the main concerns of this paper. Our analysis seeks to unpack and understand the gradual intertwining of bilateral relations between two states – Italy and Libya – and those between states and supranational actors that we shall here qualify as ‘supralateral’. In questioning prevailing accounts of the manner in which the EU externalises migration control policies, this paper draws attention to the multiple reciprocal interactions at the levels of migration framing, institutional setting and modes of compliance.

Keywords

Libya, Italy, European Union, migration

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1 Introduction

Recent developments in Italian–Libyan agreements on migration reflect counter-intuitive aspects in the evolving ‘politics of migration’ in the Mediterranean. On 28 August 2010 the Italian Minister of the Interior, Roberto Maroni, commended the collaboration on migration between Italy and Libya since it had succeeded in reducing ‘the serious emergency represented by clandestine migration from Libya to Italy.’ Indeed, arrivals from Libya to Italy in 2009 dropped by 90 per cent (Ministero dell’Interno 2010a).¹ According to figures provided by the Italian government, between 5 May and 31 December 2009 3,185 migrants landed on Italian coasts, compared with 31,281 over the same period in 2008 (Governo Berlusconi 2010). The downward trend continued in 2010, with 3,499 landings from 1 August 2009 until 31 July 2010 (of which 403 were in Lampedusa and the other in the Pelagie islands of Linosa and Lampione) compared with 29,076 disembarkations (of which 20,655 were in the Sicilian archipelago) in the previous 12 months (*La Repubblica* 10 August 2010).

According to Maroni, ‘this agreement has been praised by the European Commission as a model to be replicated throughout Europe’ (Ministero dell’Interno 2010b). What is clear from this is that migration flows and policies are contingent upon multiple reciprocal interactions between EU member states, third countries and supranational bodies such as the European Commission. It follows that the study of the collaboration on migration between Italy, Libya and the different European institutions is insightful for two main reasons. First, at the empirical level, the effects of Italian–Libyan relations on the more recent EU–Libyan ones have been poorly documented. Tracing whether norms² and negotiating practices framing bilateral interaction have been appropriated or not at EU level may usefully add a further level of complexity to our understanding of the external dimension of European migration policies. Second, at the theoretical level, patterns of complex interdependence between EU member states, third countries and supranational bodies give new scope for applying in new ways relevant scholarship on migration and international relations. This is based on the appreciation that most of the agreements on migration with third countries have been conducted primarily at bilateral level. Only recently, i.e. over approximately the last ten years, has it been taken up at supranational level by the European Commission and other European bodies. The dense feedback mechanisms linking these two levels necessitate rigorous yet open-ended analytical tools to explain and understand the directionality and depth of reciprocal influences. We will build upon evolving theoretical discussion on the international politics of migration (Betts 2008a; 2008b).

¹ Arguably this quote seems to ignore other factors that might explain the reduction of arrivals. One of these may be linked to the economic downturn. This issue will not be addressed in this paper. For more on this see Papademetriou et al. (2009).

² In this paper, we shall use the following terms interchangeably: ideas, norms, motives and policy-drives. The way we use these terms largely stems from the constructivist tradition (Checkel 1998). The appreciation of the perceptual and ideational factors informing states’ interests sets the basis for our analysis on the extent to which the shifts in ideas relate to actual practices. The latter are broadly defined as policy outcomes as conceptualised in Finnemore (1996). Throughout the text, we will consider the relation between on the one hand ideas and discourses and, on the other hand, policies and practices.

Hence, the starting assumption of this paper is that the ability of the European Commission and other European bodies to enforce customary negotiating styles and, in the process, to extend and consolidate its normative clout, often encounters significant constraints (Ellerman 2009). Accordingly, this paper seeks to explain and conceptualise recent contradictory patterns observable at the intersection of bilateral and what we call ‘supralateral’ policies on migration in the Mediterranean. We use the term supralateral to describe the relations between Libya and EU institutions. The rationale behind coining this new term is relatively simple. The term is used in opposition to the bilateral setting and, therefore, stems from the recognition that in the European context most agreements on migration have been initiated by states at bilateral level and only subsequently taken up by the EU.³ In connoting the interactions between a third country and the EU, supralateral differs from both ‘multilateral’ (often inappropriately applied to relations between the EU and third states), and ‘supranational’, which presupposes relations beyond state level. As we shall see, this new term will serve as an anchoring point in the last section where we provide some tentative theorisation on the changing patterns of interdependence across and beyond the bilateral and supralateral levels. In coining this term we hope to re-instate in theory the tension that already exists in practice between bilateral and supralateral domains.

Thus, the questions that we shall address are of two kinds. In the first instance we are concerned with the changing dynamics in the Italian–Libyan collaboration on migration: what are the norms and negotiating practices characterising the exchanges between Italy and Libya? How have the European Commission and other European bodies responded to the measures implemented at bilateral level? This brings us to the second set of questions on the relations between the three actors and on the relation between norms and procedures at bilateral level and those at a supralateral one. Can we argue that, under the guise of Italian action, different European institutions have once and for all accepted and adapted not just to policies but also to the underlying assumptions driving the bilateral diplomatic endeavour? Related to this, to what extent and why does this gradual co-implication influence the norms underpinning the approach of the European Commission towards Libya, concerning migration? In other words, to what extent do legally dubious (Favilli 2005; Tondini 2010) Italian migration practices with Libya inform and re-shape the EU’s basic principles and actions? How can we conceptualise the multiple patterns of interaction? In more trivial terms, to what extent is the putative ‘dirty job’ of managing mixed flows at bilateral level either opposed, silently backed or actively shared by European institutions?

In order to address these two sets of questions, the paper divides into eight main sections. In the next section, we set out the theoretical questions driving the paper. We sketch the main assumptions of scholarship on European migration policies that we will selectively apply to the empirical analysis in the subsequent sections. In the third section, we review migration trends and policies in Libya. This brief empirical account sets the necessary basis for the next sections where we probe how objectives and actual policies impact on bilateral and supralateral engagements. In the fourth section we provide a historical review of the bilateral negotiations on migration. In reconstructing different bargaining phases and reflecting on Italian bipartisan continuity, in the fifth section we

³ Interestingly, outside the remit of migration studies, the term denotes the optical phenomenon known as ‘halo’, the arc formed when sunlight enters horizontally oriented. This phenomenon is observable once a year.

consider how the bilateral actions have been received by different bodies within the EU and other international organisations. The review of varying European responses allows us to explore in section six the evolution of the relations between Libya and the EU. The seventh section takes this observation further. Here, we briefly unpack the complex negotiating process between the European Commission, and to a lesser extent other European institutions, and Libya. We focus on the complex feedback mechanisms at three key levels: 1) in terms of framing the issue of migration; 2) the institutional setting; and 3) the modes of compliance. Investigating the nature and direction of reciprocal interactions, we question prevailing understandings of EU external migration governance understood as unilateral policy. We thus make the case for *multiple* extensions of internal rules across and beyond bilateral and supralateral domains. The relations between Italy, Libya and the EU give us scope for rethinking in new creative ways shifting norms and practices among different actors in their quest for controlling borders and co-opting their neighbours to stem the alleged invasion.

Before turning to the empirical analysis, four caveats on the methodology, research focus, data and our key assumptions are called for. First, the paper is largely based on primary research using the databases of the European Commission and the Italian Chamber of Deputies. The citations selected from the latter have been translated by the authors. Furthermore, the analysis reports selected quotes from interviews conducted between 2007 and 2010 in Tripoli (Libya) and Rome (Italy). Second, we focus on the agreements between 2007 and 2010, as the negotiations between Libya and the EU were initiated in 2007. In fact we are concerned with the complex interaction between the two levels of negotiations. Hence it is not our aim to provide a comprehensive picture of the historical interactions between the three actors, namely Italy, Libya and the EU (Joffé 2004; Fumagalli 2001; Fusacchia 2006). Third, data on migration flows presented herein have to be taken with caution. For instance, it is not always clear to what extent figures on arrivals to Italy include persons intercepted or rescued at sea and brought to Italian ports (therefore, not actual autonomous ‘landings’). Yet, referring to this data is unavoidable and we take the view that, employed with critical awareness, it can still give an idea of the changing size of migrant flows through Italy and Libya. Fourth, it is important to be clear as to why we use the expression ‘dirty job’. As a fairly controversial qualification to the ongoing Italian–Libyan negotiations and actions, we see this as a working assumption rather than a final statement on the viability of migration control policies in the Mediterranean. The choice of this expression is intended to draw attention to the controversial modes of compliance and actual effectiveness of the policies implemented. We use ‘dirty’ here to convey two related issues to be addressed in the paper: 1) the normative questions surrounding the legal principles underpinning the agreements between Italy, Libya and the EU; and 2) the messy diplomatic bargaining style whereby agreed measures do not always correspond to practices on the ground. Hence, rather than advancing a final verdict, the employment of this expression and the very analysis hereafter seek to draw attention to the many changing norms and practices that defy one-sided and clear-cut accounts.

2 Setting the theoretical framework

The paper seeks to combine two closely interrelated strands of scholarship. While the first one addresses the emerging theoretical analysis of European external dimension, the

second concerns more empirical questions surrounding the notion of 'externalisation'. A succinct illustration of the theoretical understanding of European external dimension comes first.

In order to unpack the variable and multidimensional (Hill 1993) nature of the relations between the three actors we will analyse recent empirical data through the lenses of the theoretical contributions on global governance and migration studies (Betts 2008b). Simply put, this literature builds upon the assumption that in an increasingly multi-polar world migration appears to be a complex and salient issue (Castles and Miller 2003). In the European context, scholarly attention has been paid to theorising the process whereby migration and asylum policies in Europe have been elaborated in supranational forums and implemented by states in collaboration with transnational actors (Guiraudon 2000; Geddes 2003). This approach recognises the increasing complexity of norms and practices resulting in the gradual dispersion of authority in the current international system (Rosenau 2005). Evolving bargaining mechanisms, beyond the formal and inclusive multilateralism that characterised the post-Second World War consensus, are taking hold (Betts 2008b). The manner in which the EU has responded to the alleged crisis posed by immigration, and the shifting influence with member states and third countries, is evidence of this.

The consolidation of the Schengen system has drawn increasing attention to the implication of the European external border. To be sure, since at least the 1970s, European governments have sought to manage immigration and refugee flows into their territory (Geddes 2003). Yet the so-called 'external dimension' of EU immigration and asylum policy was not formally embraced by the European Council until October 1999 (Boswell 2003). As Boswell observes, the conclusions of the extraordinary European Council on Justice and Home Affairs stated that JHA concerns (including immigration and asylum issues) should be 'integrated in the definition and implementation of other Union policies and activities', including external relations (Boswell 2003: 620). One of the vexing questions concerns the expansion of, and tensions between, norms and practices reflecting co-existing decision-making structures at domestic and international levels. The growing normative ambitions of the EU in the aftermath of the establishment of the external border and the institutionalisation of novel mechanisms of coordination expose a number of conceptual puzzles. The political failure of the EU to fully live up to its normative expectations (Pace 2007; Bigo et al. 2007), and above all its inability to deliver a comprehensive approach to migration both within and outside its borders (Caviedes 2004), invites one to investigate further the evolving nature and multiple implications of European external dimension. Hence, in firmly situating our paper within this theoretical debate which is critically reassessing the predicaments of European external action and, more broadly, of global migration governance, our analysis heavily relies on the synthesis of varying degrees of institutionalised cooperation proposed in the recent work of Lavenex and Schimmelfennig (2009).

The starting assumption here is that the notion of governance is suitable to investigate the alleged process of expansion beyond formal membership to the European polity. In particular, Lavenex and Schimmelfennig (2009) distinguish between three basic forms of institutional governance: *hierarchy*, *networks* and *markets*, which act as opportunities and constraints on actors' modes of interaction. While *hierarchical* governance takes place in a 'formalized relationship of domination and subordination and is based on the production of collectively binding prescriptions and proscriptions', *network*

delineates a relationship in which the actors are formally equal (Lavenex and Schimmelfennig 2009: 797). Unlike hierarchical systems which are characterised by binding authoritative law, networks presuppose mutual agreements without excluding the possibility of power asymmetries (Lavenex and Schimmelfennig 2009: 797). Finally, *market governance* is defined as the process whereby mutual recognition, rather than harmonisation through the definition of common rules, unleashes a regulatory dynamic in which the most competitive system prevails (Lavenex and Schimmelfennig 2009: 799). This may lead to a voluntary *de facto* approximation of legislation on the basis of respective standards (Lavenex and Schimmelfennig 2009: 799; Schmidt 2007). Importantly, this regulatory adaptation resulting from the process of competition occurs in the absence of institutionalised mutual recognition as a consequence of competitive pressure. As we shall see, in the empirical analysis we will selectively rely on the notion of market governance, narrowly defined as the competitive process whereby the three actors re-define, negotiate and conform to norms and practices.

Within this body of literature the notion of externalisation has gained ground. Given the fact that this paper builds upon this scholarly discussion eventually to transcend it, let us explain what we mean by it. The development of new forms of cooperation among EU member states to deal with their external borders is one of the aspects at the core of the notion of 'externalisation.' This notion which has attracted increasing attention is largely defined as the 'exportation of classical migration control instruments to sending or transit countries outside the EU' (Boswell 2003: 622). Since its onset, this process whereby Europe seeks to expand its legal boundaries towards its nearby countries has been linked to the resurgence of its fundamental identity as a 'security community' in an altered geopolitical context (Deutsch et al. 1957 quoted in Lavenex 2004: 681). According to this literature, the exportation of migration control is especially pronounced in the EU accession process. Future member states are indeed obliged to incorporate the Schengen acquis into their national legislation, which implies the introduction of stricter border controls, immigration and asylum policies.

This concept has been the subject of a burgeoning literature (Betts and Milner 2007; Bigo 1998). Without wishing to probe here into this literature, one idea is central to our initial purposes. Understood as an 'external projection of internal solutions' (Lavenex 2004: 695), the concept denotes a clear directionality. In other words, the conventional wisdom underlying the 'policing at distance' practices (Bigo 1998; Morris 1998) makes strong assumptions not just about the asymmetry of power between actors but, more interestingly, about the notion of agency of countries depending on their migrant receiving or sending status. At the same time, however, the capability–expectations gap (Hill 1993) was observed with regard to the limits of the EU to fully externalise and replicate its institutional agenda across neighbouring countries. According to Hill, the EU is unable to fulfil all of its tasks because of constraints on its ability to agree, and on the resources and instruments at its disposal (Hill 1993: 315). In this paper we shall take this notion further and consider the constraints arising from the relations with third parties. This will lead us to question the directionality that the notion of externalisation, as presented above, entails. We will also apply concepts from recent theoretical developments on European migration policies, especially in relation to migration governance.

Before turning to the empirical analysis it is important to be clear from the outset on the limits of this paper. The application of the above theoretical model to our empirical

analysis is not unproblematic. Choosing the theory to fit the context means that the theory remains 'untarnished by failure' (de Haas 2010; Bakewell 2010). In other words, a post-hoc application of theories runs against rigorous and systematic hypothesis testing. The very selection of a discrete set of concepts may be limiting. These caveats notwithstanding, this narrow approach remains relevant for two related reasons. First, the purpose of this paper is neither theory building nor theory testing. Our much more discreet objective is that of presenting tentative theoretical reflections on a relevant topic, namely the increasing overlap between bilateral and supralateral initiatives at Europe's fringes. Building upon burgeoning scholarly tendencies towards theorising migration trends and policies, this paper seeks to make some preliminary suggestions about the theorisation of the multiple directionalities and shifting depth of externalisation. By narrowly applying selected theoretical tools, this paper intends to create scope for future research on negotiations and externalisation on a systematic and comparative basis. Second, we shall make pragmatic use of the notions of competition and market governance in so far as they help us to 'understand complex social phenomena and or to explain observed social regularities' (Friedrichs and Kratochwil 2009: 706).

3 Migration through Libya: a new phenomenon?

In laying the empirical basis which the next sections build on, this section provides a succinct historical review of migration in Libya and sheds light on norms and practices pre-dating the onset of the collaboration with Italy in the 1990s. In fact, cross-Saharan circulation of goods and people is certainly not a historical novelty. The Libyan Sahara, in particular, was for centuries one of the main routes for caravans connecting 'Black Africa' to the Mediterranean and Europe through the ports of Tripoli and Benghazi (Wright 1989). The Italian colonial domination had caused a substantial reduction in such flows. It was only from the 1960s that trade and human mobility between Libya and northern Niger and Chad expanded again. This cross-Saharan space became gradually 'busier during the 1970s and 1980s. In fact, the Sahelian crises caused by droughts and the war between Chad and Libya pushed thousands of refugees to settle in the Algerian and Libyan Sahara. Step by step, the Nigerien and Chadian diasporas in Libya and the Libyan one in Chad and Niger took shape' (Pliez 2005: 65). In brief, the peculiar combination of factors including geographical location and oil reserves explains why Libya has been since the 1970s an important destination of migration. Official figures, with all their flaws and intrinsic limits – largely because they do not include undocumented foreign workers – confirm this. In 2000, Libyan authorities declared that over 2.5 million foreigners lived in the country, only 1,700 of whom possessed proper ID cards (Pliez 2004: 144). The officially registered migrant stock was 618,000 in 2005,⁴ growing steadily at a rate of 2 per cent per year since 1985 (United Nations 2005). In 2010, this stock was estimated to have grown further to 682,000 (United Nations 2009). With an estimated overall population of 6.55 million (but growing quickly: according to the UN medium variant, it should reach a threshold of 8.14 by 2025 and of 9.82 by 2050 [United Nations 2010]), Libya is close to the largest European receiving states and among the first countries in Africa in terms of the immigrants' share of the total population (10.4 per cent).

⁴ Not all sources concur with these figures. For example according to the Libyan Census of Population in 2006, 359,540 non-Libyans were officially recorded (CARIM 2009). This is a further reminder of the inherently questionable reliability of the figures provided by either Libyan or non-Libyan sources.

Furthermore, as we will see below, unofficial figures on the actual number of foreign migrants living in the country reveal an even more striking picture.

It was not until the mid 1990s that Libya became the destination of increasing immigration flows, not just from neighbouring Sahel countries but also from the wider sub-Saharan region. Besides pre-existing and still strong Libyan demand for foreign labour, the specific determinants of the quick rise in inflows from sub-Saharan Africa were *political*: the end of the conflict between Libya and Chad (1987), followed by a bilateral freedom of circulation agreement (1994); the end of Tuareg rebellions in Niger (1995) and Mali (1996), which facilitated cross-Saharan transit; and above all the spectacular pan-African turn in Qadhafi's foreign policy, mainly motivated by the leader's disappointment with other Arab regimes' lack of support following the gradual hardening of UN sanctions against Libya since 1992. Repeated and widely advertised calls by the Colonel to sub-Saharan migrant workers who would be welcome as 'brothers' in Libya obviously represented a powerful pull factor, as two examples show. In February 2002, Qadhafi announced that 'the enormous Libyan projects necessitate a significant labour force from Africa (Pliez 2004: 145). In a similar vein, in June 2005, the leader stated that:

Libya is a country belonging to all Africans. [...] What we call clandestine migration is a totally natural phenomenon. [...] It is normal that Africans move around their own land. [...] Free yourself from the efforts that you are making now to control borders: surveillance along frontiers, custom control, immigration and security [...]. Leave people free to move and to look for a job from one place to another. If they will not find this job they will go back to where they came from (Panapress, 18 June 2005).

Partly as a result of these political developments, and in spite of a more recent tightening of political stances and regulations, the number of foreigners in Libya has reached a level unprecedented in the country's history, as documented above.⁵ Such massive presence is primarily the result of structural determinants, but has certainly been influenced by bewildering political choices. For instance, in 1995 after 200,000 foreigners had been expelled (Pliez 2004: 142), a Libyan delegation travelled to Baghdad to invite Iraqis to move to Libya to work, even though the Iraqi population in Libya was already 65,000 strong (Pliez 2004: 142). The move can be understood as a way for Qadhafi to secure as well as herald Libya's political bond with Iraq in concomitance with worsening relations with northern African neighbours such as Egypt and Tunisia (BBC, 30 December 1995). Be that as it may, the subsequent re-engagement with Arab countries partly explains why two years later, advertisements and publicity materials were sent to Egypt to encourage Egyptians to move to Libya (Pliez 2004; Reuters, 11 October 1997). As Pliez argues:

This *volte-face* sheds light on the limits of the instrumentalisation of the foreign labour force from the Libyan regime that is forced to make new appeals for migrants in order to counter-balance [in terms of labour force lost] the departure of those that it had expelled in the previous period (Pliez 2004: 142).

As Choucri foresaw in the late 1970s:

The Libyan episode [referring to the relations between Egypt and Libya] reflects the importance of political factors influencing migration and the potential use of

⁵ *Inter alia*, interviews with police officer on 28 May 2007 in Tripoli, and with officials from the Department of Cooperation and Relations in the Ministry of the Interior, 5 June 2007, in Tripoli.

population movement as a political threat. [...] Should migration continue to be viewed as a political weapon, the volume of Egyptian workers in Arab countries could become one of the most salient foreign policy issues in the years to come (Choucri 1977: 425).

The central point here is a rather intuitive one but worth emphasising nonetheless: migration trends and policies are intrinsically linked to foreign and domestic political dynamics (Loescher and Monahan 1989; Zolberg 1989). More than that, migration has historically been a central issue in Libya's relations with its neighbours. Ad hoc and largely informal political arrangements regarding controls at borders and towards foreigners have long coloured the wider interactions between Libya and third countries. Evidence of this is the fact that Libya presents itself as a transit country, whereas data shows that most migrants remain in the country.⁶ The employment of labels such as 'transit' and 'destination', and of numbers as part of complex political games, has already been documented and discussed by Düvell (2006). By exploiting its strategic role as a migrant transit country, Libya has succeeded in extracting specific concessions from Italy and the EU. Overall, this impromptu and behind-the-scenes⁷ course of action appears to have been among the defining features of Libya's approach to migration and, more generally, to foreign policy. This issue needs to be kept in mind for it helps us to understand the distinctive diplomatic route chosen by Italy and Libya since the late 1990s onwards. In short, the changing but largely inclusive stance to migration pursued by the Libyan regime partly explains the increase of migration to Libya and to Italy over the 2000s. This, in turn, has triggered a renewed collaboration between the two countries and between the EU and Libya. In proceeding with our historical excursus, the bilateral comes first.

4 Doing the dirty job: A short history of Italian–Libyan cooperation on migration

It is well known that cooperation with Libya in the field of migration controls was initiated at a bilateral level by Italy in a very difficult context. Over the late 1990s the Italian authorities came under strong political and media pressure because of increasing landings of irregular migrants on Sicilian coasts. Crucially, the only possible and relevant partner, i.e. Libya, was still a pariah in the international community, isolated by a tight web of embargos (by the United Nations, the EU and the US). Furthermore, Italy had specific obstacles to overcome in its relations with Libya due to a series of unresolved symbolic and practical issues related to its colonial occupation (1911–1947) of the regions of Tripolitania and Cyrenaica. In the face of all the political, diplomatic and even legal obstacles, pragmatism triumphed in a relatively short lapse of time. In July 1998, when transit migration was not yet a mainstream policy issue, a first bilateral meeting took place, where Italian regret for the colonial past was formally expressed and compensations agreed upon.⁸ This positive start (and the surrender

⁶ Out of a total migrant population of over 1.5 million in Libya, around 20,000 migrants used to reach Italian shores until 2008. For more on this see Paoletti (2009: 19-20).

⁷ It goes beyond the purposes of this paper to document and analyse Libya's distinctive political system. One of the initial assumptions of the paper is that the current political system not only defies legal scrutiny but also relies on a centralised and police-based political apparatus (Vandewalle 2006; Abdelmoula 1992).

⁸ For a detailed, although necessarily selective chronology, linking specific developments in the migration policy field with broader international political developments, see below, Figure 3.

by Libya of the two Lockerbie suspects for trial in the Netherlands) paved the way for an upgrading of political relations: in December 1999, Prime Minister Massimo D'Alema was the first Western head of government to visit Libya since 1992 (the year of the first UN Security Council resolution asking Libya to cooperate with investigations into the late 1980s notorious terrorist acts). Once that important formal step had been taken, not even the controversial behaviour of Libyan authorities during the 'pogrom' during the 1990s, in the form of systematic arbitrary arrests and detention (Amnesty International 1995; 1999), prevented the two countries from further formalising their newly established relations. A seminal agreement on cooperation against terrorism, drug trafficking and undocumented immigration was signed in Rome on 13 December 2000 and entered into force in December 2002 (Senato della Repubblica 2009). This set the basis for the bilateral formal and informal agreements which were to follow.

Between 2000 and 2007 no formal agreements were signed although the bilateral cooperation deepened in important respects.⁹ In particular, an informal and poorly documented agreement was reached in July 2003 (Cuttitta 2008). This included a programme of charter flights to return to Libya undocumented migrants who had recently landed on Italian islands such as Lampedusa (Klepp 2010; Paoletti 2008b). In fact, between October 2006 and March 2008 over 3,000 migrants were returned to Libya (European Commission 2005). What is surprising here is the almost total lack of parliamentary debates and the systematic (and according to scholarly opinions unlawful) decision by subsequent governments not to publish the technical agreements underpinning what appears to be an informal readmission agreement (Favilli 2005; De Zulueta 2006). At this point, one fundamental aspect of this early, essentially bilateral phase of collaboration is worth highlighting, namely the intrinsic fragility of the bilateral collaboration. As we shall see in the next section, the informality that characterises Italian–Libyan *modus operandi* has not influenced negotiating practices at supralateral level, which continues to be heavily constrained by established checks and balances. In fact, the gradual involvement of the EU and more recent bilateral engagement is marked by a slowly growing propensity to institutionalise and formalise cooperation.¹⁰

In fact, presumably in response to the international outcry sparked by the return flights and the construction of camps in Libya to detain migrants (Human Rights Watch 2006; European Court of Human Rights 2005; European Parliament 2005a), over the years the agreements between the two countries have been publicly released. To start with, on 29 December 2007 an agreement on joint patrolling was signed. Notably Libya's willingness to implement the joint measures did not follow suit. As the Italian Minister of the Interior, Maroni, lamented:

⁹ An important exception in this period of apparently lower intensity of Italian–Libyan diplomatic relations was represented by the ad hoc joint meeting of the Constitutional Affairs and Foreign Affairs Committees of the two Houses of the Parliament on 22 February 2006 after the anti-Italian riots in Benghazi that followed the provocative gesture by the Italian Minister Roberto Calderoli. That extraordinary parliamentary debate later brought the approval of two significant bipartisan motions (No. 48 and No. 57, approved on 24 January 2007), which are nevertheless focused on general political issues but silent about migration.

¹⁰ There are however some notable exceptions. In particular, UNHCR has not yet been officially recognised by the Libyan government and it can carry out some assistance only under the umbrella of UNDP. Such a situation, together with the fact that Libya is still not a signatory to the 1951 Geneva Convention, is a source of international concern and of inter-institutional tensions (UNHCR 2007: 2). UNHCR's relations with Libya have gone through a further deterioration in 2010, about which we will give more details below.

On 27 June 2008 the Prime Minister, Berlusconi, met the Libyan leader in order to get his approval to start [the joint patrolling]. Yet we still have to insist with Libya for it to finally agree on the implementation of the measures envisioned by the accord [of December 2007]. Only in this way [with Libya's consent] can we solve in a definite way the question of clandestine migration to Lampedusa (Camera dei Deputati 2008a).

Interestingly, the accord also envisioned the deployment of the *Guardia di Finanza* – the Italian police force under the Ministry of Finance – to Libya for one year in order to collaborate with Libyan authorities on the issues of irregular migration and human trafficking (Camera dei Deputati 2008b: 137). The agreement not only sanctioned the provision of six patrol boats but also contributed to the deepening of other measures previously agreed upon including police collaboration and exchange of information. Yet, the important turning point was marked by the Friendship Treaty signed on 30 August 2008 whereby Italy committed to pay \$5 billion over the next 20 years, nominally to compensate Libya for the 'deep wounds' of the colonial past (Gazzini 2009).¹¹ The treaty was heralded by both sides as evidence of the fact that the two countries were committed to respect 'international legality' and 'the centrality of the United Nations' (Camera dei Deputati 2009a). Accordingly, since it entered into force on 6 February 2009 a number of important developments took place. In the area of migration the first joint patrol took place and the notorious push-backs were implemented (Human Rights Watch 2009; UNHCR 2010a; Council of Europe 2010a, 2010b).¹² In retracting its long-standing opposition to joint naval operations, Libya agreed to collaborate with Italy on the return of boats intercepted on international waters. According to the Italian authorities, from 6 May to 6 November 2009 a total of nine operations were carried out, returning to Libya 834 migrants who had departed from Libya (UNCHR 2010a). In justifying these measures that were eventually suspended¹³ at the end of 2009, the Italian government repeatedly emphasised their 'absolute legality' (Camera dei Deputati 2010b: 72) and established their necessity on the grounds that 'until then the EU had not directly committed to support activities to reduce illegal immigration' (Camera dei Deputati 2009b: 2).

Arguably this measure has partly contributed to the decrease of migrants landing on Italian shores as previously documented. Furthermore, new issues have been added to the agenda, one being the negotiations of the visa facilitation. According to the report presented at the Chamber of Deputies in June 2010, Libya has requested to have visa facilitation arrangements whereby a Schengen visa is released within 48 hours as opposed to ten working days (Camera dei Deputati 2010a). The possibility of processing asylum

¹¹ Arguably, the treaty can also be understood as an expression of Berlusconi's personal economic interests. Hence it cannot simply be explained as result of bipartisan continuity. On the one hand, Italian foreign policy interests have not significantly changed despite recurrent governments reshuffles. Strategic objectives such as consolidating economic and political relations with Libya have remained constant over decades. On the other hand, as this example indicates, bilateral relations have also been heavily influenced by personal interests.

¹² Among other things, the pact entailed €150 million worth of financial assistance on measures related to migration (Camera dei Deputati 2009b: 3).

¹³ As of December 2010 it appears that push-backs were not implemented in 2010.

seekers in Libya has also been brought up again.¹⁴ As a government official from the Ministry of Interior stated:

At European level, Italy has been advocating for a while now the necessity of establishing procedures in order to process asylum requests outside the territory of the European Union and which would then allow to institutionalise entry channels to the EU for asylum seekers (Camera dei Deputati 2009b: 10).

The idea appears to have been accepted also by the European Commission. For example, on 12 July 2009, Vice-President of the European Commission, Jacques Barrot, mentioned in an interview with radio station Europe 1 that 'he would very shortly suggest to Libya that it open reception offices for people seeking political asylum' (ECRE 2009c).

Overall, bilateral and largely informal cooperation in the field of migration has been, at least in the short term, a satisfactory match. Unauthorised arrivals to southern Italian shores increased between 2000 and 2006, and have sharply decreased since 2008 (Ministero dell'Interno 2010a). Importantly, the pioneering Italian–Libyan experience of cooperative migration management has met some serious legitimacy problems. Having outlined the main phases of the bilateral negotiations of migration we shall return to the questions posed at the outset and bring into focus the principles framing the bilateral interaction. To do so we shall first consider the objectives driving the bilateral undertaking and then assess the distinctive negotiating mechanisms on the basis of the European response which came with its contentious implementation.

At the risk of overgeneralisation it can be argued that the overarching objective of the cooperation has been to stop migration. For example, in 2004 the Italian Minister of Interior declared that the ultimate objective was to reduce undocumented migration from Libya 'to zero' (Ministero dell'Interno 2004). On different occasions, the same statement was echoed by Qadhafi himself (BBC, 31 August 2010) and the recent Italian government (AGI, 29 September 2009; ANSA, 13 September 2009). This is consistent with the quotes reported above which concur that the objectives appear to be enforced by narrow security principles. Simply put, surveillance and reducing migration are not only key priorities but also benchmarks of success. The quote above by Maroni testifies to this. The success of the bilateral cooperation has been measured according to the number of boats reaching Italian soil as opposed to a hypothetical breakthrough in human-rights standards in Libya. This point alone clarifies the sense in which security, rather than, say, the rule of law and a more encompassing understanding of mobility, is the key goal if not the ultimate normative threshold. This reflection needs to be kept in mind for it will be analysed further in section five, where we map the reciprocal influences between Italy, Libya and the EU with regard to norms and practices framing the whole negotiations.

The fact that security is the underpinning normative drive is evidenced by Italy's response to changing migration policies in Libya. One example is the law on migration approved in January 2010. While it does not elaborate on the rights of irregular foreigners,¹⁵ this law defines different types of irregular migration and establishes their respective fines (People's Libyan Arab Jamahiriya 2010). Notably, the new law has been praised by the

¹⁴ To be sure, the establishment of migrant-processing centres in Libya had already been discussed in the early 2000s by the then Italian Minister of the Interior, Giuseppe Pisanu. Yet this was harshly criticised at both national and international level (Paoletti 2010).

¹⁵ It does so only when it refers to the rights of 'being treated humanely when he/she is arrested.'

Italian government as ‘a remarkable effort which will contribute to the intensification of multilateral relations and the consolidation of euro-Mediterranean partnership’ (Camera dei Deputati 2010a: 169). This law builds upon earlier ones which are equally strict. For example, in February 2007 Libya’s Ministry of Manpower introduced a law whereby all foreign workers ‘are required to pay monthly 25 Libyan dinars in income tax, 14 dinars for insurance, 15 dinars for an Arab identity card and 60 dinars for an accredited work permit’ (El-Sayed 2007). The lack of transparency and the potentially destabilising effects of this new step in Libya’s coercive approach to migration management has also alarmed the international community. For example, IOM’s Chief of Mission in Tripoli declared:

There have been a lot of police raids since this measure was passed, showing that Libyan authorities are serious this time. [...] But it has to be accompanied with reasons that people understand, otherwise they are scared [...] we don’t have anything in writing of what the procedures are (quoted in Carroll 2007).

Nevertheless, the Italian government has endorsed Libya in its commitment to bring migration under control. As an Italian official based in Libya emphasised in 2007:

We [Italians] have provided intelligence information to Libyan officials on our investigative activities and the Libyan authorities have analysed such information, confirmed our analysis and implemented ‘on the ground’ what we had suggested. As a result, the arrivals [of undocumented migrants] to Lampedusa over the last few months have been reduced by 50 per cent. Hence, we can say that the response from Libyan police has been positive.¹⁶

On these grounds it can be argued that Italian pressure on Libya in the area of migration has contributed to legitimising and further deepening pre-existing policing structures and motivations. Be that as it may, two caveats are in order. First, as illustrated in the previous section, controversial practices on migration in Libya pre-date the collaboration with Italy. The appreciation of Libya’s long-standing security apparatus is key, for it questions unidirectional accounts in how security norms and broader negotiating procedures develop and take hold. This point introduces the visual mapping that we present in section 7 to trace the process of adaptation of standards at the levels of norms and practices. We will argue that the manner in which certain norms and practices are retained can be largely understood as the consequence of competitive pressure as defined in section 2. Second, on selected occasions, Italy has sought to take a clear stance on human-rights issues. One example is Italy’s response to the alleged closure of UNHCR office. Following the controversial closure of the UNHCR office in Tripoli on 8 June 2010 (UNHCR 2010b), on 14 June the Italian Prime Minister flew to Libya officially to negotiate the release of the Swiss businessman detained in Libya over visa irregularities, but in reality as a ‘reprisal’ for the arrest in Switzerland of one of the Libyan leader’s sons in July 2008 (BBC, 15 June 2010). While the issue of UNHCR was not officially addressed then, Italy subsequently claimed responsibilities for re-negotiating the resumption of UNHCR operations in Tripoli (United Nations 2010). As the Undersecretary for Foreign Affairs, Stefania Craxi, declared: ‘the Italian government never backed away from raising awareness with Libyan authorities on the topic of human rights. [...] It is thanks to the Italian government [that] the UNHCR activities in Tripoli have started again, albeit in an informal and conditioned way’ (Migrants

¹⁶ Anonymous interview on 20 May 2007 in Tripoli, Libya.

at Sea 2010a; ANSA, 10 June 2010). This anecdote thus offers an additional insight into multiple overlapping principles framing the bilateral interaction. Where it is clear that, at the level of official discourse, norms such as human rights and international standards continue to play a central role, the measures implemented appear to be driven by a narrow notion of control and numbers. This tension also emerges in the differing responses articulated by the EU to which we now turn.

5 Watching the dirty job: the EU and international reactions to Italian–Libyan cooperation

Understanding the way in which the European Commission and other European bodies have reacted to the controversial bilateral achievements is central to this exercise. In fact, these critiques vary significantly. For the purposes of brevity we shall consider two discrete cases: the return flight between October 2004 and March 2006 and then the push-backs in 2009. It will emerge that different organisations within the EU have taken diverging and changing responses. The appreciation of multiple voices within the EU adds a further layer of complexity to our study of developing supralateral dimension.

As concerns the first case, Italy has been condemned by the Council of Europe's Committee for the Prevention of Torture, Amnesty International (Amnesty International, 2005), UNHCR (UNHCR 2005) and the European Parliament (European Parliament 2005a). Italy has also been asked to justify the expulsions by the European Court of Human Rights (European Court of Human Rights 2005) and the Italian Ministers Tribunal (Collegio per i Reati Ministeriali 2006). Broadly they agree on two overlapping points: 1) the absence of a formal readmission agreement between Italy and Libya; and 2) from the perspective of Italian jurisprudence, the questionable legal basis for conducting return flights. A brief review of the positions taken by the European Parliament, the European Commission, the Council of Europe, the European Council and the European Court of Human Rights on the return flights and the push-backs exposes the numerous discrepancies in the manner in which norms and practices are negotiated and translated into action. This empirical analysis will thus alert us to the ambiguous nature of European migration governance.

Let us first look at the diversified response to the readmission agreements and, in particular, the above-mentioned return flights. On 14 April 2005, the European Parliament approved an unusually strong-worded resolution on Lampedusa, which reads as follows:

[c]alls on the Italian authorities and on all Member States to refrain from collective expulsions of asylum seekers and 'irregular migrants' to Libya [...] [t]akes the view that the collective expulsions of migrants by Italy to Libya, including those of 17 March 2005, constitute a violation of the principle of non-refoulement and that the Italian authorities have failed to meet their international obligations by not ensuring that the lives of the people expelled by them are not threatened in their countries of origin (European Parliament 2005a).¹⁷

However, a few months afterwards, during a mission to Libya on 8 December 2005, members of the European Parliament sent a more conciliatory message to Libya. As head of

¹⁷ Lengthy and very critical passages on the Italian expulsions to Libya are to be found also in two important Council of Europe reports (Council of Europe 2005, 2006).

the delegation, Simon Busuttil stated: ‘We want to send the Libyan authorities a very specific message: we are not here to point the finger at them or to ask them to police Europe’s borders. We are here to seek cooperation on a common problem’ (European Parliament 2005b). Busuttil also added that ‘the Libyan authorities have been much more cooperative than at the last visit of a delegation from the Parliament in April 2005’ (Agence Europe, 9 December 2005).

The stance taken by the European Court of Human Rights has been equally ambivalent. In a letter dated 10 May 2005, the European Court of Human Rights declared admissible complaints against Italy submitted by 83 refugees expelled to Libya from Italy without being given any opportunity to lodge asylum applications, and it asked Italy to suspend the expulsion of 11 immigrants to Libya (European Court of Human Rights 2005).¹⁸ Yet, in January 2010 the case was archived (European Court of Human Rights, 2010). The decision was taken on the basis that it was impossible for the Court to gather the necessary factual information concerning the particular circumstances of the claimants (European Court of Human Rights 2010: 10). Similar conclusions apply to the reactions to the push-backs in 2009 (Tondini 2010).

On 15 July 2009, Jacques Barrot, European Commissioner for Justice, requested Italy to provide detailed information on its new migration law and policy of returning irregular migrants to their point of departure, ‘in order to check if Italy is breaching international and European law’ (ECRE 2009b; European Voice, 23 September 2009). Italy submitted a formal response on 10 September 2009 (Camera dei Deputati 2009b: 11 and Agence Europe, 23 September 2009). On the basis of the limited information available, it appears that the European Commission did not formally criticise Italian actions and, instead, called on Italy to act as an intermediary between the EU and Libya (Camera dei Deputati 2009b: 11). Reportedly, Italy agreed, on the condition that ‘after having initiated the negotiations, the relations would proceed directly between Libya and the European Union’ (Camera dei Deputati 2009b: 11). The formally complaisant position of the European Commission also emerges from the statements by the newly appointed Director General for Migration, Stefano Manservigi. In July 2010, Manservigi observed that ‘although the Commission prefers a European rather than a bilateral agreement, this bilateral agreement between Italy and Libya had proved to be efficient because illegal migration has been stopped’ (Times of Malta, 5 August 2010). As Manservigi further observed:

Concerning the bilateral agreements, I would prefer to have a European framework as opposed to a bilateral one. However, we need clarity and this one agreement has demonstrated its own efficiency. It is a matter of fact that the flux of migrants from Libya has stopped. [...] We have been informed that the bilateral agreement [between Italy and Libya] is in line with European norms, although there is also a secret component that we are not aware of. [...] Overall we have to make sure that

¹⁸ Applications No. 10171/05, Hussun and others, No. 10601/05, Mohamed and others, No. 11593/05, Salem and others, No. 17165/05, Midawi. It should be noted, however, that in its decision of 12 May 2006 (HUSSUN and Others - Italy, cases N° 10171/05, 10601/05, 11593/05 and 17165/05), the 3rd Section of the European Court of Human Rights (ECHR) dismissed the central claim by the migrants who challenged the lawfulness of the repatriation complaining of a collective expulsion, forbidden by article 4 of the Protocol No. 4 to the European Convention on Human Rights (Strasbourg, 16 September 1963).

what is bilateral now could set the basis of a more comprehensive accord (Migrants at Sea 2010a).¹⁹

Similarly, in the Strategy Paper on Libya produced in 2010 the European Commission endorses Italian–Libyan cooperation in the following way:

In addition to limited capacity, Libya will need to sustain efforts made to prevent irregular migration at sea and in the Southern borders and to cope with the new tasks of joint patrolling at sea induced by the bilateral agreement with Italy (European Commission 2010a: 41).

The stance of the European Council is equally amicable. In October 2009 the European Council called for the enhancement of the operational capacities of Frontex and ‘to intensify the dialogue with Libya on managing migration and responding to illegal immigration, including cooperation at sea, border control and readmission’ (Council of the European Union 2009c). In fact, the conclusions were understood by the Italian government as evidence of EU approval of Italian action (Camera dei Deputati 2009b: 11). Shortly afterwards, in November 2009, the European Council stated that ‘Italy has implemented advanced legal instruments to prevent and combat human trafficking and likewise has not failed to find absolutely innovative solutions in the field of victim assistance’ (Council of the European Union 2009b: 60).

As expected, the debate on the push-backs within the European Parliament has been more diversified. Some Members of the European Parliament (MEPs) have supported Italian action. The following quote from Busuttil is a case in point:

Lately, there has been criticism levelled at the Italian Government because they promptly sent arriving immigrants back to Libya. However, we have to understand that as a result of Italy’s actions, the number of immigrants that have chosen to brave the hazardous journey and risk their lives have decreased considerably this year. It is important to realise that this return system has dealt a big blow to organised crime and human traffickers. This means that while it is doubtlessly necessary to respect immigrants’ right to asylum, it is likewise imperative to persevere in our efforts to put a stop once and for all to this tragedy which is taking place in the Mediterranean (European Parliament 2010a).

Conversely, other MEPs, such as Hélène Flautre (Group of the Greens) and Sonia Alfano (Group of the Alliance of Liberals and Democrats for Europe) have opposed the collaboration between Italy and Libya and demanded that the Commission does not conclude an EU–Libya agreement similar to the Italian one (European Parliament 2010a). Furthermore, in June 2010 Alfano and other MEPs submitted a joint motion for resolution demanding that:

¹⁹ We take Manservisi’s quote as representing the position of the European Commission. To the best of our knowledge the above-mentioned quotes are consistent with statements by other representatives of the European Commission (Migrants at Sea 2010b). However, it is important to emphasise that individuals working for the institutions of the EU may express views which may not fully concur with the opinion presented by their respective institutions. It goes beyond the capacity of this paper to fully account for the numerous discrepancies at the levels of discourses and practices. These alert us to the limits of discourse analysis and the conclusions that can be drawn.

any cooperation or agreement with Libya shall be conditional on the ratification by Libya of the Geneva conventions, the establishment of a national asylum system, the respect of human rights and fundamental freedoms for migrants and refugees and the reopening of the UNHCR office (European Parliament 2010b).

Beyond the remit of the European Union, criticism on the push-backs has been voiced also by the Council of Europe, UNHCR and Human Rights Watch.

On 28 April 2010 the Council of Europe condemned 'Italy's policy, in its present form, of intercepting migrants at sea and obliging them to return to Libya or other non-European countries' since it 'violates the principle of *non-refoulement*, which forms part of Italy's obligations under Article 3 of the European Convention on Human Rights' (Council of Europe 2010a: 25). Likewise, UNHCR noted that the push-backs were 'at variance with the principle of *non-refoulement* and in contradiction to Article 3 of the ECHR (UNHCR, 2010a) and Human Rights Watch called for Italy to 'immediately cease interdicting and summarily returning boat migrants to Libya' and, among other issues, to 'stop cooperating with the Libyan authorities on the interdiction and interception of third-country nationals trying to leave Libya' (Human Rights Watch 2009).

In sum, from this short investigation of the norms and the negotiating procedures of Italian–Libyan collaboration as well as of the European response, we can derive two preliminary conclusions. First, the overall objectives and underlying norms guiding the bilateral cooperation have not changed significantly over the years. In fact, security is a pre-existing and entrenched feature of Libya's *modus operandi*. At its most basic, this denotes that the negotiation and institutionalisation of security norms and practices follow a complex process of reciprocal adaptation by the three actors. These multiple feedback mechanisms will be further conceptualised in section 6. Second, the diverging responses of the EU indicate that the European stance on its external action is far from being monolithic and exposes the contentious and shifting nature of European normative power (Manners 2002; Pace 2007). In turn, this raises the question as to how the arbitrary way in which bilateral negotiations have been carried out bears on the norms and practices framing the EU–Libyan discussion. The next section explores the gradual formalisation of EU–Libyan relations. It argues that in the ongoing, yet embryonic, supralateral engagement, the normative and procedural predicaments observed at the bilateral level do not fully apply.

6 Sharing the dirty job: The evolution of EU–Libya relations

Italy has long requested the EU to take a leading role in 'migration management' in the Mediterranean and, in particular, in relations with Libya. The following extract from Italian parliamentary discussions suffices to make the point: 'These countries [*Italy and Libya*] like all others exposed to migration influxes cannot be left alone. [...] Italy has been strongly calling for the European Union to intensify the collaborative efforts' (Camera dei Deputati 2010a: 171). A clear example of this approach is to be found in the proposal submitted by Italy and France during the European Summit on 29–30 October 2009 in order to launch EU-funded 'charter flights' to deport irregular immigrants under the auspices of Frontex, the European Border Agency. In their joint letter to the Swedish Presidency the two countries made clear that:

It is also necessary to consolidate the recent downward trend in illegal migratory flows from Libya by means of an agreement with that country. It must include operational clauses to support border control measures and to step up cooperation in matters of return. Partnerships must also be forged with the appropriate international institutions in order to develop an area of protection for eligible individuals. In this context, ad hoc solutions must be examined as regards access to asylum procedures outside Europe (French Embassy 2009).

Although the proposal was not formally endorsed by the Council, the Commission stated that it would examine the possibility of executing this plan (ECRE 2009c). Arguably, as a response to the increasing material and reputational costs required to implement and justify controversial policies with Libya, Rome has sought to 'europeanise' the issue.

Already in November 2002, the General Affairs and External Relations Council stated that it was 'essential to initiate cooperation with Libya'. At the end of 2004 (27 November–6 December), a 'Technical mission on illegal immigration' to Libya by the European Commission was of fundamental importance in exploring concrete opportunities for and obstacles to further cooperation (European Commission 2005). The key development, however, was the adoption by the Justice and Home Affairs (JHA) Council on 2–3 June 2005 of a specific set of Conclusions on 'Cooperation with Libya on migration issues'. With that detailed document, the EU committed itself to an integrated approach, including a strong dose of human-rights conditionality. In the words of the Luxembourg Minister Delegate for Foreign Affairs and Immigration, Nicolas Schmit, speaking on behalf of the EU Presidency:

The Council has reached a consensus on the need to develop an integrated approach in the Mediterranean region. Libya is one of the main countries of transit towards Europe for thousands of people arriving from sub-Saharan Africa. Cooperation and dialogue with this country is essential, and has particular significance in itself. The adoption of these conclusions is intended to clarify the different methods of this cooperation with Libya, based on a certain number of principles. It is essential that the European Union leads these third party countries of transit, including Libya, to respect certain basic principles – more particularly the principles enshrined in the Geneva Convention of 1951.²⁰

Since then, and specifically after the European Parliament agreed that 'EU–Libya cooperation on the issue of immigration is imperative' (European Parliament 2006: 13), the progress of EU–Libya cooperation on migration has been slow but constant. Albeit rather inconclusive from a practical point of view, the EU–Africa Ministerial Conference on Migration and Development, held in Tripoli on 22–23 November 2006, was a symbolically important achievement. It contributed to a geopolitical rebalancing of the new EU–Africa dialogue. This is because the first Ministerial Conference in Rabat on 10–11 July 2006 (Ministry of Foreign Affairs of Morocco 2006) had been perceived by several states – including Italy and Libya – as excessively focused on Western African migration and on French and Spanish priorities towards Morocco (Pastore 2007).

With the June 2005 Council Conclusions, and with the Tripoli Declaration, the basic foundations were laid that were required to shift towards an operational phase of EU–Libya

²⁰ See press release at www.eu2005.lu/en/actualites/communiqués/2005/06/03jai-libye/index.html, accessed on 6 April 2007.

relations on migration. The EU – while insisting on the importance of Libya signing the 1951 Geneva Convention, and of its full integration in the Barcelona process – has expressed its willingness to initiate concrete activities with Libya. In fact, on the same day that the death sentence of the Palestinian doctor and Bulgarian nurses accused of deliberately infecting over 400 children with HIV in 1998, had been commuted to life imprisonment, i.e. on 23 July 2007, Commissioner Waldner Ferrero signed a Memorandum of Understanding with Libya.

On 15 October 2007, the External Relations Council affirmed the need for a framework agreement with Libya whose negotiations were officially launched on 12–13 November 2008 (European Commission 2010a: 5). This agreement is expected to ‘establish mechanisms for political dialogue and cooperation’ in the fields of foreign and security policy (European Commission 2010a: 5). It shall contain provisions for a ‘deep and comprehensive’ free trade area (FTA) to cover trade in goods and services, investment issues and other key trade rules; and for close cooperation on justice, freedom and security as well as agriculture and rural development, fisheries and an integrated approach to maritime affairs, including maritime governance (European Commission 2010a: 5). The deepening diplomatic engagement has come alongside with some financial support provided by the European Commission.

On the one hand, since 2004 Libya has been receiving limited financial assistance through direct contracts with European or international service providers. Examples of this are the ‘EU HIV Action Plan for Benghazi’ (BAP), and, in the area of migration, projects through thematic instruments such as AENEAS and the ‘Thematic Programme on Migration and Asylum’ (European Commission 2010a: 12). On the other hand, as part of the negotiations on the framework agreement, the EU has committed itself to providing more substantial financial assistance, mainly through the European Neighbourhood and Partnership Instrument (ENPI). Reportedly, this assistance is in the order of US\$81.8 million (Global Insights, 3 March 2010; Human Rights Watch 2009). The funding is to be used over the next three years to boost reforms in areas of economic and political governance, as well as to improve diplomatic ties with Europe (Global Insights, 3 March 2010).

The negotiations notwithstanding, Libya appears to be disappointed with the European Commission and the overall results thus far. For example a recent statement by the Italian Parliament reads as follows:

As regards the fight against clandestine migration, Al Obeidi [Libyan Minister for European Affairs] has lamented the fact that the European Union has failed to implement the Memorandum signed in 2007 with the then Commissioner Ferrero Waldner which envisioned joint control of the land borders and of aerial space. The Memorandum also entailed a satellite monitoring system to control Libya’s southern borders amounting to EUR 300 million to be covered half by Italy and half by the EU. He also emphasised that while Italy has lived up to its commitments, [...] the EU has yet to contribute toward the establishment of this monitoring system (Camera dei Deputati 2010a).

Interviews conducted with Libyan officials in January 2010 also confirm this profound sense of dissatisfaction:

Sometimes the EU treats Libya as if it was Mauritania. When the EU proposed the framework agreement to Libya, it used the same text it used in the negotiations with Mauritania. Yet this cannot be accepted! There are many reasons why I say this. First

Libya has a very long coast which creates major problems when it comes to managing migration. Libya is a transit country with many migrants coming here in order to go to Europe. Second, Libya has an economic capacity that is pretty unique in the region. [...]. Hence the EU has to take more seriously the special role that Libya plays. This of course may have an important effect on the outcome of the negotiations that are currently underway.²¹

Even more direct and explicit sign of Libyan dissatisfaction with the material level of the EU's cooperation was given by Colonel Qadhafi during an official visit to Italy in August 2010 when the Libyan leader asked the EU for €5 billion per year as the necessary compensation for his country's cooperation in stemming migration flows. Instead, on 5 October 2010, Cecilia Malmström, European Commissioner for Home Affairs, and Štefan Füle, European Commissioner for Enlargement and European Neighbourhood announced increased financial support for Libya's reforms amounting to a total of €60 million for the period 2011–2013. These funds were intended to help improve Libya's health sector, support economic development and in particular Libya's small and medium enterprises, and assist the Libyan administration in its modernisation efforts (European Commission 2010b).

Interestingly, in concomitance with the temporary closure of the UNHCR office in Libya on 9 June 2010, the EU and Libya began the seventh round of negotiations on migration and asylum as part of the framework agreement. In that context, the consistency of Libyan claims was explicitly questioned by the European Commission. According to Hugues Mingarelli, the deputy director general for external relations at the Commission, Libya continues to refuse to sign a readmission agreement yet, at the same time, 'it states its concern about the growing flow of sub-Saharan illegal migrants crossing its territory destined for the Maltese and Italian coast' (Agence Europe, 12 June 2010).²² However, during this round of negotiations, the two sides signed a 'guidance programme which includes priorities for the EU in its financial and technical contribution to Libya's development for the years 2011–2013' (BBC, 9 June 2010). The reservations expressed by the Libyan diplomats might explain why the Commission has already announced that 'the readmission of irregular migrants from third countries will not be retained in the negotiation in the aim to reach an agreement with Libya and finalise this negotiation' (Council of the European Union 2010: 8). Likewise, at a meeting on 4 and 5 October 2010 between Malmström and Al-Obeidi, Libya's Secretary of General People's Committee for Public Security indicated that the signing of the Geneva Convention is not part of the official agenda (ECRE 2010). At the same time however, the European Commission still emphasises the need for Libya to establish 'a protection system able to deal with asylum seekers and refugees in line with international standards and in good cooperation with the competent international organization' (European Commission 2010b). Further evidence of the difficulties faced by the European Commission is to be found in the role of Frontex. In fact, Libya has refused to develop technical cooperation with Frontex and to participate in its regular naval operations in southern Mediterranean waters (European Commission 2010a: 43).

²¹ Anonymous interview on 14 January 2010 in Tripoli, Libya.

²² In the context of these negotiations, in line with Italian positions, the European Commission also expressed concern over the closure of UNHCR (Europolitics, 10 June 2010).

While the discussions so far are still at an early stage, some preliminary conclusions can be drawn as to the emerging norms and procedures shaping the discussions between the European Commission and Libya. On the one hand, the EU as a whole has acquiesced to Libya's demand for an *ad hoc* arrangement beyond and above standard negotiating frameworks such as the Barcelona Process. It is also revealing that as part of the framework agreement the European Commission has agreed to drop the clause on the readmission agreements from the negotiating table. Cooperative arrangements are contingent upon adaptation and give-and-take games which, as we shall argue below, respond to multiple competitive pressures. On the other hand, the European Commission has had to adhere to its own checks and balances, a far cry from informal practices settled at bilateral level. Furthermore, the limited European funds provided so far have not been directly allocated to the Libyan government but have been co-managed by international organisations such as the International Organization for Migration and the Italian government.²³ Accordingly, the pressure towards informality that has characterised the Italian–Libyan arrangements has had little bearing at supralateral level. Arguably, the complex functioning of the European Commission has thus far allowed it to distance itself from the dubious legal nature of the practice implemented at bilateral level. Clearly, the analysis on the inner normative drive belongs to the realm of speculation. While the response of different European organisations towards Italy has been hesitant, EU–Libyan relations have placed issues such as international human-rights standards more at the centre stage, maintaining distance from the Italian–Libyan experience.

7 Tracing the bargaining map

The evolving and deepening interactions between Italy, Libya and European institutions has often been dubbed as clear exemplification of the European attempt to extend its hegemony outside its borders (Joffé forthcoming). The above-mentioned empirical analysis complicates this picture for it highlights the relative constraints faced by each actor and the convoluted manner in which norms and practices develop, are negotiated, transposed and retained. How can we then understand and explain the process whereby ideas and actual policies on migration control and cooperation with third countries are simultaneously destabilised and re-constituted? To better understand the multiple equilibria at play and respond to our initial questions we shall now apply some of the analytical tools introduced in section two.

As first step, we have pictured the multiple feedback mechanisms at three levels *in between* norms and practices: 1) framing the nature of the issue at stake, i.e. migration; 2) the institutional setting for conducting the negotiations; and 3) the methods of compliance.²⁴ On the basis of the above analysis, for each level we identified one key empirical matching factor, i.e. securitisation of migration, shifting degrees and modes of formal negotiating practices, and adherence to international norms respectively. The choice of these three overlapping empirical factors is based on the findings of the previous sections. The findings suggest that the chosen factors are the defining and most critical aspects distinguishing each level and cutting across the bilateral and supralateral

²³ This however this may change as the framework agreement proceeds.

²⁴ The choice of these three levels draws from the literature on institutions by North (1990) and reciprocity in international relations as defined by Keohane (1986).

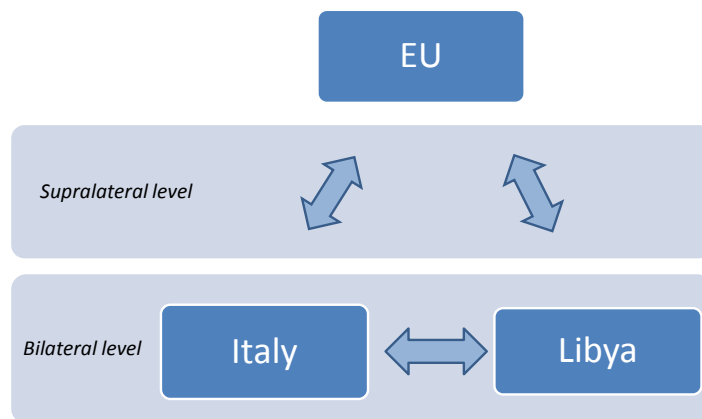
negotiations. The three matching factors are by no means the only relevant variables explaining processes at each level. Yet, the empirical analysis indicates that they are among the most controversial and relevant factors in terms of framing, institutional settings, and methods of compliance. As a first step towards the theorisation of the interactions between the three actors and before turning to the core of this section, let us make explicit how and why each factor relates to its level.

First, the framing of migration by the three actors impinges on fairly analogous security paradigms. Seemingly, not only their discourses but also the policy responses unite around a fairly homogenous array of socially coercive measures to tackle what is normally perceived as a social threat. The securitisation of migration is thus taken as the main empirical qualification pertaining to the first level. Second, the institutional practices adopted by the three actors are characterised by *changing* degrees of formalisation. The three actors have sought to cement increasingly formal arrangements with their counterparts. Hence we take the changing willingness and capacity to enter formal and transparent discussions as *sine qua non* features of the institutional setting of our case study. Third, the methods of compliance with the terms being negotiated vary significantly between the three actors. These variations relate to the relative need of actors to uphold international norms including, for example, human-rights obligations. The stance towards international norms and the influences on the other actors are key to understanding the multiple reciprocities. Hence, in summarising the empirical findings in the previous sections three propositions can be singled out with regard to overlapping externalities in terms of negotiating norms and practices. Simply put, we are interested in tracing the nature and directionality of the influences for each of the three levels by distinguishing bilateral and supralateral levels. Beyond doubt, our proposed categorisation is by no means the only way of unpacking the interaction between the three actors at the three levels. This framework however allows us to compare the direction and nature of the relationship between the three actors and examine how it varies between bilateral and supralateral. Without aiming to provide a full account of the many nuances and developments characterising the complex case study, these figures offer a stylised rendering of the increasing intertwining between bilateral and supralateral coordination.

The prevailing wisdom in the scholarly discussion on European external dimension is that the EU is forcing Libya to adopt and implement policies which tend to liken migration to a security threat. In simplistic terms this is one of the assumptions framing the burgeoning literature on the 'securitisation of migration' (Huysmans 2000). However, in unpacking the extent to which security norms related to migration have emerged and have been negotiated among the three actors, a different picture emerges. This picture challenges the enduring prejudice towards the unilateral transfer of a securitised approach to migration from Europe to Libya. In fact, the empirical analysis evinces that Libya is among the many countries with a long history of treating migration as a foreign-policy tool. The inherently political nature of migration has also been used by the North African state to consolidate ideas of belongings and, more broadly, its national building project (Paoletti 2008a). Therefore, in the Libyan context images of foreigners as the discursive 'other' and as a threat to society are not new. An important corollary follows suit: the idea that Europe is de-locating its securitised construction of migration to Libya is misleading. The consolidation of the security-migration nexus can be best understood as a dialectic process whereby security ideas and practices originating from Libya, Italy and the EU are put forward and

agreed upon on the basis of a larger give-and-take framework. Accordingly, Figure 1 illustrates the reciprocal way in which security norms have become established. The three actors share a tendency towards defining and addressing migration as a pivotal security matter and are necessarily co-implicated in the process. Therefore, in the unfolding negotiations they have sought to ‘externalise’ their own securitised interpretation of migration.

Figure 1: Framing the key issue: externalities on the securitisation of migration



Note: The expression ‘supralateral’ is defined in greater detail in the introductory section above. In brief, it refers to the relations between the EU and state actors, whether EU member states or third countries.

Less reciprocity is to be found in the manner in which issues are agreed upon, i.e. at the level of institutional setting. As illustrated in Figure 2, while the Italian–Libyan relations have been characterised, at least in their initial phase, by informal agreements, the European Commission has maintained established customary practices which necessitate fully fledged formalisation before the onset of any more concrete form of cooperation. For example, the decision of the European Commission not to yield to Libya’s request for €5 billion, and Malmström’s comment on the relations with Libya being too ‘chaotic’, are cases in point (ANSA, 6 October 2010). Significantly, Italy has sought to co-opt the EU in its approach. At its most basic, Italy has insisted on the European endorsement of its controversial actions. However, Italian requests for the EU to undertake systematic return flights to third countries and to take the lead on Italy’s dubious policies have been to no avail. The partial failure of Italy as well as Libya to fully sway Brussels towards their approach, largely based on informality, is illustrated by the dashed arrows in Figure 2. While this proposition questions standard explanations since it accounts for a failed externality originating from Libya toward the EU,²⁵ it concurs with the well-known argument on European relative weakness in enforcing transparent *modus operandi* between member states and third countries.

²⁵ The fact that Libya has refused to collaborate on the Barcelona Process and the Mediterranean Union can be taken as an example of trying to circumvent established multilateral mechanisms in favour of an *ad hoc* and less open type of cooperation.

Figure 2: Institutional setting: externalities with regard to informal negotiating practices

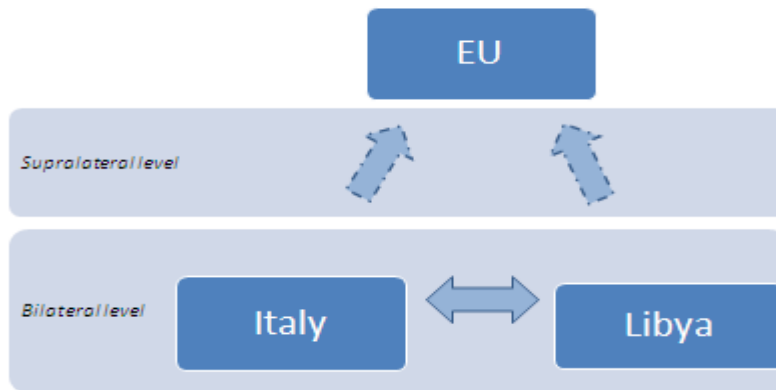
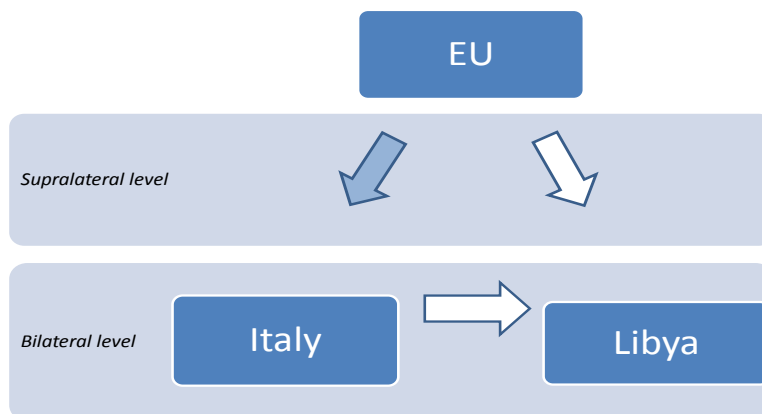


Figure 3: Methods of compliance: externalities with regard to international norms



International norms such as human-rights obligations have influenced the behaviour of the three actors in different ways (Figure 3).²⁶ Once again we see here that reciprocal influences defying clear-cut directionality for all actors have relevant bearings on the outcome of the selection and adoption of given norms. On the one hand, in its relations with Libya the European Commission has repeatedly emphasised, and has been constrained by, underlying principles such as the Geneva Convention, and internal consolidated practices such as fund disbursement. These have allowed the EU not to acquiesce fully to

²⁶ One important caveat applies. Formal objectives as presented in the public arena may not reflect strategic policy drivers. While we are unable to elaborate on the relation between the two, it is still possible to identify overarching motives and how they influence the behaviours of other actors. To be sure, however, there remains ample room for examining, in future research, the difference between official and 'substantive' interests.

Libya's demands. On the other hand, with regard to Italian controversial undertakings, different European bodies have taken a flimsy position. The same applies to the relations between Italy and Libya. In both cases, customary norms and practices appear to have been by-passed by other considerations presumably based on security and economic priorities. Formally Italy continues to support international legal standards. Significantly, the official standing does not reflect actual policies. The weakness of their normative clout is symbolised by the empty arrows.

Having sketched the patterns of reciprocal influences at the levels of norms and practices, the lingering question now is: how can we explain the directions and changing nature of these multiple externalities? As anticipated, the notion of competition as part and parcel of market governance provides us with cues to unpack this riddle (Lavenex and Schimmelfennig 2009). The rival and, at the time, contradictory norms and practices put forward by the three key actors, i.e. Italy, Libya and the European Commission, confirm the hypothesis formulated by Lavenex and Wichmann (2009),²⁷ whereby 'attempts at hierarchical governance or policy transfer face strong difficulties due to the weakness of the *acquis*, the lack of incentives the EC can offer to compensate significant interest asymmetries, and the weak level of legalization in relations with third countries' (Lavenex and Wichmann 2009: 93). In fact, the incentives provided by both Italy and the EU have proven ineffective. For example Libya did not agree to join the naval operation until Italy committed to provide an unprecedented compensation for colonial wrongdoings. Similarly, economic inducements brought with the framework agreement have yet to convince the Northern African country to cooperate with Frontex. The costs incurred by both Italy and, to a lesser extent, the EU, are epitomised in their having to adjust their initial cost-and-benefit matrix and experiencing considerable impediments in their capacity to influence Libya. Conflicting interests, the relative weakness of EU monitoring mechanisms and the absence of compensatory rewards limit the portent of a putative hegemonic model of interaction. The acknowledgement of the 'asymmetry of the overarching relationship' in the EU–Libyan–Italian context opens up new grounds for conceptualising shifting power dynamics between state and non-state actors.²⁸ And this is precisely, in a nutshell, where one of our main interests lies. The manner in which varying preference orderings and negotiating mechanisms have taken hold among the three actors tells us that multiple two-way mechanisms at the levels of both norms and actual policies are at play. The process whereby norms and negotiating practices prevail over others can be understood as the result of a competition 'between formally autonomous actors rather than the result of hierarchical harmonization or networked co-ordination' (Lavenex and Schimmelfennig 2009: 799). As a defining feature of what they call 'market governance', this notion helps us to explain the

²⁷ To be sure our analysis does not focus on enlargement. Hence it cannot be fully ascribed to the governance system as defined by Lavenex and Wichmann and the collaboration between Libya does not entail, at least formally, rule selection, adoption and application. These limits notwithstanding, some of the concepts offer useful analytical tools to make sense of our case study and, hopefully, provide relevant analytical insights to be applied on a comparative basis in future studies.

²⁸ It is worth noting that the Italo–Libyan Friendship Treaty is based on (and not understandable without) the role of non-state economic actors: the \$5 billion to be paid by Italy as a compensation for colonial wrongdoings will be deducted from the overall amount of taxes due from ENI (Ente Nazionale Idrocarburi, the Italian oil and gas company) to the Italian State on the revenues of extraction activities to be carried out in Libya in the next two decades. It is explicitly understood that while this \$5 billion will finance the construction of a coastal highway across Libya, a large share of these works will be carried out by Italian construction and engineering firms (Gazzini 2009).

adaptation of the three actors to evolving norms and practices and to map externalities originating from all the actors. If we accept this, one reflection follows suit: we are exposed to something different from the unidirectional transposition of a given set of rules as assumed in the current scholarship on European external governance.

The empirical analysis shows that the definition of common rules rests on a progression of mutual recognition whereby the three actors make relative concessions. In the Italian–Libyan case the rules taking firm ground have been, until recently, the informality of the arrangements and the questionable adherence to the rule of law, including human-rights norms. Seemingly, international standards are relatively marginal to the bilateral endeavour. Some of the most controversial practices, such as the return flights between 2004 and 2006 and the push-backs in 2009, appear to have been informally agreed upon. To an extent, these two moves presuppose Italy’s yielding to Libya’s limited interest in both formalising the accord and being subject to international scrutiny. The glaring counterfactual here is the fact that Italy has indeed signed readmission agreements with several other neighbouring countries (including, for instance, Tunisia and, more recently, Egypt).²⁹ This shows that the process whereby norms and practices are selected and internalised is all but one-way. It eschews formalised and deeply integrated systems, as the market governance mode elaborated by Lavenex and Schimmelfennig (2009) postulates. Interestingly, in this context important lines of disconnection between the bilateral and the supralateral experience can be found. For example, the EU has not provided significant financial aid because of the lack of overarching institutional framework, and negotiations have – at least formally – given paramount attention to rule of law and international norms. Competition partly explains this preliminary outcome. The partial non-negotiability of European long-standing *modus operandi* renders Libya’s defection too costly which justifies its thwarted compliance. Hence a tension in norms and practices at the interface of bilateral and supralateral initiatives is observable. On the one hand, the European Commission has endorsed Italian undertaking. On the other hand, other European institutions such as the European Court of Human Rights and members of the European Parliament have voiced serious criticism. This is insightful in as much as it draws attention to the many agencies and conflicting interests within the EU.

One important point of connection between the two levels, however, is to be found in a reduced leeway of both Italy and the EU in their ‘external dimension’ effort. While seeking to extend and deepen migration management beyond their borders, they have been exposed to the many constraints not so much at the levels of ideas but actual practices. If Libya appears to fully uphold the migration–security agenda, it remains unwilling to fully concede to Italian and European agendas. This leads us back to the putative expansive nature of the EU migration regime understood as market governance. The gradual approximation both at the level of practices and principles coalesce externalities coming from the three actors. Our first section demonstrates that pre-existing norms shaping migration management in Libya, such as informality and security, have been applied also at bilateral level. Overall, from the perspectives of Italy and the European Commission, the approximation is here exemplified in having to revise and at the same time backtrack on established negotiating procedures and related dynamics of issue setting. Meanwhile, from Libya’s viewpoint, approximation has mainly consisted in selectively

²⁹ Exploring this issue goes beyond the purposes of the present analysis. For more on this see Cuttitta (2008).

adopting prevailing security norms as a means of either upholding or rejecting Italian or European proposals. In so far as Italy and, more recently, the European Commission are the initiators of the process, it can thus be argued that their agendas and standard procedures had to undergo major revisions. The process whereby Libya has induced both counterparts to alter some of their initial objectives is central to our discussion. At its most basic, it questions the defining rationale of the notion of 'governance by externalisation', namely that the process whereby rules and practices are transferred is unidirectional. In most of the scholarly works, the concept of 'externalisation' in the field of migration controls denotes linearity to the extent that the process originates from the EU and it ends in the third country (Rodier 2006; Guild and Bigo 2003). Our case study complicates this account and it argues that processes of 'lesson-drawing' and 'enabling impact' apply at multiple ends.

8 Conclusion

On 19 June 2009 the Presidency of the Council of the European Union made it clear that 'concluding the negotiations on the EC readmission agreements with key countries of origin and transit such as Libya and Turkey is a priority' and that 'until then, already existing bilateral agreements should be adequately implemented' (Council of the European Union 2009a: 15). This quote draws our attention to the way in which European bodies respond to bilateral initiatives between EU member states and third countries and vice-versa. In fact, an emerging scholarship has been investigating the 'rapidly emerging "bottom-up" global migration governance framework' (Betts 2008b: 2), whereby in the absence of coherent multilateral institutions, states and non-state actors are creating *ad hoc* forms of multi-level migration governance. In this paper we have sought to better understand and explain this process in the context of the interactions between Italy, Libya and the EU. We did so by introducing the novel concept of 'supralateral', which defines the relations between a supranational body, such as the EU, with state actors. We then considered how long-lasting bilateral interactions on migration, such as the one between Italy and Libya, relate to emerging supralateral ones, as in the case of the EU–Libyan framework agreement and vice-versa.

By building upon the discussion on external migration governance, we have briefly reviewed the bilateral negotiations between Italy and Libya and those between Libya and the EU which we qualified as 'supralateral.' We then considered the nature and depth of multiple interactions at three main levels: framing the issue at stake, i.e. migration; the relative formality of the institutional setting shaping negotiating practices; and the compliance mechanisms in relation to international norms. We grounded these analytical constructs on three decisive, but not exhaustive, empirical domains: security-based migration as framing the objectives and measures under negotiations; increasing formalisation qualifying the institutional modes of bargaining; and, at the level of compliance, bewildering and flimsy endorsement of international norms. Proceeding along this line of thinking, we presented a tentative theorisation of a three-fold dynamic across and beyond the bilateral and supra-lateral matrix. One important conclusion regards European political leverage. The analysis sheds light on notable variations between policies at any given stage of the policy cycle and, more broadly, tensions between European normative muscle and actual capacity to affect behaviour of both member states, like Italy, and third countries, like Libya. More than that, relative limitations on the ability to affect the

behaviours of their interlocutors were also observed for Libya and Italy. Therefore Hill's (1993) reflection on the capacity-expectations gap applies *also* to the stance of EU member states and of the EU towards third countries. Where this appears at odds with prevailing views of European externalisation of migration policies, it provides the opportunity for applying in novel ways selected insights from the migration governance literature. The constraints experienced by each actor are the result of a competitive process of norm diffusion and multiple policy transfers. In this vein, we questioned the notion of rule expansion as one-way shifts in the regulatory and organisational boundaries of European migration governance. Put simply, the idea of external governance as mere extension of the *acquis communautaire* to non-member states appears to be inadequate.

From a political point of view, when reaching out to third countries, Europe's normative clout tends to weaken. In the largely uncharted waters of the EU's external action and in an increasingly multipolar international environment, the pre-existence of strong bilateral relations between a member state and a more or less powerful third country becomes particularly relevant. The pre-existence of strong bilateral ties with third powers has been perceived in EU circles more as an obstacle to developing a 'truly European' external policy than as an asset. As the case analysed in this paper suggests, this might be changing. Yet this is not always openly recognised, due to the often embarrassing normative implications of state-to-state relations from the point of view of a rigidly self-defined normative power. In conclusion, a provocative hypothesis could be that the Italian–Libyan saga with its scandalizing potential and destabilising repercussions at EU level is not an extreme and unique case but rather an anticipation of future trends (Klepp 2008). In this vein, the Italian–Libyan situation is a crucial challenge not just for the external dimension of the EU's migration policy, but much more fundamentally for the EU's external action as a whole both in terms of its normative underpinning and actual policies. Ultimately, it impinges on the EU's identity and *raison d'être*.

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Annex 1: Chronology of key political events involving Libya between 1994 and 2010³⁰

21 December 1988	PanAm flight 103 explodes over the Scottish town of Lockerbie.
19 September 1989	French airliner UTA 772 explodes over Niger.
1992–4	Through a series of resolutions, the UN Security Council first asks Libya to surrender suspects and then adopts and gradually strengthens an embargo.
1994	Libya withdraws its troops from Chad following a decision by the International Court of Justice rejecting its territorial claims over the Aouzou strip.
1994 onwards	Col. Qadhafi's pan-Africanist turn includes strong opening to sub-Saharan immigrants.
September–October 1995	Expulsion of several thousands of Arab foreign workers (primarily Palestinians, Sudanese, and Egyptians). The move is officially justified with the need to create jobs for Libyans, but it is also explained as a reaction against the ongoing Palestinian–Israeli peace process.
4 February 1998	The Community of Sahel-Saharan States CEN-SAD is established under the initiative of Libya. Other founding members are Burkina Faso, Mali, Niger, Chad and Sudan.
4 July 1998	Bilateral ministerial meeting Italy–Libya. Formal regret expressed by Italian government for colonial past; compensations agreed.
August 1998	A bilateral agreement on readmission and technical cooperation against illegal immigration is signed between Italy and Tunisia; a smuggling route to Sicilian coasts which had gained importance in the previous years is effectively closed.
5 April 1999	The two Libyans agents accused for Lockerbie bombing are surrendered to the Netherlands for trial. UN Security Council suspends sanctions.
6 April 1999	Italian Minister of Foreign Affairs, Lamberto Dini, is the first high-level European government representative to travel to Libya since the enforcement of UN sanctions in 1992.
9 September 1999	Sirte Declaration calling for the establishment of an African Union (then established in Lomé in 2000).
1 December 1999	Prime Minister Massimo D'Alema is the first western head of government to visit Libya since 1992.
September 2000	Reported killing of over 50 foreign workers, mainly from Chad and Niger, in anti-immigrant riots in the city of Az Zawiyah.
13 December 2000	Italian–Libyan agreement on cooperation against terrorism, drug trafficking and illegal immigration (not published); basis for all further bilateral agreements.
11 September 2001	Col. Qadhafi is among the first foreign leaders to condemn the terrorist attacks against the Twin Towers and the Pentagon.
24 October 2002	Libya threatens withdrawal from the Arab League.
4 July 2003	Important (unpublished) operational agreement on cooperation against illegal migration and human smuggling signed in Tripoli by Italian Head of Police, Gianni De Gennaro, and Libyan Undersecretary for Justice and Public Order.
12 September 2003	Resolution 1506 of the UN Security Council lifts sanctions against Libya. The first part of the agreed compensation for the families of the victims of Lockerbie bombing is paid.

³⁰ This very selective chronology owes much to a more detailed synoptical chronology drafted by Luca Trinchieri, whom we thank for the authorisation to make use of his work. The responsibility for any inaccuracy is obviously only the authors'. The main sources were the following: *Adnkronos*; *Agi*; *Aki*; *Ansa*; *Apcom*; *Reuters*; Amnesty International, *Lampedusa: ingresso vietato. Le deportazioni degli stranieri dall'Italia alla Libia*, EGA Editore, Torino 2005; *BBC News, online archive* (1999-2006); *Keesing's Record of World Events* (1996-2006). *Il Corriere della Sera* and www.corriere.it; 2006; *Il Manifesto*, 2005-2006; *The International Herald Tribune*, 2006; *Jamahiriya News Agency (Jana)*, www.jamahiriyanews.com, 2006; *Jeune Afrique*, www.jeuneafrique.com/pays/libye.htm, 2006; *La Repubblica* and www.repubblica.it (1998-2006); *La Stampa* and www.lastampa.it (1998-2006); *Le Monde*, 2006; www.europa.eu.int.

19 December 2003	The Libyan government announces its decision to eliminate all materials, equipment and programmes leading to the production of WMD.
21 February 2004	Following an arrest warrant by Italian judiciary, Ms Ganat Tewelde Barhe (better known as 'Madame Gennet'), allegedly boss of an important smugglers' organisation, is handed over by Libyan authorities to their Italian counterparts.
27 April 2004	Historical visit of Col. Qadhafi to Brussels. During the meeting with the President of the European Commission, Romano Prodi, international migration issues are on the agenda.
6 May 2004	Five Bulgarian nurses and one Palestinian doctor operating in Libya, accused of having deliberately infected over 400 Libyan children with the HIV virus, are sentenced to death. Protests from the international community.
21 July 2004	The Italian Minister of the Interior, G. Pisanu, raises an alarm regarding '2 million migrants' ready to reach Italy from Libya.
12 August 2004	High-Level Italian police official agrees in Tripoli with Libyan counterpart enhanced cooperation on illegal migration, including joint patrolling of Libyan coasts.
25 August 2004	Meeting in Sirte between Col. Qadhafi and the Italian Premier, Silvio Berlusconi, where clandestine immigration is a core topic.
October 2004	Following massive unauthorised landings of migrants from Libya in Lampedusa, an air lift is organised to deport hundreds back to Libya. Strong protests by UNHCR and NGOs followed.
7 October 2004	Greenstream, gas pipeline linking Libya (Mellitah) and Italy (Gela) is inaugurated by Col. Qadhafi and Italian Prime Minister Silvio Berlusconi.
11 October 2004	The EU's Council of Ministers agrees to lift all economic sanctions against Libya including an arms embargo. Italy is therefore allowed to supply Libya with surveillance equipment needed to control migration.
12 November 2004	With Law 271/2004 (art. 1 bis), the Italian Parliament authorises the financing of the construction in the territory of foreign countries of <i>ad hoc</i> facilities for migration law enforcement purposes.
28 November– 6 December 2004	Technical mission of the European Commission to Libya to verify conditions and identify areas for EU–Libya cooperation on migration.
13–17 March 2005	New air lift of deported migrants from Italy to Libya; the European Commission, through its Vicepresident Franco Frattini, expresses disagreement.
14 April 2005	European Parliament's Resolution on Lampedusa, asking the Italian government 'to refrain from collective expulsions of asylum seekers and "irregular migrants" to Libya'.
10 May 2005	The European Court of Human Rights asks Italy to suspend the expulsion of a group of irregular migrants to Libya; many of them, however, have already been expelled.
May 2005	Col. Qadhafi convenes Sudanese representatives in Tripoli as an attempt to contribute to the solution of the Darfur crisis. This is part of a protracted Libyan effort to broker peace in the western region of Sudan.
2–3 June 2005	The EU's JHA Council adopts a set of conclusions on 'Cooperation with Libya on migration issues'. An <i>ad hoc</i> dialogue on migration issues between Libya and the EU is launched and a long series of joint law-enforcement measures is agreed upon.
4–6 December 2005	An <i>ad hoc</i> delegation of the European Parliament visits Libya: the final report stresses that 'EU–Libya co-operation on the issue of immigration is imperative'.
17 January 2006	Contract signed by the Italian state-owned firm Finmeccanica with the Libyan authorities for ten helicopters equipped for border surveillance: it is the first big contract for military equipment with a western firm.
17 February 2006	Following a provocation by Italian Minister Roberto Calderoli (who appeared in TV wearing a t-shirt printed with the notorious 'Mohammed cartoons'), rioters attack Italian consulate in Benghazi. Calderoli is forced to resign.
15 May 2006	The USA restores full diplomatic relations with Libya and removes it from the list of state sponsors of terrorism.
24 May 2006	During an official visit to Lampedusa, the Italian Minister of Social Affairs, Paolo Ferrero,

	and Interior Undersecretary, Marcella Lucidi, announce that Italy will suspend all expulsions towards Libya.
21 September 2006	An informal JHA Council in Tampere allocates €3 million to strengthen Libyan capacities in the field of border controls.
22 November 2006	EU–AFRICA Ministerial Conference on Migration and Development in Tripoli.
23 November 2006	During bilateral meetings with the Italian Ministers of the Interior, Giuliano Amato, and of Foreign Affairs, Massimo D’Alema, Col. Qadhafi asks for European support not just in the control of coasts, but also of southern land borders.
8 April 2007	In Libya for Easter holidays, Italian Minister of Foreign Affairs, Massimo D’Alema, meets Col. Qadhafi again. Talks of an Italian engagement for the construction of a coastal road between the Egyptian and the Tunisian borders as compensation for colonial damages.
July 2007	Release of the Bulgaria nurses and the Palestinian doctor. The EU’s External Affairs Commissioner, Benita Ferrero-Waldner, makes official visit to Tripoli and signs the Memorandum of Understanding.
30 December 2007	A Protocol for the cooperation between Italy and Libya to counter clandestine immigration is signed in Tripoli between the Italian (centre-Left) Minister of the Interior and the Libyan Minister of Foreign Affairs, Abdurrahman Mohamed Shalgam. Among other things, Italy agrees to donate six vessels equipped for migration controls at high sea.
July 2008	Arrest of Col. Qadhafi’s son Hannibal and his wife, Aline Skaf, in Geneva for allegedly beating two servants at a luxury hotel in Switzerland. This unleashed a diplomatic dispute between Switzerland and Libya. Libya retaliated by cancelling oil supplies, withdrawing billions of dollars from Swiss banks, refusing visas to Swiss citizens and recalling some of its diplomats.
31 August 2008	A historical ‘Friendship, Partnership and Cooperation Treaty’ between Italy and the Libyan Jamahiria is signed in Benghazi by Italian Prime Minister Silvio Berlusconi (centre-right) and Libyan leader Col. Qadhafi. Cooperation on migration controls is just one of the items. Italy agrees to pay \$5 billion in compensation for colonial damages. Part of this money will be used to finance major infrastructural works in Libya with the involvement of Italian firms.
May 2009	A new policy is inaugurated based on coordinated Italo–Libyan patrolling at high sea, interception of suspect vessels and rejection of vessels with undocumented migrants on board. No formal screening procedure for asylum-seekers is envisaged. Allegations of violation of the Geneva Convention and other international and European legal standards by several NGOs and international bodies.
September 2009	Col. Qadhafi’s first visit to the United Nations headquarters in New York City.
February 2010	As part of the dispute between Switzerland and Libya, Libya stopped issuing visas to citizens from many European nations, prompting condemnation from the European Commission. Between February and March Italy and other European countries intervened and the ban was officially lifted and relations normalised.
June 2010	On 6 June the UNHCR Office in Tripoli is closed by Libyan authority. After formal protest by the UN, on 26 June UNHCR can resume its activity. Reportedly, this is also thanks to an alleged Italian mediation.
August 2010	Second Official visit by Col. Qadhafi in Italy. In a speech, the Libyan leader declares that the EU should finance Libya with €5 billion per year to ensure cooperation in the field of migration controls.
13 September 2010	A Libyan boat (one of the 6 donated by Italy in 2007) with Italian liaison personnel on board fires a machine-gun on an Italian fishing boat which had refused to stop in international waters. The episode stirs bitter political controversies in Italy, focusing on the inappropriate implementation of bilateral agreements by the Libyan counterpart.
6 October 2010	The two-day meetings in Libya between EU Commissioners Cecilia Malmström and Stefan Füle with Libyan representatives result in an agreement between the EU and Libya on a plan for future cooperation on issues related to asylum, migration, and international protection.