

Forensic Oceanography

**Report on the “*Left-To-Die Boat*”**

Charles Heller, Lorenzo Pezzani and Situ Studio

Part of the European Research Council project “Forensic Architecture”  
Centre for Research Architecture, Goldsmiths, University of London.

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- B.6 Letter sent on 28 November 2011 by Gil Arias, Deputy Executive Director of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), in reply to a request of information sent by a colation of NGOs.
- B.7 Email sent by Mathias Eichenlaub (Press and Media Section – Media Operation Centre, NATO Headquarters) on 3 October 2011, in response to an email by journalist Emiliano Bos. This document was quoted in Emiliano Bos and Paul Nicol’s documentary “Mare deserto” produced for the RSI and broadcasted on 24 January 2012.
- B.8 Letter from NATO to the Council of Europe dated 8 February 2012.

ANNEX C: Interviews with the survivors (note that the interviews with the migrants are listed here only as references but will not be made public):

- C.1 Interview with Dan Haile Gebre, conducted by Lorenzo Pezzani and filmed by Charles Heller in Milan on 22 December 2011.
- C.2 Interview with Abu Kurke Kebato conducted on the phone by Emiliano Bos in April 2011, while the former was still in Libya.
- C.3 Second interview with Abu Kurke Kebato conducted by Emiliano Bos on 2 and 3 August 2011 in San Giorgio Lucano (MT), Italy.
- C.4 Interview with Elias Mohammed Kadi conducted by Michel Toubiana, member of REMDH executive committee and honorary president of the League for Human Rights (France), on 6 September 2011 at the UNHRC camp in Choucha, Tunisia.

C.5 Interview with Elias Mohammed Kadi conducted by Emiliano Bos between 17 and 19 August at the UNHRC camp in Choucha, Tunisia.

C.6 Interview with Filmon Weldemichail Teklegergis conducted by Emiliano Bos on 8 and 9 October 2011 in Larvik, Norway.

C.7 Interview with Bilal Yacoub Idris conducted by Emiliano Bos on 6 September 2011 in Rome.

C.8 Interview with Mohammd Ahmed Ibrhaim conducted by Emiliano Bos between 17 and 19 August at the UNHRC camp in Choucha, Tunisia.

## ii. Acronyms and Abbreviations

ARCI	Associazione Ricreativa e Culturale Italiana
CIRÉ	Coordination et Initiatives pour Réfugiés et Etrangers
ECG	Enhanced Group Call
FIDH	International Federation for Human Rights / Fédération internationale des ligues des droits de l'Homme
GMDSS	Global Maritime Distress Safety System
GISTI	Groupe d'information et de soutien des immigrés
HRW	Human Rights Watch
IOM	International Organization for Migration
LDH	Ligue des droits de l'homme / Human Rights League
MRCC	Maritime Rescue Coordination Centre
MSA	Maritime Surveillance Area
MSF	Médecins Sans Frontières / Doctors Without Borders
NATO	North Atlantic Treaty Organization
PACE	Parliamentary Assembly of the Council of Europe
REMDH	Réseau Euro-Méditerranéen des Droits de l'Homme / Euro-Mediterranean Human Rights Network
RMP	Recognised Maritime Picture
RSI	Radiotelevisione svizzera
SAR	Synthetic Aperture Radar
SAR zone	Search and Rescue zone
SOLAS	International Convention for the Safety of Life at Sea
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	Office of the United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution

### iii. About the Authors

This report was prepared in the framework of “Forensic Oceanography”, a project by Charles Heller and Lorenzo Pezzani, both PhD students at the Centre for Research Architecture, Goldsmiths, University of London, as well as by SITU Studio, a creative practice in Brooklyn, New York committed to spatial investigations in a wide range of scales and media. Additional technical expertise was provided by Richard Limeburner, Senior Research Specialist in the Department of Physical Oceanography at Woods Hole Oceanographic Institution and Lawrence Fox III, Humboldt State University Emeritus Professor of Remote Sensing, who was recruited for us by GIScorps. Ayesha Ahmed, a Postdoctoral Fellow of the Centre for Research Architecture, Goldsmiths, University of London also contributed to the research informing this report.

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Forensic Architecture

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# 1. INTRODUCTION

## 1.1 EXECUTIVE SUMMARY

The UNHCR defined 2011 as the “deadliest year” in the Mediterranean since the organisation began recording these statistics in 2006, estimating that over 1,500 migrants died while fleeing Libya during the initial stages of the violent conflict.<sup>1</sup> This number is extremely high in comparison to the 13,417 deaths documented from 1988 to March 2012 at the maritime borders of the EU, and the 6,226 deaths occurred solely in the Sicily Channel during the same period.<sup>2</sup> Furthermore, the loss of lives at sea in 2011 occurred despite the significant naval and aerial presence in the area due to the military intervention in Libya launched by an international coalition of states and NATO (hereafter referred to as “participating states/NATO”) under the United Nations Security Council Resolution 1973.<sup>3</sup>

One particular event, reported by the international press, provoked widespread public outrage<sup>4</sup>. In the case of what is now referred to as the “left-to-die boat”<sup>5</sup>, 72 migrants fleeing Tripoli by boat on the early morning of March 27 2011 ran out of fuel and were left to drift for 14 days until they landed back on the Libyan coast. With no water or food on-board, only nine of the migrants survived. In several interviews, these survivors recounted the various points of contacts they had with the external world during this ordeal. This included describing the aircraft that flew over them, the distress call they sent out via satellite telephone and their visual sightings of a military helicopter which provided a few packets of biscuits and bottles of water and a military ship which failed to provide any assistance whatsoever. The events, as recounted by these survivors, appeared to constitute a severe violation of the legal obligation to provide assistance to any person in distress at sea, an obligation sanctioned by several international conventions.

In response to this incident, several initiatives were undertaken to shed light on these deaths and demand accountability for them. On 10 May 2011, Human Rights Watch demanded that NATO and its member countries conduct a full investigation of the case.<sup>6</sup> On 9 June 2011, the French NGO GISTI sent out a public call which led to the formation of a coalition of NGOs (constituted primarily by CIRÉ, FIDH, GISTI, LDH, and Migreurop) that sought accountability for the non-assistance of migrants at sea during and in the aftermath of Arab Spring in general and in the case of the “left-to-die boat” in particular.<sup>7</sup> The Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE) appointed the Dutch Senator Tineke Strik to prepare an in-depth report on the deaths that have occurred in the Mediterranean in 2011. Her report titled “Lives lost in the Mediterranean Sea: who is responsible?” was presented in Brussels on 29 March 2012.

The enclosed report focuses on the spatial analysis of data surrounding the case of the “left-to-die boat” and includes a series of visualizations that supplement the written reports produced by the organisations and institutions mentioned above. In order to generate our analysis and report we employed a wide range of digital

1 UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”, Briefing Notes, 31 January 2012. URL: <http://www.unhcr.org/4f27e01f9.html> (All websites accessed in March 2012).

2 See the data gathered by Fortress Europe, one of the leading sources concerning the documentation of migrants' deaths within and at the border of the EU: <http://fortresseurope.blogspot.com/p/fortezza-europa.html>.

3 We discuss our use of the terminology “participating states/NATO” in section 3.2.1.

4 Several newspapers reported the news of the deaths and various journalists conducted specific investigations on this case. Among these we would like to mention: Stefano Liberti, “La NATO dov'era?”, Il Manifesto, 14 April 2011. URL: <http://www.ilmanifesto.it/approfondimenti/immigrazionenaufregio-63-morti-risposta-nato/immigrazionenaufregio-63-morti/>; Emiliano Bos, “Quell'elicottero che non è tornato a salvarci”, RSI, 15 April 2011. URL: [http://info.rsi.ch/home/channels/informazione/info\\_on\\_line/2011/04/15-Lelicottero-che-non-tornato-a-](http://info.rsi.ch/home/channels/informazione/info_on_line/2011/04/15-Lelicottero-che-non-tornato-a-); Jack Shenker, “Aircraft carrier left us to die, say migrants”, 8 May 2011. URL: <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>. Moreover, Emiliano Bos and Paul Nicol conducted the in-depth documentary investigation titled “Mare Deserto” on behalf of the Swiss national television which was broadcasted on 24 January 2012. URL: <http://la1.rsi.ch/falo/welcome.cfm?dg=0&ids=0&idc=42593>.

5 To our knowledge this particular designation was first introduced by the Dutch Senator Tineke Strik in several communications relating to her inquiry. See for example: Parliamentary Assembly of the Council of Europe, “The left-to-die boat’: there should be no gaps in the division of responsibility for search and rescue”, 16 December 2011. URL: [http://assembly.coe.int/ASP/NewsManager/EMB\\_NewsManagerView.asp?ID=7279&L=2](http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=7279&L=2)

6 Human Rights Watch, “NATO: Investigate Fatal Boat Episode”, 10 May 2011. URL: [www.hrw.org/news/2011/05/10/nato-investigate-fatal-boat-episode](http://www.hrw.org/news/2011/05/10/nato-investigate-fatal-boat-episode)

7 GISTI, “Le Gisti va déposer plainte contre l’OTAN, l’Union européenne et les pays de la coalition en opération en Libye”, 9 June 2011. URL: <http://www.gisti.org/spip.php?article2304>.

mapping and modelling technologies, which included the use of Synthetic Aperture Radar (SAR) imagery, geospatial mapping, and drift modelling. In combining these technologies to elucidate the chain of events of this particular case we also suggest new ways in which these emergent technologies could be applied to the field of international law and human rights advocacy.

In collecting, analysing, and synthesising data, reports, and human testimonies related to the case, this report reconstructs as accurately as possible what happened to this vessel. It ultimately aims to answer the following question: what happened to the “left-to-die boat” and who was involved in the events leading to the deaths of 63 migrants? While some differences between oral testimonies occur on specific points and while there are some instances in which more data would have been desirable, overall a coherent picture emerges from the synthesis of these disparate bodies of information, a picture that demonstrates how the migrants were lead to a slow death despite repeated contacts with several parties. An abbreviated summary of key events is outlined as follows (fig. 2):

- In the early morning of 27 March 2011, between 00:00 and 02:00 GMT,<sup>8</sup> a Zodiac-style rubber boat, approximately 10 metres in length with 72 people on-board left the port next to the Medina (Old City) of Tripoli, Libya and headed in the direction of the island of Lampedusa in Southern Italy.
- At 14:55 GMT an aircraft flew over the migrants’ vessel notifying the Italian Maritime Rescue and Coordination Centre (MRCC) of its sighting. This fly-over generated a photograph and provided the exact location of the vessel (fig. 2A).
- At the end of the afternoon of the same day, with little fuel and almost no food and water left and no sight of land, the migrants called Father Zerai, an Eritrean priest based in Rome, by satellite phone to ask for help. After receiving the call, Father Zerai informed of the situation Rome MRCC, which after obtaining the GPS location of the boat at 16:52 GMT from the satellite provider (fig. 2B), informed their Maltese counterparts, NATO’s Naples Maritime HQ and sent out a distress signal to all ships in the area.
- Two to three hours after having placed the call and while the migrants’ vessel continued sailing in the direction of Lampedusa, it was flown over by a military helicopter, which bore the writing “ARMY” or “RESCUE ARMY” on its side. Despite the migrants’ clearly identifiable gestures for help - waving, holding the babies on board at arms length, showing the empty tanks of petrol -, the helicopter hovered over the boat but left without providing any immediate assistance. The migrants now believed they would soon be saved, and the “captain” therefore threw overboard the satellite phone, which had failing batteries and could have been used as evidence of his involvement in a smuggling network. The last GPS position registered by the satellite provider at 19:08 GMT (fig. 2C) thus corresponds in all likelihood to the location of the first helicopter encounter.
- After 4-5 hours of waiting, floating in approximately the same position and with no sign of rescue, the migrants decided to ask for help from some fishermen, whose boats they noticed around them. They attempted to reach those boats but the fishermen too left without providing any assistance. Shortly afterwards, and still in approximately the same position, the same helicopter came back. This time, military personnel on-board threw down 8 bottles of water and a few packets of biscuits before leaving again.

<sup>8</sup> Throughout this report times will be indicated in Greenwich Mean Time (GMT), the convention predominantly used by Rome MRCC in its official communications. However when quoting migrant testimonies local times are used, which at the time of events for both Italy and Libya was GMT plus two hours. For the purposes of this report GMT is considered as equivalent to Coordinated Universal Time or UTC.

- Following this second helicopter visit, the migrants were shown the direction of Lampedusa by yet another fishing vessel. Between 00:00 and 01:00 GMT on 28 March 2011, they resumed movement in this direction for 5-8 hours until they ran out of fuel in the early morning (fig. 2D). From this moment, until they landed back on the Libyan coast, their boat drifted on the open sea without any use of its motor.
- After several days of drifting, between the 3rd and 4th of April, the migrants encountered a military ship with one or two helicopters on its deck (fig. 2E). The migrants got as close as 10 metres to this ship in their plea for help. The crew on the deck of the military ship did not provide assistance and only took photos before departing.
- The migrants' vessel continued to drift until it eventually landed back on the coast of Libya, near Zlitan, on April 10<sup>th</sup>. In total, the boat drifted for 14 days. Of the 72 people who departed from Tripoli only 11 survived. One woman died shortly after arriving ashore, while the others were caught and imprisoned by Libyan soldiers. During the imprisonment another person died. In total nine people survived the journey and 63 perished.

While the involvement of all actors in these dramatic events will be discussed in greater detail in chapter three, the reconstruction of the events will clearly demonstrate that the actions or inactions of different actors contributed to the death of 63 migrants. At least one patrol aircraft, one helicopter, two fishing boats, and a military ship, whose identities still remain unknown, allegedly had direct contact with the boat. Moreover, the Italian and Maltese MRCC as well as participating states/NATO forces present in the area were informed of the distress of the boat and of its location, and had the technical and logistical ability to assist it. Despite all this, none of these actors intervened in a way that could have averted the tragic fate of the people on the boat.

In her report "Lives lost in the Mediterranean Sea: who is responsible?" Senator Tineke Strik has spoken of a "catalogue of failures" that led to the loss of "many opportunities for saving the lives of the persons on board the boat."<sup>9</sup> Furthermore, these deaths occurred in an area that was under strict surveillance by NATO to enforce an arms embargo as provided for by UNSCR 1973 and where at least 38 naval assets were present at some time during the event. While this report focuses on the "left-to-die boat" case specifically, it should be recalled once again that this is only one amongst the many incidents that have caused the death of more than 13,417 deaths at the maritime borders of the EU over the last 20 years.<sup>10</sup>

## 1.2 METHODOLOGY

This report is the first outcome of an investigation that began in the summer of 2011. Between 4 to 14 August 2011, we conducted a fact-finding mission in Southern Italy to inquire into the reasons that had caused several hundred deaths in the Mediterranean. During this mission we conducted nineteen interviews in the provinces of Bari, Brindisi and Palermo with 68 migrants who had recently crossed the Mediterranean. In Lampedusa we had meetings with officials of the Italian Coast Guard and Border Police (Guardia di Finanza), MSF personnel, IOM and UNHCR representatives. In Palermo we interviewed Fulvio Vassallo Paleologo, a lawyer who specialises in migration law. These interviews were fundamental to building an overall understanding of the more general conditions in which the crossings were taking place.

Among the several cases of deaths and claims of non-assistance around which we gathered video testimonials or of which we heard, we decided to concentrate on the "left-to-die boat" case. During our investigation into

<sup>9</sup> Senator Tineke Strik, European Parliamentary Assembly, Committee on Migration, Refugees and Displaced Persons, "Lives lost in the Mediterranean Sea: who is responsible?", 29 March 2011, p.1. URL: [http://assembly.coe.int/CommitteeDocs/2012/20120329\\_mig\\_RPT.EN.pdf](http://assembly.coe.int/CommitteeDocs/2012/20120329_mig_RPT.EN.pdf)

<sup>10</sup> See the data gathered by Fortress Europe, one of the leading sources concerning the documentation of migrants' deaths within and at the border of the EU: <http://fortresseurope.blogspot.com/p/fortezza-europa.html>

this case, which took place between October 2011 and March 2012, we were able to gather several pieces of evidence as well as analyse a significant amount of material available in the public domain. These elements form the basis of the in-depth visual and spatial analysis that constitutes the core of this report and which has allowed us to create a synthetic picture built upon corroborating and cross-referencing disparate sources and pieces of information. Because of the complex legal structure of the Mediterranean and the numerous actors operating there during the time of the event in question, creating a coherent spatial picture based upon the data gathered is critical to determining the degree of involvement of each of these parties.

In establishing our findings, we relied primarily and whenever possible on information gathered first-hand or whose sources could be directly verified. When, in certain cases, this has not been possible, it has been clearly indicated.

For the purposes of this report, we rely primarily on the following types of sources and information-gathering methods:

1. Interviews with witnesses and other persons having relevant information, conducted either by us or by Swiss journalist Emiliano Bos, with whom we have had direct contact.

Throughout this document, we will refer to specific points within witnesses' interviews by quoting the initials of the interviewee followed by a number that refers to line of the interview where the quote is taken from. If more than one interview is available, the second interview is differentiated from the first one by inserting the number "2" after the initials.

It should be noted at the outset that while the testimonies of the survivors are occasionally divergent in terms of the timing of events they are remarkably consistent in terms of the sequence of events. The temporal or factual inconsistencies – as minimal as they are – must be understood in relation to the volatile context of the war that they were fleeing, the lack of spatio-temporal references in the open sea and the cumulative effects of having endured over two weeks with little to no food or fresh water and of drinking sea water.<sup>11</sup>

Throughout the reconstruction, we will use survivor Dan Haile Gebre's narrative as a main point of reference while corroborating or adding to his testimony by comparing it to interviews conducted with other survivors - Abu Kurke Kebato, Elias Mohammed Kadi, Filmon Weldemichail Teklegergis, Bilal Yacoub Idris, and Mohamed Ahmed Ibrahim.

Dan Haile Gebre's testimony is foregrounded as the interview we conducted with him is, to our knowledge, one of the most detailed that has been carried out with any of the survivors.<sup>12</sup> Secondly, unlike several of the other survivors interviewed, he can speak English proficiently. This allowed him to communicate with us very precisely and clearly. Thirdly, his version of the events is the most consistent with the other sources of data described below.

Abu Kurke Kebato recalls the same chain of events with a sometimes striking degree of precision.<sup>13</sup> Some of the events that Dan Haile Gebre remembers, such as the encounter with several fishermen's boats and the second visit of the helicopter, are not mentioned by Abu Kurke Kebato, who nevertheless

11 Senator Tineke Strik refers to the following effects of drinking seawater: excessive thirst, increased heart rate, headaches, dizziness, and nausea, vomiting, brain damage, impairment of judgement, and dehydration. See MarineInsight, "10 Effects of Drinking Salt Water of the Sea", 20 September 2011. URL: <http://www.marineinsight.com/misc/marine-safety/10-effects-of-drinking-salt-water-of-the-sea/>

12 DHG: interview conducted by Lorenzo Pezzani and filmed by Charles Heller in Milan on 22 December 2011. Father Zerai was present and provided additional translation from Tigrine.

13 AKK: interview conducted on the phone by Emiliano Bos in April 2011. Audio recording available at: <http://la1.rsi.ch/falo/welcome.cfm?idg=0&ids=0&idc=42593>

did not contradict them.

Elias Mohammed Kadi mentions the same events recalled by Dan Haile Gebre (the encounter with several fishermen's boats, with a helicopter and a military ship), but the sequence of events is not always consistent between their two narratives.<sup>14</sup>

Finally, the testimonies of Filmon Weldemichail Teklegerkis, Bilal Yacoub Idris and Mohamed Ahmed Ibrahim, which we could analyse only in the form of written and translated transcripts, have been used as references to corroborate or disprove some specific points, but have not been the object of as detailed an analysis as the other testimonies.<sup>15</sup>

Another important interview we conducted was with Father Zerai, who received the migrants' first distress call via satellite phone.<sup>16</sup> He also provided us with the exact text and dispatch time of an SMS that he had sent to the satellite phone of the migrants on the 27 March 2011.<sup>17</sup>

2. Geo-referenced locations logged by Rome MRCC.
3. A drift model (figs. 16, 17, 18) which simulates the path of the migrant's vessel over the 14 day period in which it was floating without any use of its motor. Richard Limeburner, Senior Research Specialist in the Department of Physical Oceanography at Woods Hole Oceanographic Institution, created a model that tracks the path of the vessel on the basis of ocean current data and wind data. A detailed account of how this has been produced is provided in Limeburner's full report (annex A).
4. Commercially available Synthetic Aperture Radar (SAR) data for our time and area of interest was analysed by Lawrence Fox III, Humboldt State University Emeritus Professor of Remote Sensing (figs. 21 to 26). A detailed account of this analysis is provided in figs. 25 and 26.
5. Official communications among different actors involved in this case (NATO, Frontex and the Ministries of Defence of Italy, France, and Spain) and several investigating bodies or individuals (among which, in particular, are Senator Tineke Strik and journalist Emiliano Bos).
6. The review of publicly available information from military sources, statements by the participating states/ NATO concerning the 2011 military operations in Libya and official statements by other actors involved such as the Italian Coast Guard and media reports.
7. The evidence collected by Senator Tineke Strik towards the report "Lives lost in the Mediterranean Sea: who is responsible?" on behalf of the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE).

The synthesis of these various forms of information has allowed us to build a compelling picture of the events surrounding this case. In order to reconstruct certain specific moments for which definitive evidence was lacking, we have formulated informed hypotheses by cross-referencing different sources of data. These hypotheses are clearly indicated as such. As soon as further inquiry takes place and the key actors involved in the case release

<sup>14</sup> EMK: interview conducted by Michel Toubiana, member of REMDH executive committee and honorary president of the League for Human Rights (France) on 6 September 2011 at the UNHRC camp in Choucha, Tunisia; EMK2: translation in Italian of the transcript of an interview conducted by Emiliano Bos towards his documentary "Mare deserto", *ibid*.

<sup>15</sup> FWT, BYI and MAI: translations in Italian of the transcripts of interviews conducted by Emiliano Bos towards his documentary "Mare deserto", *ibid*.

<sup>16</sup> Interview conducted and filmed by Charles Heller in Geneva on 12 November 2011.

<sup>17</sup> As reported in an article that appeared in the newspaper "La Repubblica", Father Zerai initially indicated the morning of the 26 March 2011 as the time when he received the distress call from the "left-to-die boat" (Carlo Bonini, "Sessanta profughi alla deriva lasciati morire da navi NATO. L' Alleanza replica: tutto falso", *La Repubblica*, 10 May 2011. URL: <http://rassegna.governo.it/testo.asp?d=60677635>). However, Father Zerai later amended his initial version of the facts following a review of his phone bill, which confirmed that he was first called by the migrants of the vessel in question on the afternoon of the 27<sup>th</sup>. It should be noted that during the time of events Father Zerai received several calls, frequently within a single day, either by migrants who were in distress at sea or by relatives of people who went missing in the Mediterranean.

the relevant data, the pertinent sections of this report will be updated. This is particularly the case in sub-chapter 3.2, in which disclosure of information by participating states/NATO forces is required to prove or disprove the reconstruction of facts that we have compiled.

### 1.3 2011: “THE DEADLIEST YEAR IN THE MEDITERRANEAN”

The phenomenon of migrants dying at sea in their attempt to reach the shores of the EU is not new. Since the beginning of the 1990s, we have simultaneously witnessed the consolidation of freedom of movement within the EU for its citizens and increasing restrictions on the entry of non-European migrants.<sup>18</sup> As a result, migrants have resorted to clandestine means to enter EU territory. One frequent strategy involves embarking on unseaworthy vessels to cross the Mediterranean. EU policies that aim to contain and control these movements have thus far failed to stop clandestine migration across the Mediterranean. Rather they have resulted in the splintering of migrants’ routes throughout the Mediterranean basin and led to increasingly dangerous points of passage.<sup>19</sup> The independent blog Fortress Europe, which has become one of the most authoritative sources covering the death of migrants within and at the borders of the EU, documented that from 1988 to March 2012, 13,417 deaths at sea have occurred, and 6,226 in the Sicily Channel only.<sup>20</sup> Their estimate is based primarily on news reports and thus there are certainly many more deaths that have gone unreported.

The dramatic geopolitical changes that swept across North Africa in 2011 nonetheless marked an important break in migration patterns both within North Africa and between North Africa and the EU and have led to an unprecedented number of migrants’ deaths in the Mediterranean. The collapse of the Tunisian and Libyan regimes, which had until that moment contained the migration of their nationals and non-nationals on behalf of the EU, provoked a temporary crisis in migration patterns in North Africa, an increase in the number of migrants attempting to cross the Mediterranean to Europe and an increase in the number of migrants losing their lives in this attempt.

#### 1.3.1 Tunisia

In Tunisia the revolutionary process sparked by the immolation of Mohamed Bouazizi on 17 December 2010 led to the collapse of the Ben Ali regime on 14 January 2011. A temporary power vacuum ensued. With the regime no longer controlling the emigration of its citizens, a significant number of people seized the opportunity to cross the Mediterranean to the small Italian island of Lampedusa. Between 9 and 13 February 2011 five thousand migrants arrived in Lampedusa.<sup>21</sup> By the beginning of April, 22,200 had arrived.<sup>22</sup> The number of arrivals led to a diplomatic crisis at the EU level since different states disagreed as to who should be responsible for managing these new arrivals.<sup>23</sup> However, these diminished rapidly following the agreement signed on 5 April 2011 between the Italian and Tunisian authorities allowing for the repatriation of new arrivals and by the end of June the total number of Tunisian arrivals in Italy had reached approximately 25,000.<sup>24</sup> By the end of 2011, 28,000 Tunisians had reached Italy<sup>25</sup> and Fortress Europe had counted 334 deaths amongst the migrants departing from Tunisia.<sup>26</sup>

18 Concerning these broader developments, see the synthesis provided by Migreurop, “Atlas des migrants en Europe – Géographie critique des politiques migratoires”, Armand Colin: Paris, 2009.

19 Hein de Haas, “Mediterranean migration futures: Patterns, drivers and scenarios,” in Global Environmental Change, forthcoming. URL: [www.bis.gov.uk/foresight/our-work/projects/published-projects/global-migration/reports-publications](http://www.bis.gov.uk/foresight/our-work/projects/published-projects/global-migration/reports-publications)

20 See: <http://fortresseurope.blogspot.com/p/fortezza-europa.html>

21 Abderazak Bel Haj Zekri, “La dimension sociopolitique actuelle de la migration en Tunisie”, CARIM Analytic and Synthetic Notes; 2011/48, 1 July 2011. URL: <http://cadmus.eui.eu/handle/1814/18474>

22 Migreurop, “note de synthèse janvier-juin 2011”, 27 June 2011, p.3. URL: <http://www.migreurop.org/article1949.html>

23 *Ibid.*, p.1.

24 *Ibid.*

25 UNHCR, “HCR: nombre record de migrants ayant traversé la Méditerranée en 2011”, 31 January 2012. URL : <http://www.un.org/apps/news/fr/story.asp?NewsID=27476&Cr=HCR&Cr1=>

26 Alberta Torres, “Nel Canale di Sicilia almeno 6.166 morti dal 1994”, 03 December 2011. URL : <http://fortresseurope.blogspot.com/2006/02/nel-canale-di-sicilia.html>. The recently formed movement of relatives of Tunisians who have gone missing after trying to reach Italy by boat claims that the number of missing persons oscillates between 500 and 800. This number includes people who might have died during the crossing, as well as persons who went missing after their arrival in Italy. See: <http://www.senato.it/Web/16Lavori.nsf/All/A5854376F94C2CB2C12579AC0058CDDD?OpenDocument>

### 1.3.2 Libya

In Libya the popular revolt that began on 15 February 2011 aimed at toppling the Gaddafi regime was met with strong repression leading to a civil war which was officially ended on 23 October 2011 but the effects of which are still felt as we write. As of 19 March 2011, a military intervention was launched by an international coalition and NATO under the United Nations Security Council Resolution 1973 (see section 3.2 for further details on this operation). The conflict led to numerically important and rapid movements of civilians. While some expatriates were evacuated very quickly by charter flights, many more migrant workers fled to neighbouring countries. However, the mounting violence and the targeting of Sub-Saharan Africans by both Gaddafi forces and the rebels forced them into hiding, often without food and in very precarious conditions.<sup>27</sup> Furthermore for many migrants residing in Libya, no return to a country of origin was possible. Some arrived too late in the main cities to be able to board the charter flights organised for the repatriation of third country nationals. Others had in fact fled countries such as Sudan, Somalia or Eritrea or Iraq and would risk their lives if they returned. For many migrants, the only solution for fleeing the conflict was to attempt the crossing of the Mediterranean. These crossings were first reported at the end of March.<sup>28</sup>

By 23 March 2011, UNHCR estimated that a total of 351,673 persons had fled Libya, escaping to Tunisia (178,262), Egypt (147,293), Niger (11,949) and Algeria (9,168).<sup>29</sup> By 7 October 2011, the IOM counted a total of 721,772 persons who had crossed the Libyan border, mainly escaping to Tunisia (313,414), Egypt (229,514), Niger (82,935), Algeria (13,962), and Chad (51,682). A comparatively smaller number of migrants succeeded in crossing the Mediterranean from Libya: by 7 October, 25,935 people had arrived in Italy and 1,530 in Malta.<sup>30</sup>

Migrants making these crossings had at times to rely on paying smugglers and Gaddafi forces. There were also widespread reports of Sub-Saharan migrants being forced into boats by Gaddafi forces.<sup>31</sup> Gaddafi himself had warned the EU on two occasions that he would cease all cooperation with European states in attempts to control migration should these states continue their support of the rebellion against his regime.<sup>32</sup> The bodies of migrants had thus become a form of ammunition within the international conflict. The extremely precarious conditions of such crossings lead to a new high in the number of deaths. The UNHCR defined 2011 as the “deadliest year” in the Mediterranean “since UNHCR started to record these statistics in 2006” and estimates that the number of deaths among the people fleeing Libya by water was more than 1,500.<sup>33</sup>

Reviewing the number of arrivals both from Libya and Tunisia, we see that slightly more than 50,000 people arrived in Italy and Malta. This number is far lower than the “up to 1.5 million” potential arrivals European politicians and the European Border agency (Frontex) warned of at the beginning of the Arab Spring.<sup>34</sup> The majority of the movement of civilian populations occurred within the region itself, with close to 700,000 people fleeing to neighbouring countries.

From a humanitarian point of view, much more alarming than the amount of people arriving on the European

27 UNHCR, “UNHCR fears for the safety of refugees caught in Libya’s violence,” 22 February 2011. URL: <http://www.unhcr.org/4d6393e06.html>

28 UNHCR, “Some 2,000 people flee from Tripoli by boat to Italy and Malta”, 29 March 2011. URL: <http://www.unhcr.org/4d91f4f49.html>

29 UNHCR, “Update no 13: Humanitarian Situation in Libya and the Neighbouring Countries”, 24 March 2011. URL: <http://www.unhcr.org/4d8b6a1f9.html>

30 IOM “Response to the Libyan Crisis”, External Situation Report, 10 October 2011. URL:

<http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/IOM-sitrep-MENA.pdf>

31 Martin Chulov and Simon Tisdall, “Libyan regime accused of exploiting boat people”, The Guardian, 11 May 2011. URL:

<http://www.guardian.co.uk/world/2011/may/11/libya-accused-of-exploiting-humanitarian-crisis>. See also John Irish, “Libya may be using migrants as weapon against EU-UN”,

Reuters, 11 May 2011. URL: <http://af.reuters.com/article/libyaNews/idAFLDE74A0YB20110511?sp=true>

32 Ghaddafi first announced this intention to European representatives in Tripoli on 17 of February 2011. Later he reasserted that Europe would be

invaded by thousands of people if he were to lose power. See “Libya threatens to stop help on illegal EU immigration”, 21 February 2011, URL:

<http://www.eubusiness.com/news-eu/libya-unrest.8p5/> and “Kadhafi: ‘J’en appelle à la France’”, Le Journal de Dimanche, 6 March 2011. URL:

<http://www.lejdd.fr/International/Afrique/Actualite/Exclusif-L-interview-integrale-accordee-par-Mouammar-Kadhafi-au-JDD-278745/>.

33 UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”. It should be noted that this is an estimate based just on satellite phone calls from boats in distress, and on reports from survivors, from migrants arrived on other boats or from relatives of the missing living in the EU. The death toll is therefore likely higher than 1,500.

34 Euronews, “Italy’s EU immigration rescue call”, 23 February 2011. URL: <http://www.euronews.net/2011/02/23/italys-eu-immigration-rescue-call/>

coasts was the amount of people who lost their life during the crossing. Here, comparing the number of deaths between Tunisian and Libyan crossings is instructive. From the total of 1,822 deaths documented by Fortress Europe in 2011, 334 were from Tunisia and 1,488 from Libya.<sup>35</sup> In relative terms this means that while one in 85 migrants departing from Tunisia lost their lives, this ratio rose to one in 19 for those departing Libya.<sup>36</sup> While the area and time of crossings were similar, the great difference both in absolute and relative terms in the number of deaths amongst migrants fleeing Tunisia and Libya has to be primarily related to the organisation of the crossings by Gaddafi forces.

### 1.3.3 Patterns of Crossings

We will not review in detail the 19 interviews we conducted in the summer of 2011 with 68 migrants who had recently crossed the Mediterranean from Libya to Italy in the Italian cities of Bari, Palermo and Lampedusa. In the following section, however, we will provide a broad overview of the patterns of crossings that emerged from them.

Most of the migrants we interviewed testified to the active role that Gaddafi's troops played not only in organizing and managing the crossing but also in often forcing Sub-Saharan migrants to leave. The great majority among them did not have to pay for the trip, or paid just a small amount, and were searched by soldiers before embarking. This prevented them from carrying any water or food, cellular phones, or money. The majority left from Tripoli (Medina or Janzur port). Most of the boats were wooden fishing boats less than 15 metres long but bigger fishing vessels that could transport several hundred people were also used at times. Migrants were usually distributed on three levels of the boats: on the top of the small pilothouse; on the main deck; and in the lower level where the engines are housed. Safety measures were almost completely non-existent. In some instances a few life-jackets were available but were not enough to supply all passengers, many of whom did not know how to swim. Migrants' boats usually moved at a speed of 6 or 7 knots which means that, in good weather conditions and when able to hold the shortest course, it normally took them between 19 and 24 hours to cover the 156 nautical miles that separates Tripoli from Lampedusa. However crossings lasting two or three days were very common. Almost all migrants we interviewed reported having crossed several vessels at sea, ranging from the boats of other migrants, fishermen, NATO ships, cruise ships, and the coast guard patrols of Malta and Italy.

While many of the migrants we interviewed did not have any casualties on board, we were also regularly told of deaths. The most common causes were the suffocation of the migrants in engine section of the boat, falling over-board of migrants following a collision with another boat or heavy weather, and finally lack of food and water if the boat got lost at sea for several days.

The general context provided above as well as the overall patterns of crossings that emerged from our interviews allowed us to have a more thorough understanding of the events in the "left-to-die boat" case, to which we now turn.

<sup>35</sup> Alberta Torres, "Nel Canale di Sicilia almeno 6.166 morti dal 1994", 03 December 2011. URL : <http://fortresseurope.blogspot.com/2006/02/nel-canale-di-sicilia.html>  
<sup>36</sup> *Ibid.*



## 2. CHAIN OF EVENTS

### 2.1 DECIDING TO FLEE LIBYA

The migrants' individual life stories that lead them to embark upon the perilous journey cannot be reconstituted exhaustively since the majority of the migrants perished and the interviews of the remaining survivors we have accessed do not necessarily mention their lives prior to departure. The case of Dan Haile Gebre however provides a more detailed example. While he worked and earned a decent living as a mechanic in a garage located in Tripoli, with the onset of the conflict the situation became increasingly perilous for the population as a whole and for Sub-Saharan migrants in particular. "The people are divided in two, pro Gaddafi and pro Benghazi groups. So anybody will ask you asked: who do you support? If you say 'rebels' the person you are speaking to might be pro Gaddafi, and if you say with 'Gaddafi' he might be with the rebels. It is very complicated, especially for the Black people. They started killing black people. They come to our homes and steal everything you have. They stole everything from my workshop because of the green flag, mandatory if you want to find work under the Gaddafi regime. We were afraid. There was a lot of things: if you want to take a taxi, the driver will ask you the same question. In a bakery: buying bread was not allowed for Africans. There was no more police, so it's a matter of chance if something good or bad happens to you." (DHG, 22-29)

For Dan Haile Gebre as for many others, fleeing to Italy seemed to be the last option available amidst a very volatile context. He could not ask for the protection of the Eritrean Embassy since he had fled his country, but neither did he have the means to go to Tunisia. "At this time only if you have a passport you can go to Tunisia, and also you will pay a lot of money to the police, but we had nothing. [...] The only thing we could do is cross to Italy." (DHG, 31-33)

A friend of Dan Haile Gebre informed him that a boat was about to leave and he was directed towards a group in a camp in the Gargash area of Tripoli. He told us: "I found a lot of Ethiopians, many of them women and mostly young people." (DHG, 35-36). He further describes staying with the group for one night. On the second they had an aborted departure, which Dan Haile Gebre describes as follows: "The second night we started to travel. While we were there, we were shot at by pro-Gaddafi soldiers, because they thought we were from the Benghazi group. But then they said "if you are immigrant, you want to go to Italy, come back tomorrow and we will send you to Italy with respect". (DHG, 38-39) Their actual departure would occur the following night.

### 2.2 DEPARTURE FROM TRIPOLI

The vessel's departure location is consistently identified throughout all interviews as the commercial port of Tripoli, near the Medina area. The interviews conducted by Forensic Oceanography during the summer of 2011 in Southern Italy with several other migrants as well as posts on the Fortress Europe blog confirm that this, together with the Sidi Bilel port in Janzur were the main departure points in the Tripoli area for migrants' vessels (fig. 3).<sup>37</sup>

The survivors' testimonies differ on the date of departure. While being quite consistent on the time of the night when they left port (midnight for DHG, 215; three am for EMK, 8 and AKK, 9), they differ on the date itself (25 March 2011 according to DHG, 215, AKK, 11 and MAI, 16; 26 March 2011 according to EMK, 6). It is difficult to understand whether the migrants, when talking for instance of three am on 25 March 2011, are really referring to the 25<sup>th</sup> or would rather be mistakenly referring to the early morning of the 26<sup>th</sup> as it might very well be instead.

<sup>37</sup> Fortress Europe, "Sidi Bilel: this is where they use to leave for Lampedusa", 20 September 2011. URL: <http://fortresseurope.blogspot.com/2011/09/sidi-bilel-this-is-where-they-use-to.html>, and "A video shows Gaddafi's role in the landings in Lampedusa", 20 September 2011. URL: <http://fortresseurope.blogspot.com/2011/09/video-shows-gaddafis-role-in-landings.html>

The first aborted departure of the previous day may be an additional reason for confusion.

The timing after the departure is however very consistent between the interviews. Survivors state to have contacted Father Zerai via satellite phone 15-18 hours after the departure (DHG, 215; AKK, 18). Furthermore, the moment and location of this call is documented by several pieces of evidence to have occurred between 16:00 and 16:52 GMT on 27 March 2011. Working backwards starting from the moment when the distress call was placed, we can then establish the time and date of departure as between 2-3am Libyan time, or 00:00-01:00 GMT, on 27 March 2011.

The boat on which the migrants travelled was provided by the Libyan military and is described by Dan Haile Gebre as a Zodiac-type plastic vessel (this is confirmed by EMK2, 201) equipped with a Yamaha motor of 37 horsepower (figs. 5, 6). Twelve tanks with a capacity of 20 litres of petrol each were provided and loaded into the boat. The migrants were told that this amount of fuel should allow them to reach Lampedusa and that the trip should have lasted around 18 hours (DHG, 61).

On the vessel there were 72 people including three children, 60 who had been gathered in the nearby camp and waiting for over 24 hours. Additionally a group of 12 people were brought to the point of departure in the last moments before leaving port (DHG, 49). According to Abu Kurke Kebato, there were seven people from Nigeria, six from Ghana, five from Sudan and seven from Eritrea, all of the 47 others were from Ethiopia (AKK, 13). The Libyan military that were organising the departure provided a “captain”, from Sub-Saharan Africa. His nationality is not defined consistently across the testimonies: Dan Haile Gebre believes he was a francophone from West Africa (DH, 186), while Abu Kurke Kebato (AK, 90) and Elias Mohammed Kadi (EMK, 16) believe he was from Ghana. According to Dan Haile Gebre the “captain” told the migrants on board that he had already successfully brought migrants to Italy in the past, so they more or less trusted him at first. He continues: “But we had no choice. We only trusted in God” (DHG, 76). The migrants were given a GPS, a compass and a Thuraya satellite phone (DHG, 69-70).<sup>38</sup> No food or water was provided (DHG, 144).

According to Dan Haile, the boat was much too small to carry 72 people and at the moment of departure they contested being forced to travel in such a vessel (DHG, 58), but finally, with little choice, they embarked. The boat was overloaded to such an extent that at first it only travelled at minimum speed, “very, very slowly” as Dan Haile testifies (DHG, 65), while the sea was calm (DHG, 92). From Dan Haile Gebre’s testimony and the fact that the vessel carried 72 people we have estimated that the boat was slightly above 10m in length.<sup>39</sup>

### 2.3 AIRCRAFT SIGHTING

At 14:55 GMT Rome MRCC received a notice from a French aircraft describing a small rubber boat with about 50 people on-board. It located the position of the migrants’ vessel as follows: LAT 33°40’ N, LONG 13°05’ E. According to the testimonies collected by Senator Tineke Strik, the migrants “noticed an aircraft flying high above them”.<sup>40</sup> Ghirma Halefom said “the aircraft was white, and not a helicopter but rather a small patrolling aircraft.”<sup>41</sup> Rome MRCC provided Senator Tineke Strik with evidence corroborating this sighting, in particular with a photograph of the rubber boat taken from the aircraft itself (fig. 7).<sup>42</sup>

38 “Thuraya Telecommunications Company is a world-leading mobile satellite service provider of voice, data, maritime, rural telephony, fleet management and other telecommunication solutions in remote areas. Providing mobile satellite communications to over 140 countries around the world, Thuraya offers a congestion-free network that now covers most of the planet, encompassing Asia, Africa, Australia, the Middle East and Europe.” URL: <http://www.thuraya.com/about>

39 The ASIS WB 12, a commercially available rubber boat of 11.9 metres in length, is described as having a floorboard usable area of 22.2 square metres. It’s advertised capacity, in accordance with the ISO 6185 standard, is 25 people. However if we consider that it is possible to overcrowd the boat with 4 people per square metre, this boat would have a capacity of 88 people. URL: <http://www.asiscommercialboats.com/asis-commercial-work-boat-wb-12.html>

40 Senator Tineke STRIK, “Lives lost in the Mediterranean Sea: who is responsible?” p. 7.

41 *Ibid.*

42 *Ibid.*, p. 15.

Based on the information gathered by Senator Tineke Strik, we can reasonably conclude that this event did occur as described. The event is mentioned by the testimony of at least one survivor; moreover Senator Tineke Strik presented one of the survivors with the photograph taken by the aircraft and the boat it documents was identified as the one pertinent to the case; and finally the time and location of the identification are consistent with the established trajectory of the boat.<sup>43</sup>

## 2.4 DISTRESS CALL

Dan Haile Gebre and Abu Kurke Kebato say that after approximately 15-18 hours at sea they called Father Zerai because they were about to run out of fuel (DHG, 215; AKK, 18). Dan Haile Gebre recounts the following: “I looked at the GPS and it seemed we were travelling in the right direction but not very fast. At the time we called Father Mussie [Zerai] we had not even covered half the distance.” (DHG, 77-78). The boat seems thus to have moved at a speed of slightly less than 5 knots (covering 66.6 nautical miles in around 15 hours). Considering that according to Dan Haile Gebre the boat was moving at slow speed (DHG, 65), this is consistent with the average speed of 6-7 knots of vessels loaded with migrants that the Italian CG provided us.<sup>44</sup>

According to the survivors (EMK2, 132-137; AKK2, 17-62) and to Father Zerai, there were several calls exchanged, first between the migrants and Father Zerai, then between the migrants and Rome MRCC. Several calls were necessary because the driver was not able to read the boat’s GPS instrument and could not provide the exact GPS coordinates of the boat. (AKK, 91). The connection was made more difficult by failing batteries (DHG, 72 and 82; AKK, 18; EMK, 11).

Rome MRCC confirmed to Senator Tineke Strik that they logged and recorded Father Zerai’s call on the 27 March 2011 at 16:28 GMT.<sup>45</sup> Father Zerai has provided us with the SMS he sent the migrants the same day at 16:33 GMT in order to explain them how to read the GPS: “Go to display menu gps maenager actual solution selected put my phon number send”. This attempt at explanation proved unsuccessful. Thuraya, the satellite phone company, was contacted by Rome MRCC at 16:40 GMT. It provided the location of the satellite device at 16:52 GMT at LAT 33°58’.2” N, LONG 012° 55’.8” E.<sup>46</sup> This location effectively corresponds approximately to “half the distance” between Tripoli and Lampedusa, as was observed by Dan Haile Gebre (DHG, 78).

Rome MRCC sent out several distress signals (which we will discuss in detail in sub-chapter 3.2.2; see also figs. 8, 9,10), the first being an Enhanced Group Call (EGC) broadcast to all ships transiting in the Sicily Channel at 18:54 GMT via the Inmarsat C system. The message with the priority code “DISTRESS” warned of the presence of a “boat with about 68 passengers, probably in difficulty. All ships transiting in the area are requested to keep a sharp lookout and reporting any sighting urgently at MRCC Rome” (fig. 8). It also directly informed specific parties such as Malta and NATO headquarters allied command in Naples.

## 2.5 FIRST HELICOPTER ENCOUNTER

Following Father Zerai’s advice to continue on their way because Rome MRCC had been warned and believing that rescue would soon come (DHG, 81), they continued for “a few hours” (DHG, 89), until a helicopter arrived. This account is confirmed, with small differences, by Abu Kurke Kebato who says that after the distress call they waited for a short time and then they proceeded for two more hours before encountering the helicopter (AKK2, 66-76). All testimonies converge in describing the helicopter as “military” and, some of the survivors

<sup>43</sup> *Ibid.*, p. 7.

<sup>44</sup> Interview conducted by Charles Heller and Lorenzo Pezzani with Sottotenente di Vascello Salvatore Porcaro, Lampedusa, Capitaneria di porto, 12 August 2011.

<sup>45</sup> Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p.11.

<sup>46</sup> The GPS signal is accurate to 100 meters and there should be no doppler effect. See [http://www.universatitalia.it/pdf/SERVIZI%20SATELLITARI%20-%20Allegati%20SatNetwork%20Brochure/Brochure%20Thuraya\\_en.pdf](http://www.universatitalia.it/pdf/SERVIZI%20SATELLITARI%20-%20Allegati%20SatNetwork%20Brochure/Brochure%20Thuraya_en.pdf)

add, equipped with a machine gun (DHG, 103; EMK, 18; AKK, 38; AKK2, 74 and 83; MAI, 27; FWT, 16-17). Furthermore, witnesses state that it bore the English writing “ARMY” (AKK, 24; BYI, 16-19) or “RESCUE ARMY” (DHG, 107; FWT, 16). The helicopter cabin door was open and at least 2 people wearing military uniforms could be seen (DHG, 103; EMK2, 71; AKK, 24; FWT, 133; MAI, 27).

Dan Haile Gebre describes the helicopter’s approach as follows: “It circled around us 4-5 times and came closer. It was making a lot of wind, and we almost lost our balance” (DHG, 93). Abu Kurke Kebato adds: “The helicopter came very close to us down, we showed him our babies, we showed them we finished oil, we tell them ‘Please help us’” (AKK, 30). He continues: “I think I saw them take our picture. I think I saw a photo camera or something like that” (AKK, 41). This description is consistent with protocols for vessel identification missions in the frame of NATO’s monitoring of the embargo over Libya during Operation Unified Protector.<sup>47</sup>

Despite the fact that the helicopter clearly came very close, approximately 10 meters according to Abu Kurke Kebato, (AKK, 40), and that the migrants clearly communicated signals of distress, the helicopter left without providing any assistance. Following that encounter, the migrants believed they would be soon rescued (AKK2, 85-87). Dan Haile explains: “The captain told us: ‘This is the rescue! We are safe’. We were very happy. He told us we were far from Italy and we needed to leave a bit of time for the rescue to arrive.” The captain then threw GPS, satellite phone and compass into the water. He disposed of these items because he was afraid that if a Search and Rescue team found this on-board he would be identified as a smuggler and deported (DHG, 93-96).

Thuraya identified the last signal from the migrants’ satellite phone at 19:08 GMT, with the position 34 07.11 N - 12 53.24 E, i.e. 9 nautical miles further in the direction of Lampedusa in relation to the earlier position provided by Rome MRCC. We can reasonably assess that this time/location was established just before the satellite phone was thrown overboard and is therefore very close to that of this first helicopter encounter.

Waiting for rescue, the migrants remained in place 4-5 hours (DHG, 119, EMK, 15) or “over 5 hours” (AK2, 98). By then, it was the middle of the night, i.e. around 23:00-00:00 GMT. The women on the boat told the captain “We can not wait any more, lets go (DHG, 119).” The migrants decided to start moving again despite the little fuel they had left and with no communication means and with a small plastic compass attached to a belt (DHG, 121). This compass and the stars in the sky were their only means of orientation at this point (AKK2, 130).

## 2.6 FISHERMAN ENCOUNTER

Once they resumed movement, the migrants tried to approach some fishermen whose boats they noticed around them to ask for help (Dan mentions 5-6 vessels). Dan Haile Gebre believes that they were from Tunisia and Malta (DHG, 124). When the fishermen saw the migrants’ boat arriving though, they drew in their nets and sailed away swiftly, almost making the small migrants’ vessel capsize (DHG, 125). During this time, the migrants navigated for very short stretches in random directions, i.e. without following the direction of Lampedusa but rather moving from one boat to the other. We can therefore estimate that during this time they did not move considerably from the previously established GPS position.

## 2.7 SECOND HELICOPTER ENCOUNTER

According to Dan Haile Gebre, this encounter with the fishermen was immediately followed by the re-appearance of what appeared to be the same helicopter that had visited the vessel previously. This time, the military on-board lowered down eight bottles of water and small packets biscuits, both of which had Italian writing on them, and

<sup>47</sup> This practice is illustrated in a video depicting the HMCS Charlottetown’s Sea King helicopter on a reconnaissance mission during which the military take photographs of the ships they encounter for identification. [Natochannel.tv](http://Natochannel.tv), “Maritime Helicopter Patrols”, 6 April 2011. URL: [www.natochannel.tv](http://www.natochannel.tv) or <http://www.youtube.com/watch?v=sjV1o9GOhVg>

left again (DHG, 127, AKK, 28, EMK, 19; FWT, 175-176).

After the helicopter departed for a second time, the migrants encountered one more Tunisian fishing boat (EMK2, 181), which gave them the direction of Lampedusa in Arabic. Pointing to the Island's direction the fisherman said "four hours" (DHG, 136). We can estimate that the entire interaction with the fishermen and the second helicopter visit lasted one hour, leaving us at between 00:00 GMT and 01:00 GMT on 28 March 2011 but in approximately the same location as that of the first helicopter encounter.

Following the Tunisian fisherman's indications, the migrants' vessel thus started to navigate again with the outboard engine. The estimate of the duration of this second phase of navigation varies between: four hours, as indicated by Dan Haile Gebre a first time (DHG, 137) and Abu Kurke Kebato (AKK2, 132); or eight to nine hours, as indicated by Dan Haile Gebre some time later in the same interview (DHG, 218) and by Filmon Weldemichail Teklegergis (FWT, 83). Two witnesses specify that when they started navigating again, they were moving at "greatest possible speed" (DHG, 122; FWT, 89) and they consumed all the remaining 20 litres of fuel (DHG, 218), a detail that is confirmed by Abu Kurke Kebato (AKK, 47) while Filmon Weldemichail Teklegergis mentions 40 litres instead (FWT, 83). All accounts agree that the vessel kept sailing until the following morning (DHG, 122), i.e. until there was daylight again. In that area the sun rose at around 07:00 GMT on 28 March, with daylight probably already visible at around 06:00 GMT. Based on this information, we have concluded that the motor run out of fuel and the vessel began to drift between 6:00 and 8:00 GMT on 28 March 2011. Two time/position possibilities for the start of the drift were calculated by Richard Limeburner of Woods Hole Oceanographic Institution based on the information above:

- The vessel started to drift at 06:00 GMT (after 5 hours navigation) 22.2 nm north northwest of last GPS position.
- The vessel started to drift at 08:00 GMT (after 7 hours navigation) 31.1 nm north northwest of last GPS position.

## **2.8 DRIFTING IN THE STORM**

From the morning of the 28 March 2011, the migrants found themselves drifting in high waves for which their small, overcrowded rubber boat was unfit (AKK2, 152). Dan Haile Gebre recalls that "the sea was very dark with too much waves and wind. We lost our direction. From then on and for several days we don't know anything" (DHG, 139-140).

As part of this report a drift model has been created to simulate the trajectory of the vessel as it travelled from the morning of the 28<sup>th</sup> until eventually landing ashore in Ziltan on 10 April 2011 (figs. 16,17,18).

Left without food or water, the migrants began drinking sea-water as well as their own urine mixed with toothpaste (DHG, 144). According to Dan Haile, after 2-3 days of this weather people started to die (DHG, 142-143). According to Abu Kurke, the number of people dying increased daily. First two, then four, then five or six people died everyday (AKK, 55-62).

While drifting the migrants sighted the lights of boats in the distance during the night. "During the night we would see the lights of other big boats in the distance, we could not see them but the reflection of their lights looked like a city in the distance" (DHG, 145). In the attempt to come closer to these vessels four people in the boat started paddling with their hands but the effort was unsuccessful (DHG, 146).

## 2.9 MILITARY VESSEL ENCOUNTER

After 5-6 days of drifting in bad weather (DHG, 219) the migrants' vessel encountered a military ship. Dan Haile Gebre describes its approach in the following way: "At first the ship was very far. Maybe 700 metres. They then circled around us, three times, until they came very close, 10 meters. We are watching them, they are watching us. We are showing them the dead bodies. We drank water from the sea to show them we were thirsty. The people on the boat took pictures, nothing else." (DHG, 154-155; see also EMK, 26). Despite coming within viewing distance and despite the migrants' evident signs of distress, the military vessel left without providing them with any assistance.

The survivor's testimonies provide indications concerning the military vessel in question. While we will discuss these elements of identification further in sub-chapter 3.4.2, suffice to mention here that according to three witnesses the military-ship bore two helicopters (DHG, 176; EMK, 25; FWT, 347), while Mohamed Ahmed Ibrahim recalls just one helicopter (MAI, 217). During our interview with Dan Haile Gebre, we showed him images of different naval assets. When presented with a photograph of the Borsini ship of the Italian Fleet (fig. 20B) he recognized the typology of the ship being very similar to the one they encountered and stated: "Yes exactly like this, like two steps" (DHG, 177). He also recalled elements leading him to believe the vessel was French (DHG, 187).

Dan Haile believes this encounter occurred "5-6 days" after the beginning of the drift in the storm (DHG, 219), which would lead us to 2 April 2011. However he told us that approximately six days after the encounter they landed back in Libya (DHG, 221). While we know that the migrants landed in Zlitan on 10 April 2011, counting backwards leads us to 4 April 2011. This date is corroborated by Elias who believes the encounter occurred nine days after embarking on their journey (EMK, 25). Considering the above, we believe it is most likely that the encounter with the military ship occurred between the 3<sup>rd</sup> and the 4<sup>th</sup>.

## 2.10 DRIFTING BACK TO THE LIBYAN COAST

After the military ship left the migrants without assisting them, morale dropped precipitously. "We knew that we would die little-by-little", says Dan Haile Gebre (DHG, 248). According to him, they continued to drift for approximately six days before landing in Zlitan (DHG, 221).

He states that for the last four days of drifting they could see the Libyan coast. "We could see buildings at night. The driver thought this is Malta, but some Nigerians on the boat said "no, these are the Hotels built by Gaddafi in Tripoli" (DHG, 206-207). The proximity of the vessel to the coast during this period is confirmed by the drift model (fig. 18).

During the last days of drifting almost all migrants seem to have lost consciousness or were in a very bad physical state. Ultimately only 11 of them landed back on Libyan soil alive (AKK, 64). Their arrival and subsequent imprisonment is thus remembered in fragments. Abu Kurke Kebato described these events as follows to journalist Emiliano Bos one day after being released from prison: "The wind and the sea made us drift on Libyan land, to a small village area near Misrata. When we reached that place we didn't know it was Libya, we thought it was Italy! When we reached the land one girl died within the hour. The military took the ten of us to a pharmacy, not a hospital. They only gave us a bit of water and took us to prison in Zlitan. We spent three days there. Without food. One more of our brothers died there because lack of food. When he died they took us to Homs hospital, all of us. But they still wouldn't give us anything and brought us back to Zlitan prison. The next day they took us to a Tripoli prison, called Toyesha. We stayed there two days and told them we were very sick, that people were going to die, "Please help us, take us to hospital". But the policemen answered "die die die!".

After that my brother knew an Ethiopian boy in Tripoli, he knew his number. Using the phone of a Bangladeshi man we called him and Father Mussie. The man came to prison with drinks and food. He took us from Toyesha prison yesterday. He said "I can take these people to my house", they said: "Take them". He rented a room and took us there in two taxi cars." (AKK, 64-74).

The day after being released from prison the nine survivors met with representatives of the Catholic Church. During this meeting organised by Father Zerai (AKK, 76; DHG, 233), the survivors were interviewed and provided with medical assistance.

A group of survivors fled shortly after to Tunisia where they have been residing in Choucha refugee camp since. The rest attempted the crossing to Italy once again, this time with success. They now reside in different countries throughout Europe (Italy, Norway and the Netherlands).<sup>48</sup>

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<sup>48</sup> For details concerning the individual trajectories of the survivors and their legal statuses at the time of writing, see Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 22.

### 3. PARTIES INVOLVED

This section attempts to answer the following question: who was involved and to what degree in the events leading to the deaths that occurred in the “left-to-die boat” case? With this objective in mind, we will review evidence that points to the involvement of different parties. While the tragic effects of Gaddafi’s forces facilitating and, in some cases, directly organising the exodus of hundreds of migrants in unseaworthy vessels was already addressed in sub-chapter 1.3, we will now focus exclusively on the involvement of those actors who, although informed of the distress of the people on the “left-to-die boat”, might have failed to assist them. Whereas the previous section looked at the chain of events from the point of view of the migrants by corroborating their testimony with verifiable data, this section analyses the same events from the point of view of the former parties.

While we will limit ourselves to collecting and assessing the facts that will allow for a determination regarding the degree of involvement of different actors, the legal framework that sets out the obligations of ships and states to assist any person found in distress at sea provides a useful point of reference for our inquiry. This obligation is mainly framed by two essential texts, the 1982 United Nations Convention on the Law of the Sea (UNCLOS convention) and the 1974 International Convention for the Safety of Life at Sea (SOLAS convention).<sup>49</sup> These provide that every state shall require the master of a ship (civilian or military) flying its flag to provide assistance to seafarers if informed of their distress and if the ship does incur danger in doing so. Furthermore, coastal states have the obligation to coordinate search and rescue operations within a given area (SAR zone) as defined by the UNCLOS, SOLAS and SAR conventions.<sup>50</sup> In the particular context of war in which the “left-to-die boat” case occurred, International humanitarian law may also provide an important point of reference, in that, it obliges parties to armed conflict “to take all possible measures to search for, collect and evacuate the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment and to ensure their adequate care. There are also obligations on parties to take feasible measures to account for persons reported missing, with respect to the right of families to know the fate of their missing relatives, and with respect to the management of the dead and related issues”.<sup>51</sup>

This chapter will mainly enquire into the implication of participating states/NATO forces involved in the 2011 military operations in Libya. Our choice of emphasis is motivated by the fact that the involvement of non-military parties has already been established with a sufficient degree of clarity by Senator Tineke Strik’s report “Lives lost

- 49 International Maritime Organization (IMO) and the Office of the United Nations High Commissioner for Refugees (UNHCR), “Rescue at sea, a guide to principles and practice as applied to migrants and refugees”, September 2006. URL: [www.unhcr.org/450037d34.html](http://www.unhcr.org/450037d34.html)  
The 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention) provides that: “Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:  
(a) to render assistance to any person found at sea in danger of being lost;  
(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.” (Art. 98 (1))  
The 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) obliges the: “master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so...” (Chapter V, Regulation 33(1)).
- 50 *Ibid.* The 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention) imposes an obligation on every coastal State Party to: “...promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose”. (Art. 98 (2))  
The 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) requires State Parties: “... to ensure that necessary arrangements are made for distress communication and coordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary ...” (Chapter V, Regulation 7)  
The 1979 International Convention on Maritime Search and Rescue (SAR Convention) obliges State Parties to: “... ensure that assistance be provided to any person in distress at sea ... regardless of the nationality or status of such a person or the circumstances in which that person is found” (Chapter 2.1.10) and to “[...] provide for their initial medical or other needs, and deliver them to a place of safety.” (Chapter 1.3.2)  
The May 2004 amendments (which came into force in July 2006) to the SOLAS and SAR conventions as well as Guidelines on the Treatment of Persons Rescued at Sea further specify their application. The Guidelines contain the following provisions: The government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided. (para. 2.5). A place of safety is a location where rescue operations are considered to terminate, and where the survivors’ safety or life is no longer threatened; basic human needs (such as food, shelter and medical needs) can be met; and transportation arrangements can be made for the survivors’ next or final destination. (para. 6.12) While an assisting ship may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made. (para. 6.13)
- 51 UNHCR, “Refugees and Asylum-Seekers in Distress at Sea - how best to respond?”, 5 December 2011. URL: <http://www.unhcr.org/refworld/docid/4ede0d392.html>. The document refers to “Articles 18, 19, 20, 21 of the 1949 Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, entered into force 21 October 1950; Article 26 of the 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War, entered into force 21 October 1950; Articles 10, 17, 32, 33, 34 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), entered into force 7 December 1978; Articles 4, 8 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), entered into force 7 December 1978.”



in the Mediterranean Sea: who is responsible?”. The specific focus of our report is further based on two initial elements of evidence:

1. The drift modelling (figs. 16,17,18) produced towards our report, which indicates that the migrants’ vessel remained within NATO’s Maritime Surveillance Area (MSA) or within the highly surveilled Libyan territorial waters for the entirety of its trajectory (fig. 28). This area was closely patrolled to impose an arms embargo on Libya and densely populated with a high number of maritime and aerial military assets.
2. The testimonies of the survivors, who state that they encountered naval and aerial assets that failed to assist them.

Despite our choice of emphasis, we will first review the involvement in the incident on the part of non-military parties, relying almost exclusively on secondary sources as well as on the evidence gathered by Senator Tineke Strik.

### 3.1 NON-MILITARY PARTIES INVOLVEMENT

#### 3.1.1 Fishermen

As we have indicated in the previous section, the passengers on board the “left-to-die-boat” claim to have encountered a number of fishing vessels in the hours that followed the distress call and the first helicopter encounter during the night of 27 and into the morning of 28 March. Dan Haile Gebre mentions 5-6 boats, some of which were from Tunisia and Malta (DHG, 124). The migrants’ vessel went from one boat to the other asking for help, but none of them provided any assistance. On the contrary, they left swiftly, almost making the small migrants’ vessel capsize. One Tunisian fishermen indicated the direction towards Lampedusa but provided no other assistance. All these fishermen failed to render assistance to the migrants in any way that could have averted their tragic fate, thus disregarding their obligation to rescue vessels in distress at sea. Furthermore, according to the evidence analysed by Senator Tineke Strik, the fishermen also failed to inform any maritime authorities.<sup>52</sup> While we are not able to identify the fishing vessels in question, it might be possible to do so by analysing VMS data in possession of national authorities.

However, this episode of non-assistance should be also understood in connection to the process by which assistance to migrants in the Sicily Channel on the part of fishing and/or commercial vessels has been heavily discouraged in recent years, if not criminalized. Both in the “Cap Anamur” case in 2004 as well as in the case involving two Tunisian fishermen in August 2007, shipmasters have been arrested and criminally charged with facilitating illegal immigration after having taken on-board migrants in distress at sea and disembarking them in Italy.<sup>53</sup> Even though in both these cases the defendants have been acquitted, they have nevertheless suffered severe economic damages, having been on trial for several years and having had their vessels confiscated for several months. Moreover, a strong disincentive for ships to comply with their obligation to assist has been the growing reluctance on the part of Southern European coastal states to accept responsibility for disembarking migrants, which has caused difficult situations of standstill for shipmasters. Since the enforcement of the Dublin Regulation which sets out that the first state of entry of an asylum seeker in the EU is responsible for following his or her claim, coastal states have been increasingly hesitant to receive migrants rescued at sea and have in several occasions engaged in diplomatic rows with neighbouring states to establish where those migrants

<sup>52</sup> Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 16.

<sup>53</sup> See for example: Statewatch, “Italy - Criminalising solidarity - Cap Anamur trial underway”, 2007. URL: <http://www.statewatch.org/news/2007/apr/03italy-cape-anamur.htm>; and Fortress Europe, “Lampedusa: fishermen arrested having saved 44 shipwrecked migrants”, 29 August 2007. URL: <http://fortresseurope.blogspot.com/2006/01/lampedusa-fishermen-arrested-having.html>

should have been disembarked. In the already mentioned case of the “Cap Anamur” as well as in the case involving the Turkish cargo ship Pinar in 2009 the ships were denied the possibility to disembark the rescued migrants for several days.<sup>54</sup> Although these events have acted as a strong disincentive for shipmasters of fishing and/or commercial vessels to comply with their obligation to assist and rescue at sea, this situation does not diminish the fact of non-assistance by the fishermen to the passengers of the “left-to-die boat”.

### 3.1.2 Coastal States

The responsibility of coastal states “to ensure arrangements for distress communication and coordination in their area of responsibility and for the rescue of persons in distress at sea around their coasts” is defined in several maritime conventions.<sup>55</sup> In the Sicily Channel, SAR responsibilities are divided between Italy, Malta and Libya, while Tunisia still hasn’t established its SAR zone boundary (fig. 27). The delimitation of SAR zones is aimed at avoiding situations wherein a ship might find itself in danger and no state is designated as responsible for coordinating its rescue. However coastal states’ divergent interpretations of SAR norms have been used to evade this responsibility. Italy and Malta, for example, have an on-going and notorious dispute because they are signatories to different versions of the SAR convention. This dispute is well summarized by Thomas Gammeltoft-Hansen and Tanja E. Aalberts: “Italy has signed the 2004 amendments to the SAR and SOLAS conventions that stipulate that the migrants should be disembarked on the territory of the state within which’s SAR zone its vessel is identified or intercepted. Malta however, due to the size of its SAR zone, has refused to ratify these amendments for fears that it would impose unrealistic obligations to disembark migrants rescued by other states and private vessels. Malta consequently maintains the interpretation that the coordinating country’s obligation is to disembark rescued persons at the nearest safe port of call. This has led to tensions between Malta and Italy following a series of incidents where migrants were rescued in Malta’s SAR zone yet closer to the Italian islands Lampedusa and Pantelleria. The result has been lengthy stand-off during which migrants have died, and a number of confrontations between Italian and Maltese naval vessels literally trying to block each other from entering its territorial waters and disembark rescued migrants”.<sup>56</sup>

In the case of the “left-to-die boat” both Italian and Maltese MRCCs were informed of the distress of the migrants. As discussed above, Father Zerai called Rome MRCC, which established communication with the migrants and determined the position of their vessel. According to evidence provided to Senator Tineke Strik, considering that the ship would have soon entered the Maltese SAR zone, Rome MRCC then informed Malta MRCC by phone. The call was followed by a fax alert sent to Malta MRCC at 18:40 GMT and by a distress signal to all ships transiting in the Sicily Channel at 18:54 GMT. At 19:40 GMT, Rome MRCC sent a fax to NATO headquarters allied command in Naples. On 28 March at 04:06 GMT Rome MRCC sent out to all vessels another form of alert message, a Hydrolant navigational warning. The evidence provided to Senator Tineke Strik does not indicate that Libyan authorities were informed.<sup>57</sup> While we will discuss the precise content and geographic scope of these signals in short order, suffice it to say here that both Italian and Maltese authorities were informed of the boats distress, but given the localisation of the vessel at the moment of its distress signal within the Libyan SAR zone they did not consider they had the responsibility to coordinate rescue operations.<sup>58</sup> However, according to the drift model produced for our enquiry by Richard Limeburner (Woods Hole Oceanographic Institution), it appears probable that the vessel entered the Maltese SAR zone for at least part of one day (fig. 27), drifting in an area located 82 nautical miles from Lampedusa and 149 nautical miles from the Island of Malta, and thus within the

54 BBC, “Italy takes in stranded migrants”, 20 April 2009. URL: <http://news.bbc.co.uk/1/hi/world/europe/8007379.stm>

55 UNHCR, “Rescue at Sea. A Guide to Principles and Practice as Applied to Migrants and Refugees”, September 2006. URL: <http://www.unhcr.org/refworld/docid/45b8d1e54.html>

56 Thomas Gammeltoft-Hansen and Tanja E. Aalberts, “Sovereignty at Sea: The law and politics of saving lives in the Mare Liberum”, DIIS Working Paper 2010:18, p. 21-22.

57 Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 12.

58 Ibid., p. 13.

zone of conflicting responsibility between Italy and Malta described above.

According to the analysis provided by Senator Tineke Strik, even if the vessel had remained within the Libyan SAR zone, this would not completely exempt Italy and Malta from all responsibility, for Libyan SAR capacity was compromised by NATO's intervention. Libyan Coast Guard vessels were involved in combat and targeted by participating states/NATO forces as an enemy naval asset.<sup>59</sup> While Senator Strik notes that the situation of a failing SAR zone is not foreseen in the existing legal framework, she also reminds all actors that "not being responsible on the basis of SAR zones, doesn't relieve another state which is informed about an incident at sea of its responsibility to ensure the rescue operation".<sup>60</sup> While Rome MRCC told Senator Strik that between 26 and 28 March 2011 the Italian authorities were engaged in incidents involving approximate 4,300 persons with over 2,200 of these people assisted at sea and around 2,000 rescued from distress situations, we may also note that the Italian Coast Guard had the technical and logistic capability to conduct a SAR operation well into Libyan SAR zone.<sup>61</sup> On 4 August 2011, around 140 migrants were rescued by the Italian Coast Guard 90nm South of Lampedusa, hence several nautical miles south of both Italian and Maltese SAR zone.<sup>62</sup>

### 3.1.3 Frontex

As of 20 February 2011, following the demand from the Italian Ministry of Interior, Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, deployed the "Joint Operation EPN Hermes Extension 2011 [...] to assist the Italian authorities in managing the influx of migrants from North Africa, most of whom have been arriving on the island of Lampedusa".<sup>63</sup> The operation was described by Frontex as follows: "All maritime assets and crews will be provided by the Italian authorities and will patrol a predefined area with a view to detecting and preventing illegitimate border crossings to the Pelagic Islands, Sicily and the Italian mainland. Aerial assets made available by other Member States [Italy, France, Germany, the Netherlands, Malta, Spain] for enhanced border surveillance and search and rescue capability will support these sea patrols. Meanwhile, second-line border control will be supported through the deployment of debriefing and screening experts to identify migrants' nationalities and to gather intelligence on people-smuggling networks. Further support may also be made available in the area of return operations."<sup>64</sup>

According to evidence provided to Senator Tineke Strik, Frontex was directly informed by Rome MRCC of the vessel in distress. However on 28 November 2011, Frontex wrote a letter in response to a request of information advanced by a group of NGOs in which it clarified the scope and location of its mission.<sup>65</sup> In the letter, Frontex provided the coordinates of the "operational area" of the naval assets, which were involved in the "joint operations that were taking place in Central Mediterranean between 22<sup>nd</sup> of March and 10<sup>th</sup> of April".<sup>66</sup> From the information provided, it emerges that the trajectory of the "left-to-die boat" never entered any of Frontex's operational areas.

59 During the evening of 28 March 2011, only one day after the migrants' distress call, a U.S. Navy P-3C Maritime Patrol aircraft, a U.S. Air Force A-10 Thunderbolt attack aircraft and the guided-missile destroyer USS Barry (DDG-52) engaged the Libyan Coast Guard vessel Vittoria and two smaller crafts, which were firing indiscriminately at merchant vessels in the port of Misrata. See Joint Task Force Odyssey Dawn Public Affairs, "US Navy P-3C, USAF A-10 and USS Barry Engage Libyan Vessels", 29 March 2011. URL: <http://www.africom.mil/getArticle.asp?art=6347&lang=0>

60 Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 14.

61 Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 13.

62 Francesco Viviano, "Cento corpi in mare", nuova strage di migranti", La Repubblica, 5 August 2011. URL:

<http://www.dirittiglobali.it/home/categorie/23-immigrati-a-rifugiati/18594-qcento-corpi-in-mareq-nuova-strage-di-migranti.html>

63 EC Press release, "The European Commission's response to the migratory flows from North Africa", MEMO/11/226, 8 April 2011. URL: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/226>

64 Frontex press release, "Hermes 2011 running", 22 February 2011. URL: [http://www.frontex.europa.eu/newsroom/news\\_releases/art96.html](http://www.frontex.europa.eu/newsroom/news_releases/art96.html)

65 Letter by Gil Arias, Frontex Deputy Executive Director, to Souhayr Belhassen, President of FIDH; Olivier Clochard, President of Migreurope; Stéphane Maugendre, President of GISTI; Fred Mawet, Director of CIRÉ; Pierre Tartakowsky, President of LDH. Written in Warsaw on the 28th November 2011.

66 *Ibid.*

### 3.1.4 Summary Of Non-Military Parties Involvement

From what precedes, it appears that fishermen failed to assist the migrants in the open sea and that Italy and Malta, although informed of the distress of the migrants (the migrants' vessel was on the threshold of, if not inside, the Maltese SAR zone), did not intervene to rescue them or assure that their rescue was being coordinated. The "left-to-die boat" thus remained adrift for 14 days within a non-operational Libyan SAR zone. This same area was however populated by an intensified amount of aerial and maritime assets deployed in support of the multi-state military operations in Libya. NATO monitored all maritime traffic as part of the maritime embargo over Libya. Furthermore the migrants' testimonies state that they encountered military aerial and naval assets that failed to assist them. All these elements point in the direction of a strong involvement on the part of participating states/NATO forces, which we will now investigate in detail.

### 3.2 PARTICIPATING STATES/NATO INVOLVEMENT

In the remainder of this chapter we will enquire into participating states/NATO involvement with regard to the "left-to-die boat" case. To this effect we will try to answer, to the best of our knowledge, the following questions:

1. To what extent were participating states/NATO naval and aerial assets present during the events in question? We estimate that at least 38 naval assets had been in operation off the coast of Libya at least for some time during the time of events. Several aerial assets were also deployed in the same time and area.
2. Were participating states/NATO naval assets informed of the migrants' distress? NATO has admitted that its maritime command did receive a "general notice in the evening of 27 March from the Italian Authorities to alert them to the presence of a vessel in difficulty carrying 68 people."<sup>67</sup> We will further demonstrate that participating states/NATO naval assets themselves were informed of the migrants' distress through two maritime distress signals that provided them with the distressed vessels' location.
3. How did participating states/NATO forces respond to the information of distress? In one of its statements on the events dated 3 October 2011, NATO claims that the message its maritime command received did not request assistance.<sup>68</sup> In a letter sent to Senator Tineke Strik, NATO has further specified that "there is no record of any aircraft or ship under NATO command having seen or made contact with the small boat in question".<sup>69</sup> However, based upon the migrants testimonies describing two encounters with military helicopters and based upon prior practices of assistance by NATO, we will argue that a NATO or a participating states' naval asset probably did send out a helicopter to assess the condition of the migrants' vessel and limited itself to providing them with food and water.
4. Could participating states/NATO have detected the vessel as it drifted back towards the Libyan coast during 14 days (11 within NATO's MSA and the remaining three within the highly surveilled Libyan territorial waters)? We will argue that participating states/NATO's sensing capabilities did enable them to detect the migrants' vessel.
5. Did the migrants' vessel encounter a military ship that failed to assist them? Considering the survivors' overall agreement on this point and the number of naval assets of the type recognised by the survivors present at the time in the area, we will argue that this is not only plausible, but also probable.

By reviewing the above questions and assessments in detail we will demonstrate a high degree of involvement

<sup>67</sup> Email in response to journalist Emiliano Bos sent on the 3 October 2011 by Mathias Eichenlaub (Press and Media Section – Media Operation Centre, NATO HQ) the content of which "can be attributed to Ms Oana Lungescu, NATO spokesperson". This email was quoted in Emiliano Bos and Paul Nicol's documentary "Mare deserto", produced for the Swiss Radio and Television and broadcasted on the 24th of January (annex B.13) Note the reference to "68 people" is quoted from the Italian Coast Guard signal sent out on the March 27th 2011. The number is inaccurate but reflects their knowledge at the time.

<sup>68</sup> *Ibid.*

<sup>69</sup> Letter sent on 8 February 2012 to Senator Tineke Strik by Richard Froh, Deputy Assistant Secretary General, Operations Directorate, NATO, quoted in Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 26.

on the part of participating states/NATO command and assets that contributed to the death of 63 passengers on board the “left-to-die boat” and to grave psychological and physiological consequences for all 72 passengers.

### 3.2.1 Participating States/NATO Naval And Aerial Assets Presence

NATO and states participating in the military intervention have so far not provided precise lists or locations of their active naval assets during the time of the events in question. In what follows, we nevertheless offer a general picture of the scope and density of participating states/NATO’s maritime and aerial presence in the area and time of interest, based on publicly available information released by NATO command as well as by various national navies. The accuracy of this general picture will be tested against Synthetic Aperture Radar imagery (figs. 21 to 26), which will allow for an assessment of the presence of ships, both military and civil, in the area.

The international response to the Libyan crisis was framed by two United Nations Security Council Resolutions. While Resolution 1970 adopted on 26 February 2011 instated the arms embargo,<sup>70</sup> Resolution 1973 adopted on 17 March 2011<sup>71</sup> lead to international military deployment by authorizing “member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya” To the effect of protecting civilians, the Resolution further decided to “establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians” and called upon “all Member States, in particular States of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo established by paragraphs 9 and 10 of resolution 1970 (2011).”

This resolution led to an international military intervention in Libya involving the deployment of naval and aerial assets from 18 states.<sup>72</sup> The official names for the interventions by the states contributing most importantly to the military effort are Operation Harmattan by France; Operation Ellamy by the United Kingdom; Operation Mobile for the Canadian participation and Operation Odyssey Dawn for the United States. NATO’s role progressively grew as it took under its command the arms embargo on 23 March<sup>73</sup>, the no fly zone on 25 March<sup>74</sup> and actions the protection of civilians from attack or the threat of attack on 31 March.<sup>75</sup>

The structure of command thus evolved rapidly at the beginning of the military operations and official statements remain contradictory, making it extremely difficult to determine which assets were under which command at what time.

The French Ministry of Defence explained in its presentation of Operation Harmattan that “while the multinational mechanism [dispositive] is being installed and grows more important, the command of each military asset falls under the command of its national joint-staff. In France the command of assets falls under the Centre for Planning and Conduct of Operations (CPCO), under the authority of the CEMA.”<sup>76</sup> Despite having been updated in September 2011, this statement seems to refer to the period prior to NATO’s increasingly important role.

70 United Nations Security Council Resolution. 1970, adopted on 26 February 2011, point 9. URL: [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

71 United Nations Security Council Resolution. 1973, adopted on 17 March 2011. URL: [http://www.un.org/Docs/sc/unsc\\_resolutions11.htm](http://www.un.org/Docs/sc/unsc_resolutions11.htm)

72 The International Institute for Strategic Studies mentions 18 states contributing military assets to the operations undertaken to enforce UN Security Council Resolution 1973 as of 10 June 2011. See: <http://www.iiss.org/whats-new/iiss-voices/operation-odyssey-dawn-ellamy-harmattan-mobile/>

73 NATO Fact sheet, “Operation Unified Protector - NATO Arms Embargo against Libya”, March 2011. URL: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_03/unified-protector-arms-embargo-factsheet.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-arms-embargo-factsheet.pdf)

74 NATO Fact sheet, “Operation Unified Protector - NATO No-Fly Zone over Libya”, March 2011. URL: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_03/unified-protector-no-fly-zone.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-no-fly-zone.pdf)

75 NATO Fact sheet, “Operation Unified Protector - Protection of civilians and civilian populated areas”, April 2011. URL: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_04/20110407\\_unified-protector-protection-civilians.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_04/20110407_unified-protector-protection-civilians.pdf)

76 French Ministry of Defence, “L’opération Harmattan”, last updated 27 September 2011. URL: <http://www.defense.gouv.fr/actualites/operations/l-operation-harmattan>

During a press briefing on 31 March 2011, NATO Military Committee Chairman Admiral Giampaolo Di Paola stated that “over the past week we have seen NATO gradually taking over responsibility of operations in Libya. Today we can announce that NATO has full responsibility of Operation Unified Protector – which includes the arms embargo, the no-fly zone and actions to protect civilians.” He further declared that the 28 members of the Alliance had “decided that a unified chain of command under NATO was the best solution for dealing with this crisis from a military point of view”<sup>77</sup>

However NATO’s response to Senator Tineke Strik dated 8 February 2012 states clearly that: “not all military ships in that part of the Mediterranean were operating under NATO command”.<sup>78</sup> Furthermore, during a telephone conversation we were granted on 12 March 2012, Stanislas Gentien, Adjunct director of communications for the French Navy, explained that the majority of French naval assets involved in the military effort operated under national command while one naval asset – which could shift through time - was provided to NATO towards operations under its command. According to an article published in the newspaper “L’Express” based on an interview with French Admiral Philippe Coindreau, the French aircraft carrier Charles-de-Gaulle remained under national command but upon takeoff its aircrafts came under NATO command.<sup>79</sup>

Considering the complexity and the evolving nature of the command over military assets by states taking part in the military intervention and NATO, we will refer throughout this section to “participating states/NATO” assets to encompass all assets present at the time of events and their relative commands.

### 3.2.1.1 Participating States/NATO Naval Presence Towards Enforcement Of The No-Fly Zone And For Protection Of Civilians

The military operations launched to enforce UNSCR 1973 started early on the afternoon of 19 March 2011, when around 20 French aircrafts were deployed over Libya.<sup>80</sup> The presence of naval assets in the first 24 hours was probably limited but expanded rapidly in the following 24 to 72 hours, with the first ships being joined by several others which were already on hold in the Mediterranean or were deployed for the possible evacuation of foreigners trapped in Libya.<sup>81</sup> The national navies most heavily involved in this very early phase were the French, the American, the British, and the Italian, although other significant contributions from other countries cannot be excluded on the basis of the information at our disposal. The main naval means deployed by those countries within the first 24 hours of combat were:

- Two French military ships (the anti-air frigates Jean Bart and Forbin), which started to take part in military operations on the afternoon of 19 March. The Jean Bart was one of the first naval assets to reach the coast of Libya. It received the order to head towards Libyan waters on 7 March 2011 and arrived off the coast of Tripoli on the 8<sup>th</sup>. Its initial mission was to gather intelligence on the situation in Libya.<sup>82</sup> The Forbin left Toulon on 17 March and arrived on the coast of Benghazi on the 19<sup>th</sup> to join Operation Harmattan.<sup>83</sup>

77 NATO Press briefing, 31 March 2011. URL: [http://www.nato.int/cps/en/natolive/opinions\\_71897.htm](http://www.nato.int/cps/en/natolive/opinions_71897.htm)

78 Letter sent on 8 February 2012 to Senator Tineke Strik by Richard Froh, Deputy Assistant Secretary General, Operations Directorate, NATO, quoted in Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 26

79 Romain Rosso, “Le Charles-de-Gaulle accusé d’avoir laissé mourir 61 migrants”, L’Express, 9 Mai 2011. URL: [http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants\\_990737.html](http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants_990737.html)

80 French Ministry of Defence, “Libye: point de situation opération Harmattan n°1”, 25 March 2011. URL: <http://www.defense.gouv.fr/actualites/operations/libye-point-de-situation-operation-harmattan-n-1>

81 As it was the case, for instance, of the British HMS Cumberland (see <http://www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/HmsCumberlandDeploysToLibyanCoast.htm>) and of the Canadian HMCS Charlottetown (see <http://www.rcf-arc.forces.gc.ca/v2/nr-sp/index-eng.asp?id=11534>)

82 See the posts on the Jean Bart’s “Journal de bord”: <http://fdb.marine.defense.gouv.fr/index.php/post/2011/04/02/Le-Charles-de-Gaulle-accuse-d-avoir-laisse-mourir-61-migrants> and <http://www.defense.gouv.fr/english/content/view/full/111961>

83 See the posts on the Forbin’s “Journal de bord”:

<http://fdb.marine.defense.gouv.fr/index.php/post/2011/04/02/Le-Forbin-accuse-d-avoir-laisse-mourir-61-migrants>

As of the arrival of the aircraft carrier the Charles-de-Gaulle in the zone on the 22 March 2011, the Forbin joined the carrier strike group (CSG), which was composed as well by tanker Meuse, destroyer Duplex, and frigate Aconit.

- Two US destroyers, the USS Stout and USS Barry, as well as three American submarines (USS Providence, USS Scranton and USS Florida) and another British one (HMS Triumph), which were reported to have fired several Tomahawk cruise missiles on 19 and 20 March 2011.<sup>84</sup> Other US ships present in the area include the USS Kearsarge, USS Ponce and USS Mount Whitney.<sup>85</sup>
- Two British frigates, the HMS Westminster and HMS Cumberland.<sup>86</sup>
- The Italian aircraft carrier Giuseppe Garibaldi, which left the port of Taranto on 19 March, the destroyer Andrea Doria and the frigate Euro. Other Italian naval assets present in the Sicily Channel were the auxiliary vessel Etna and patrol boat Borsini.<sup>87</sup>
- Whereas the initial operations to protect civilians occurred in the area south-west of Benghazi, the enforcement of the no-fly-zone required the firing of missiles all along the Western and Central sections of the Libyan coast, from the border with Tunisia to Benghazi (annex B.5). Another mission assigned to those ships in the first days of conflict was to block Libyan gunboats in port, preventing them from performing coastal patrols and the bombardment of rebel-held positions ashore, as well as the use of participating states/NATO surveillance suites “to monitor activities along the Libyan coast, providing vital intelligence for the overall mission”.<sup>88</sup> We can therefore assume that naval assets involved in these operations were located along this stretch of Libyan coast from the border with Tunisia to Benghazi.
- The naval presence of participating states/NATO forces grew rapidly. At a news briefing on 24 March, three days before the migrant’s boat left Tripoli, Vice Admiral Gortney of the US Department of Defence presented a slide (annex B.3) describing the “maritime laydown, with most ships operating just to the north of Libya” mentioning 38 naval assets taking part in operation at the time.<sup>89</sup> According to both media reports and press releases by national navies, that the naval presence in the Central Mediterranean continued to grow in the following days. In the period between 27 March and 10 April it was further reinforced by ships belonging to the Belgian, Greek, Dutch and Spanish Navies, all of which contributed at least one military ship each<sup>90</sup>, and the Turkish Navy which contributed at least four ships.
- Amongst the 38 ships mentioned in this document, those involved in the protection of civilian and the no-fly zone enforcement and those involved in the arms embargo enforcement are not differentiated. But if the number of ships involved in the latter numbered between 12 and 21 (as is explained in the following subchapter) we can assume that those involved in the former two elements of the operations were likely of a similar number, that is between 16 and 26.<sup>91</sup>

### 3.2.1.2 NATO Naval Presence Towards The Enforcement Of The Arms Embargo

According to our understanding, the naval assets patrolling the approaches to Libyan territorial waters so as to monitor the enforcement of the embargo operated under NATO command as of 23 March 2011 in the frame of Operation Unified Protector. “Their mission”, it can be read in a fact-sheet provided by NATO, “is to reduce the flow of arms, related material and mercenaries to Libya, as called for in UN Security Council Resolution 1973.

84 U.S. Department of Defence, “DOD News Briefing by Vice Adm. Gortney on Operation Odyssey Dawn”, 19 March and 20 March 2011. URL: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4786> and <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4787>

85 *Ibid.*

86 See: <http://www.navynews.co.uk/news/1123-royal-navy-blockade-forces-gaddafis-gunboats-off-the-ocean.aspx>

87 See: [http://www.marina.difesa.it/Conosciamoci/Notizie/Pagine/20110321\\_libriacrisi.aspx](http://www.marina.difesa.it/Conosciamoci/Notizie/Pagine/20110321_libriacrisi.aspx)

88 See: <http://www.navynews.co.uk/news/1123-royal-navy-blockade-forces-gaddafis-gunboats-off-the-ocean.aspx>

89 U.S. Department of Defence, “DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn”, 24 March 2011. URL: <http://www.defense.gov/news/d20110324pptslides.pdf>

90 Respectively, the BNS Narcis, the frigate Limnos, the HNLMS Haarlem and the ESPS Méndez Núñez.

91 Although the upper limit of ships’ involvement in the arms embargo has been made publicly available (see: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_10/20111005\\_111005-factsheet\\_arms\\_embargo.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_10/20111005_111005-factsheet_arms_embargo.pdf)), the lower limit hasn’t. The number of 12 ships refers in fact to September 2011. More precise information on the number of ships involved in the first phases of the arms embargo could not be found.

(...) NATO ships will use surveillance to verify the activity of shipping in the region, separating out legitimate commercial and private traffic from suspicious vessels that warrant closer inspection. Suspicious traffic will be hailed by radio, and if they cannot give satisfactory information about their cargoes, the NATO ships are authorized to intercept them. As a last resort, the Task Force is empowered to use force.”<sup>92</sup> In order to impose the embargo, a wide zone of the Central Mediterranean (fig. 28) was turned into a “maritime surveillance area” (MSA) monitored by various naval assets and sophisticated surveillance systems centralised by NATO’s Headquarters in Naples.<sup>93</sup> Ships aiming to transit through the embargo area were required to notify NATO of their cargo and destination as detailed in a Navigation Warning message.

The number of naval assets specifically involved in monitoring the MSA fluctuated but at the peak of the arms embargo mission, 21 naval assets were assigned to NATO in support of the operation.<sup>94</sup> On 4 April 2011, Vice Admiral Rinaldo Veri, Commander Maritime Command Naples, stated: “I have been entrusted with commanding the part of the operation which enforces the arms embargo in the maritime approaches to Libya. (...) Under my command I currently have 16 ships, submarines and surveillance aircraft. Nine nations are contributing. This force is destined to grow.”<sup>95</sup> As of 5 April 2011, eight Allies (Belgium, Canada, Greece, Italy, Netherlands, Spain, Turkey, and United Kingdom) provided 18 ships and submarines to monitor and enforce the arms embargo, supported by surveillance planes and fighter jets as required.<sup>96</sup> This important naval presence was necessary to monitor one of the most congested waterways in Europe. By 3 May 2011, 750 ships had been hailed, 26 boarded and five ships turned away.<sup>97</sup> By 30 September 2011, a total of 2862 vessels had been hailed, 293 boarded and 11 denied transit to or from Libyan ports. In order to most effectively monitor the MSA, each of the naval assets under NATO command patrolled a specific area of responsibility, or “patrol box”, which evolved through time.<sup>98</sup> While NATO has not provided information as to the delimitation of these areas according to naval assets, the coverage was extensive. Luca Selva, Operations Officer on board the Italian ship Bettica operating under NATO command, describes the 24/7 activity of maritime surveillance in a video posted on 20 April 2011 as follows: “When you have about 18 ships at sea to control such a vast sea portion, obviously you have to make sure that every portion of sea is controlled, and that there is nothing passing through and you are not noticing it.”<sup>99</sup>

### 3.2.1.3 Participating States/NATO Aerial Assets

At the 24 March 2011 US Department of Defense News briefing on Libya Operation Odyssey Dawn, Vice Admiral Gortney from the Pentagon stated: “You can also get a sense here of the international contributions to the no-fly zone mission. More than 350 aircraft are involved in some capacity, either enforcing the no-fly zone or protecting the civilian populace. Only slightly more than half belong to the United States.”<sup>100</sup> Between 19 and 27 March

92 NATO Fact sheet, “Operation Unified Protector NATO Arms Embargo against Libya”, March 2011. URL: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_03/unified-protector-arms-embargo-factsheet.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-arms-embargo-factsheet.pdf)

93 From the 23rd of March to the 8th of April the area was defined as follows: Northern limit: 35 00 N, Western limit: 34 00 N 012 00 E, Southern limit: Libya TTW limit -not included-, Eastern limits: 34 00 N 022 00 E and 33 00 N 025 00E. As of the 8th of April the Northern limit was reduced to 34 00 N. For the most recent definition of the area see: NATO, “Update to NATO Embargo operations in the vicinity of Libya”, 8 April 2011. URL: [http://www.shipping.nato.int/SiteCollectionDocuments/110408\\_Engagement\\_Embargo\\_update11.pdf](http://www.shipping.nato.int/SiteCollectionDocuments/110408_Engagement_Embargo_update11.pdf). For the definition of the area prior to 8 April 2011 see “NATO Embargo operations in the vicinity of Libya”, 22 March 2011, available at [http://www.aegirshipbrokers.com/images/110324\\_Engagement\\_Embargo\\_LBY.pdf](http://www.aegirshipbrokers.com/images/110324_Engagement_Embargo_LBY.pdf)

94 NATO Fact Sheet, “Operation Unified Protector NATO-led Arms Embargo against Libya”, October 2011. URL: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_10/20111005\\_111005-factsheet\\_arms\\_embargo.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_10/20111005_111005-factsheet_arms_embargo.pdf)

95 NATO, “VADM Veri holds Press Conference aboard ITS Etna”, 4 April 2011. URL: <http://www.jfcnaples.nato.int/page167503642.aspx>

96 NATO Fact Sheet, “Operation Unified Protector NATO-led Arms Embargo against Libya”, March 2011. URL: [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_03/unified-protector-arms-embargo-factsheet.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-arms-embargo-factsheet.pdf)

97 NATO press conference, “Maritime Embargo has contributed significantly”, Naples, 3 May 2011. URL: [http://www.jfcnaples.nato.int/Unified\\_Protector/page190902014.aspx](http://www.jfcnaples.nato.int/Unified_Protector/page190902014.aspx)

98 See “International Operations: HMCS Vancouver completes successful Mediterranean mission”, January 12, 2012. URL: [http://www.navy.forces.gc.ca/cms/4/4-a\\_eng.asp?id=892](http://www.navy.forces.gc.ca/cms/4/4-a_eng.asp?id=892) and the video : [http://www.isafnato.com/natocommunity/nato-and-libya-italian-patrol-ship-bettica-enforcing-the-arms-embargo-video\\_45f8fd52e.html](http://www.isafnato.com/natocommunity/nato-and-libya-italian-patrol-ship-bettica-enforcing-the-arms-embargo-video_45f8fd52e.html)

99 Natochanneltv, “NATO Libya ARMS EMBARGO 24-7”, 20 March 2011. URL: <http://www.youtube.com/watch?v=Wa9C-a2A-k4>. The division of the sea into patrol sectors is confirmed in yet another video posted on the 14 April 2011 on natochanneltv, in which we are taken onboard the Bettica as its manoeuvres towards its patrol area, “near the border between Tunisia and Libya.” Mike Mühlberger, the NATO correspondent aboard explains while describing a monitor on which maritime traffic appears: “The area North of Libya as been divided into patrol sectors assigned to each NATO ship.” Available at <http://www.youtube.com/watch?v=fwVPv0sgsk8>

100 U.S. Department of Defence, “DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn”, 24 March 2011. URL : <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4798>



2011, a total of 1,602 sorties had taken place under the auspices of Operation Odyssey Dawn.<sup>101</sup>

A number of participating states/NATO aerial assets were deployed over the Mediterranean Sea. Most of the naval assets patrolling the MSA were equipped with helicopters, which were scrambled to verify unidentifiable radar returns. The above-mentioned HMCS Charlottetown, for example, had a Sea King helicopter on board.<sup>102</sup> The French aircraft carrier Charles-de-Gaulle was equipped with two E-2C Hawkeye planes that operated from its deck.<sup>103</sup> France also deployed an Atlantique 2 maritime patrol aircraft, which operated surveillance missions towards the maritime embargo in April.<sup>104</sup> The Canadian Forces deployed two CP-140 Aurora maritime patrol aircrafts as part of Operation Mobile as of the 25 of March 2011.<sup>105</sup> In the framework of the intervention in Libya, the Aurora “began conducting maritime surveillance to identify vessels in the embargo zone and relay that information to the NATO task group patrolling the waters off Libya.”<sup>106</sup> Participating states/NATO also deployed AWACS (Airborne Warning and Control System) aircrafts. On 9 March 2011 NATO reinforced AWACS presence over the Mediterranean to 24/7.<sup>107</sup> While these first AWACS were NATO assets, several other participating states (USA, UK, and France) subsequently provided their own planes in order to monitor the Libyan land, air, and sea.<sup>108</sup>

### 3.2.1.4 Conclusion On Participating States/NATO Naval And Aerial Assets Presence

From what precedes, we can estimate that at least 38 naval assets had been in operation in the waters off the coast of Libya for at least some time between 27 March and 10 April. Although this data alone does not allow us to determine with precision the exact laydown of naval assets as it evolved day by day, it does establish the degree of naval presence during the time of events. The extent of participating states/NATO’s naval asset presence was conveyed by an Italian official to Senator Tineke Strik as follows: “I expect that sailing from Libya towards Italy should be a bit like doing a slalom between military ships”.<sup>109</sup> Furthermore, the maritime space was also closely monitored by several aircrafts.

The image of a congested stretch of sea – populated by both military and commercial vessels - is confirmed by our analysis of Synthetic Aperture Radar (SAR) data (figs. 21 to 26). Combining the analysis of SAR data with that of the drift model, we are able to demonstrate that both on 28 and 29 March 2011 a large number of ships were located in the area, some of which were at distance of between 20 and 38 nautical miles to the migrants boat. Although we are not currently able to identify whether they were military or commercial ships or their nationality, the question that presents itself is compelling: who’s ships were these? Only further investigation and disclosure by participating states/NATO forces will provide the answer to this question.

### 3.2.2 Participating States/NATO Information Of The Migrant’s Distress

At first, after the “left-to-die boat” case was reported in the international press NATO denied being involved in any way in the incident.<sup>110</sup> Carmen Romero, NATO Deputy Spokesperson, stated on 10 May 2011 that:

101 U.S. Department of Defence, “DOD News Briefing with Vice Adm. Gortney from the Pentagon on Libya Operation Odyssey Dawn”, 28 March 2011. URL: <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4803>

102 Natchannel.tv, “Maritime Helicopter Patrols”, 6 April 2011. URL: [www.natochannel.tv](http://www.natochannel.tv) or <http://www.youtube.com/watch?v=sjV1o9GQhVg>

103 French Ministry of Defence, “Libye: appareillage du porte-avions Charles de Gaulle”, 21 March 2011. URL : <http://www.defense.gouv.fr/content/view/full/111961>

104 French Ministry of Defence, “Libye: arrivée des Atlantique 2 à la Sude”, 4 August 2011. URL :

<http://www.defense.gouv.fr/operations/autres-operations/operation-harmattan-libye/actualites/libye-arrivee-des-atlantique-2-a-la-sude>, see also Mer et marine, “La marine française déjoue une opération de minage devant le port de Misrata”, 2 Mai 2011. URL: <http://www.meretmarine.com/article.cfm?id=116002>

105 Canada National Defence and Armed Forces, “Canadian Forces Deploy Maritime Patrol Aircraft In Response To Situation In Libya”, News Release 11.034, . 25 March 2011. URL: <http://www.cfcmaf.forces.gc.ca/pa-ap/nr-sp/doc-eng.asp?id=3758>

106 Canada National Defence and Armed Forces, “Auroras fly first mission over Libya”, 4 October 2011. URL : <http://www.comfec-cfcmaf.forces.gc.ca/pa-ap/fs-ev/2011/10/04-eng.asp>

107 NATO, “NATO increases airborne surveillance in the Mediterranean”, 9 March 2011 URL:

[http://www.nato.int/cps/en/SID-60A834D6-21121871/natolive/news\\_71316.htm?selectedLocale=en](http://www.nato.int/cps/en/SID-60A834D6-21121871/natolive/news_71316.htm?selectedLocale=en)

108 NATO, “AWACS: NATO’s ‘Eye In The Sky’”, URL: [http://www.nato.int/cps/en/SID-D366E59C-D740EDFA/natolive/topics\\_48904.htm?selectedLocale=en](http://www.nato.int/cps/en/SID-D366E59C-D740EDFA/natolive/topics_48904.htm?selectedLocale=en)

109 Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 5.

110 Although it was not the first to report the incident, Jack Shenker’s article “Aircraft carrier left us to die, say migrants” published in “The Guardian” newspaper on 8 May 2011 was the one that sparked international criticism. URL: <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>.

“NATO has reviewed all relevant information available, so we have already looked into that, and we can find no evidence whatsoever of any NATO ships being involved in this tragic incident reported by The Guardian. (...) In addition to that, NATO units at sea neither saw nor heard any trace of distress calls from that area. This is all we have to say about this. We looked into this and there is no evidence. Basically, NATO was not involved because it had no signs.”<sup>111</sup>

A number of elements now allow us to say with conviction that participating states/NATO forces were informed of the migrants’ distress.

### 3.2.2.1 French Military Aircraft Identification

As mentioned previously in the “Chain of Events” section of the report, both the testimonies of the survivors and the evidence provided to Senator Tineke Strik by Rome MRCC lead to the conclusion that on the afternoon of 27 March 2011 the migrants’ vessel was flown over by a French aircraft.<sup>112</sup> Because the aircraft provided GPS coordinates as well as a photograph of the migrants’ vessel, a practice consistent with maritime identification practices under NATO, this leads us to believe that it was a military aircraft involved in participating states/NATO operations. As discussed above, France had a number of aircrafts operating specifically over the Mediterranean Sea, some of which might appear to be “white”, as stated by Girma Halfmon to Senator Tineke Strik. This is the case for example of the Altantique 2 maritime patrol aircraft, which is light grey and was operating off the Libyan coast in April. Based on the information reviewed we cannot confirm that it was already in operation on 27 March 2011. The military aircraft that first sighted the migrants’ vessel described the small rubber boat and mentioned it was carrying about 50 people, a smaller number than the 72 migrants actually on the “left-to-die boat” but already an observation that indicates dangerous overcrowding.

### 3.2.2.2 Fax And Phone Call

From its initial statement of denial, NATO reviewed its position several months later, as detailed in Emiliano Bos and Paul Nicol’s documentary “Mare deserto” produced for the RSI and broadcasted on 24 January 2012. In this documentary, the authors quote a response to their inquiry provided on 3 October 2011 by Mathias Eichenlaub (Press and Media Section – Media Operation Centre, NATO Headquarters) that, as we read, can be attributed to Ms Oana Lungescu, NATO spokesperson. In this communication, Ms Oana Lungescu finally admitted receiving a “general notice” sent out by the Italian Authorities, but that this did not imply a request for assistance:

“NATO maritime command did not receive a call for assistance in relation to this migrant ship. Instead, NATO received a general notice in the evening of the 27<sup>th</sup> of March from the Italian Authorities to alert them to the presence of a vessel in difficulty carrying 68 people.<sup>113</sup> The message was not an instruction to begin search and rescue, nor did it request assistance [...]. At the time the message was received, the nearest NATO vessel was 24 nautical miles away from the aforementioned vessel.” (annex B.13)

The “general notice” Ms Oana Lungescu is referring to is the fax sent by MRCC Rome to NATO headquarters allied command in Naples on 27 March 2011 at 19:40 GMT and quoted in Senator Tineke Strik’s report:

“FROM: MRCC ROMA  
TO: NATO HEADQUARTER ALLIED COMMAND – NAPLES  
SUBJECT: BOAT WITH APPROX 68 P.O.B. PROBABLY IN DIFFICULT IN POS. LAT 33°58.2’N – LONG 012°55.8’E (16.52 UTC)

111 NATO News conference, “NATO Allied Joint Force Command”, Naples, 10 May 2011. URL: [http://www.jfcnaples.nato.int/Unified\\_Protector/page19090937.aspx](http://www.jfcnaples.nato.int/Unified_Protector/page19090937.aspx)

112 Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, pp. 7, 15.

113 Note that the reference to “68 people” comes from the Italian Coast Guard signal sent out on 27 March 2011. The number is inaccurate but reflects their knowledge at the time.

TEXT: DEAR SIR/MADAMS

FOR ANY APPROPRIATE ACTION, PLEASE BE INFORMED THAT TODAY THIS MRCC RECEIVED THE INFORMATION ABOUT A SMALL BOAT WITH ABOUT 68 POB. IN DIFFICULT IN THE SOUTH MEDITERRANEAN SEA. ON BOARD THERE IS THE THURAYA SAT PHONE WITH THE NUMBER 008821621256157.

WE CARRIED OUT SOME INVESTIGATION ABOUT THIS CASE WITH THE PURPOSE TO LOCATE THE CALLER. "THURAYA" COMPANY INFORMED US THAT THE POSITION OF THE SATELLITE DEVICE AT 16.52 UTC WAS LAT 33°58.2'N – LONG 012°55.8'E.

PLEASE KEEP US UPDATED IN CASE OF SIGHTING OF THE ABOVE MENTIONED BOAT BY ANY NATO NAVAL ASSETS."<sup>114</sup>

According to NATO's latest statement dated 27 March 2012 "despite the imprecise nature of the request for information contained in the MRCC fax, which was not a formal request for assistance or «distress call», it was forwarded to NATO Task Force units under its operational control." (annex B.14)

The following day, 28 March 2011, NATO was also alerted by telephone by Father Zerai. In several newspaper articles, Father Zerai stated to have informed NATO command in Naples. In our interview, Father Zerai declared: "On Monday 28<sup>th</sup> I have called the Coast Guard, and when they told me they still didn't have any news I called NATO at Naples at around 10-10.30 to ask them to mobilize their means to look for this boat as well. [...] At NATO, the person who answered first was speaking English. I asked for somebody speaking Italian. They put my call through to somebody who could speak Italian. I explained him that there were these two boats missing and asked for NATO participation in the search. He told me that he would warn the appropriate authorities".

<sup>115</sup> However, in a response to Senator Tineke Strik's inquiry, Richard Froh, Deputy Assistant Secretary General Operations, states that NATO operational headquarters in Naples does not have "any record of a phone call from Father Zerai on 28 March".<sup>116</sup>

### 3.2.2.3 Distress Signals

In addition to the fax and phone call received directly by NATO allied command in Naples, all participating states/ NATO naval assets present in the area received the distress signals sent out by Rome MRCC.

The first signal was an ECG message sent at 18:54 GMT<sup>117</sup> through the SafetyNET international safety service.<sup>118</sup> According to Admiral Lo Sardo, interviewed by journalist Emiliano Bos, this distress signal was sent "to all ships in transit and to anyone in the area".<sup>119</sup> The message provided the coordinates of the migrants' boat and stated that it was "probably in difficulty" (fig. 8). It demanded that "all ships transiting in the Sicily Channel" "keep a sharp look out and reporting any sighting at MRCC Rome". The distress signal, whose status will be discussed in more detail in the following section, was emitted again every four hours for ten days.

On 28 March 2011 at 04:06 GMT the initial warning was also circulated by the World Wide Navigational Warning Service (WWNWS) as a Hydrolant Navigational Warning (fig. 9).<sup>120</sup> It further specified: "Vessels in vicinity

<sup>114</sup> Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 12.

<sup>115</sup> Interview conducted and filmed by Charles Heller in Geneva on 12 November 2011 (our translation from Italian to English).

<sup>116</sup> Senator Tineke Strik, "Lives lost in the Mediterranean Sea: who is responsible?", p. 26.

<sup>117</sup> *Ibid.*, p. 11.

<sup>118</sup> SafetyNET uses the Immarsat EGC (Enhanced Group Call) service to allow authorised maritime safety information providers, such as Maritime Rescue Coordination Centres, to broadcast messages to all ships in certain geographical areas in accordance with Global Maritime Distress and Safety System (GMDSS) procedures. See: [http://www.inmarsat.com/Support/Inmarsat\\_C/FAQs/default.aspx?language=EN&textonly=False](http://www.inmarsat.com/Support/Inmarsat_C/FAQs/default.aspx?language=EN&textonly=False)

<sup>119</sup> Interview conducted and filmed by Emiliano Bos at Rome MRCC (Comando Generale del Corpo delle Capitanerie di Porto) on 8 September 2011 (our translation from Italian to English).

<sup>120</sup> "In support of the Global Maritime Distress and Safety System (GMDSS), Broadcast Warnings are promulgated by the Worldwide Navigational Warnings Service [...] to provide rapid dissemination of information critical to navigation and the safety of life at sea. Navigational Warnings are issued regularly and contain information about persons in distress, or objects and events that pose an immediate hazard to navigation. The four types of Navigational Warnings - NAVAREA IV, HYDROLANT, NAVAREA XII, and HYDROPAC - are categorized by their location". URL: [http://msi.nga.mil/NGAPortal/MSI.portal?\\_nfpb=true&\\_pageLabel=msi\\_portal\\_page\\_63](http://msi.nga.mil/NGAPortal/MSI.portal?_nfpb=true&_pageLabel=msi_portal_page_63)

requested to keep a sharp lookout, assist if possible. Report to MRCC Rome.” This second message was sent in a perimeter including the Sicily Channel and beyond (the Hydrolant broadcast zones 52,53 and 56 indicated in fig. 10).

While a spokesman of the Spanish ministry of defence has denied that the Spanish asset operating in the area received this message,<sup>121</sup> according to Senator Tineke Strik “all maritime vessels, be they private, commercial or military, are supposed to be equipped to receive these messages”.<sup>122</sup> All participating states/NATO naval assets present in the area should thus have received the successive distress signals.

The above suggests that both NATO maritime command in Naples and participating states/NATO naval assets present in the area were directly informed of the presence of a vessel in distress, respectively by fax and telephone and via maritime distress signals.

### 3.2.3 Participating States/NATO Response To The Distress Signal

We must now discuss the participating states/NATO response to the information of the migrants’ distressed boat, which was received through multiple channels and NATO’s understanding of “distress” more generally.

The first element that needs to be discussed is NATO’s understanding of what kind of situation constitutes “distress”. In the above mentioned response to Emiliano Bos, NATO spokesperson Ms Oana Lungescu acknowledges that NATO maritime command was alerted “to the presence of a vessel in difficulty” but states that “the message was not an instruction to begin search and rescue, nor did it request assistance”. If the above-mentioned fax sent by MRCC Rome to NATO headquarters allied command in Naples on 27 March indicating the presence of a boat “in difficulty” did not require immediate and explicit intervention, participating states/NATO naval assets should have received the ECG signal sent out by the Italian Coast Guard. This message had a priority code marked as “distress”, the highest possible in a scale that includes, in decreasing order of urgency, “distress, urgency, safety, and routine”. The 1979 SAR Convention defines distress as “a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.”<sup>123</sup> According to this definition then, the EGC sent out by the Italian Coast Guard would have required “immediate assistance”. Moreover, all participating states/NATO assets in the Central Mediterranean should have received the Hydrolant message demanding that they “assist if possible”. Finally, it should be reminded that on 8 April 2011 - only a few days after the message was received and while the migrants’ vessel was still drifting at sea, the UNHCR’s Assistant High Commissioner for Protection Erika Feller stated that “any overcrowded boat leaving Libya these days should be considered to be in distress.”<sup>124</sup>

From the above it follows that if participating states/NATO forces did not deem the distress signals urgent enough to prompt their intervention, they failed to correctly assess the degree of distress of the passengers. However, the question “how did NATO and participating states assets act upon the information of the vessels distress?” remains entirely open. In a letter sent on 8 February 2012 in response to Senator Tineke Strik’s enquiry, NATO specified that “there is no record of any aircraft or ship under NATO command having seen

121 Jack Shenker and Giles Tremlett, “Migrant boat disaster: Spain challenges NATO over distress call claim”, 29 March 2012. URL: <http://www.guardian.co.uk/world/2012/mar/29/migrant-boat-disaster-spain-nato>

122 Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p. 12

123 Annex to the International Convention on Maritime Search and Rescue (SAR Convention), adopted on 27 April 1979, entered into force on 22 June 1985, para. 1.3.13. It should also be noted that the very definition of “distress” has been a contested term in the frame of assistance to migrants at sea in the Mediterranean, and in the Sicily Channel in particular. For instance, Maltese Armed Forces, the agency responsible for SAR operations in Malta, have at times applied a more narrow definition. According to a senior officer of the Armed Forces of Malta, distress is defined as “the imminent danger of loss of lives, so if they are sinking it is distress. If they are not sinking it is not distress”. Quoted in: Silja Klepp, “Illegal migration and migrant fatalities in Malta”, in *The human cost of border control in the context of EU maritime migration systems*, Vrije Universiteit: Amsterdam, 2009, p.7. On this issue see also: Thomas Gammeltoft-Hansen and Tanja E. Aalberts, “Sovereignty at sea: the law and politics of saving lives in the Mare Liberum”, DIIS Working Paper, 2010:18, p. 21; and Michael Pugh, “Drowning not waving: boat people and humanitarianism at sea”, 2004, *Journal of Refugee Studies*, 17 (1), pp. 50-68.

124 UNHCR, “UNHCR calls on States to uphold principles of rescue-at-sea and burden sharing”, Press Releases, 8 April 2011. URL: <http://www.unhcr.org/mt/index.php/news-and-views/news/312-unhcr-calls-on-states-to-uphold-principles-of-rescue-at-sea-and-burden-sharing>

or made contact with the small boat in question”.<sup>125</sup> However in several different statements, NATO has progressively admitted that several assets were in the area. In the email of 3 October 2011, NATO stated: “the nearest NATO vessel was 24 nautical miles away from the aforementioned vessel”. Senator Tineke Strik’s report has revealed that the Spanish Méndez Nuñez “was located around 11 miles away from the boat in distress”.<sup>126</sup> In NATO’s latest response dated 27 March 2012 it further conceded that, according to information from the Italian authorities, the Italian Borsini was “37 miles away” and the Etna “155 nautical miles from the position reported by the MRCC fax” (see annex B.14). No further information has been disclosed as to the position of other participating states/NATO naval assets present at the time.

We will now provide a hypothesis of what the participating states/NATO’s response may have been based on prior practices of assistance by NATO and by discussing the migrants’ testimonies describing their two encounters with military helicopters.

### 3.2.3.1 NATO Prior Assistance Practice

As stated in the “background” section of NATO’s 3 October 2011 statement concerning the “left-to-die boat” quoted above, “issues of migration do not fall within the mandate of the mission aimed at preventing the flow of arms, related material, and mercenaries to Libya. However all ships under NATO command are fully aware of their responsibilities with regards to the International Maritime Law regarding Safety of Life at Sea (SOLAS). As such NATO ships do everything they can to respond to distress calls and provide help when necessary, which they did on several occasions” (annex B.13). In NATO’s Fact Sheet “Operation Unified Protector NATO-led Arms Embargo against Libya” dated October 2011, NATO states that during the operation, “NATO ships have directly assisted in the rescue of more than 600 people in distress at sea and through coordination with national authorities and coast guards, NATO has facilitated the rescue of many hundreds more”.<sup>127</sup> We may note here that the number of people rescued by NATO is relatively small if compared to the 25,935 people<sup>128</sup> who arrived in Italy after fleeing Libya in unseaworthy boats and that at least 1,500 people lost their lives at sea during the same period.<sup>129</sup> This might be considered an indication of NATO’s minimal assistance practice. One particular case of rescue that occurred the day before the “left-to-die boat” left the port of Tripoli provides further insight into the way NATO conducted its assistance to migrants.

Between 25 and 26 March 2011, one day prior to the departure of the “left-to-die boat”, a migrant vessel was initially assisted by the Canadian frigate HMCS Charlottetown. The episode is described on the Canadian Navy journal “Crownsnest” as follows: “Shortly before noon on March 25, an order from the commander of Combined Task Group 4555.01 [Nato Maritime Command] directed HMCS Charlottetown to investigate a vessel off the coast of North Africa that had been reported as “adrift” to authorities ashore. The frigate scrambled her Sea King helicopter, which became the first NATO aircraft to reach the vessel. ‘We located the vessel, tracked it by radar, and confirmed visually it was making good headway,’ said pilot Captain Gerritt Siebring. ‘As soon as Charlottetown came into visual distance, however, the vessel stopped dead in the water.’ When contacted by radio, the crew of the migrant vessel claimed that they were adrift because their engine was seized and they were out of fuel. A boarding party set off from the frigate to investigate. Once aboard the migrant vessel, the boarding party members saw that the actual situation was rather different. ‘I was surprised to see the engine was running,’ said engineer Petty Officer 2nd Class Serge Grondin. ‘I checked the sump and the oil was pure black;

125 Letter sent on 8 February 2012 to Senator Tineke Strik by Richard Froh, Deputy Assistant Secretary General, Operations Directorate, NATO, quoted in Senator Tineke Strik’s “Lives lost in the Mediterranean Sea: who is responsible?”, p. 26.

126 *Ibid.*, p.17

127 NATO Fact sheet, “Operation UNIFIED PROTECTOR NATO Arms Embargo against Libya”, October 2011 [http://www.nato.int/nato\\_static/assets/pdf/pdf\\_2011\\_10/20111005\\_111005-factsheet\\_arms\\_embargo.pdf](http://www.nato.int/nato_static/assets/pdf/pdf_2011_10/20111005_111005-factsheet_arms_embargo.pdf).

128 IOM “Response to the Libyan Crisis”, External Situation Report, 10 October 2011. URL:

<http://www.iom.int/jahia/webdav/shared/shared/mainsite/media/docs/reports/IOM-sitrep-MENA.pdf>

129 UNHCR, “More than 1,500 drown or go missing trying to cross the Mediterranean in 2011”, 31 January 2012, <http://www.unhcr.org/4f2803949.html>

there was no water contamination as they said. When I checked their fuel, there was easily 400 litres in their tanks.' The boat also had an efficient bilge pump, powered by the main engine. After a minor adjustment to the rudimentary steering system, the migrant vessel was deemed seaworthy. Meanwhile, Charlottetown provided food, water and blankets for the passengers, and a member of the warship's medical team checked their general health. The final determination was that, although crowded, everyone aboard was in good health and in no immediate danger. 'Once we provided aid and met our obligations by assuring their health, ability to navigate and safely operate their vessel, our options became limited,' said Commander Craig Skjerpen, commanding officer of Charlottetown. 'We opened our distance and resumed our patrol, but stayed close enough to monitor the situation and respond if required.' The warship monitored the migrant vessel all night as the NATO Combined Task Group began managing the situation in coordination with Italian national authorities. The Italian Coast Guard took charge of the vessel and its occupants the following day."<sup>130</sup>

During a press briefing held on 10 May 2011, NATO reported that the following day, on 26 March 2011, the Italian military ship Etna also provided assistance to what seems to have been the same vessel. The statement reads as follows: "On the 26th March, the Italian ship ETNA, under NATO command in support of the arms embargo, assisted a vessel with around 150 people on board, including women and children. The vessel had earlier been given food and water by another NATO ship, but after the vessel came into distress, with no power, the ETNA sent teams including medical professionals to assess the passengers. The Etna then provided sickbay care for a newborn baby and mother before flying them to Lampedusa for transfer to hospital. The Etna remained alongside the vessel as all passengers were evacuated from the vessel by the Coast Guard. The helicopter returned to Etna before taking a second woman, undergoing contractions, to the Lampedusa for transfer to the same hospital".<sup>131</sup>

Nowhere in NATO's official sources could we find a confirmation of the fact that these two cases of rescue refer to the same migrants' boat. However, and although some inconsistencies remain (in particular, different articles in the press refer to 300-350 migrants, whereas NATO talks of 150 migrants in the case involving the Etna),<sup>132</sup> several elements of evidence points to this. In particular, the images provided in relation to the rescue carried out by the Charlottetown and by the Etna depict a boat that, although shot from two different sides (figs. 33, 34, 35), portray the same migrants' boat, leaving little space for doubt about the identity of the rescued boat. Moreover, the reconstruction of the facts provided by Italian journalist Francesco Viviano, who had been directly in touch via satellite phone with the migrants involved in these two cases of rescue, is consistent with this version.<sup>133</sup>

In the above-mentioned case, when informed of the presence of a vessel that was reported as "adrift", NATO did send out an order to a vessel, the Canadian Charlottetown under its command, to investigate the case. The commander of the ship, after assessing the condition of the boat through the ship's helicopter and later via radio, sent a boarding team to provide assistance in the form of water, food, and blankets, and also checked the general health of the people on-board (although the superficiality of this health check is reflected by the fact that only a few hours later two women gave birth). It further assessed the condition of the vessel. NATO seems to have then monitored the migrants' vessel until it was taken charge of by the Italian Coast Guard.<sup>134</sup>

130 Lieutenant (Navy) Michael McWhinnie, "HMCS Charlottetown assists drifting migrant vessel", in *Crowsnest* Vol. 5, No. 2 Summer 2011, p. 4. URL: [www.navy.forces.gc.ca/.../crowsnest\\_v5-i2.pdf](http://www.navy.forces.gc.ca/.../crowsnest_v5-i2.pdf)

131 NATO Press briefing on Libya by the NATO Deputy Spokesperson, Carmen Romero; Brigadier General Claudio Gabellini, Chief Operations Officer, Operation Unified Protector; Commander Peter Clarke. 10 May 2011. URL: [http://www.nato.int/cps/en/natolive/opinions\\_73660.htm](http://www.nato.int/cps/en/natolive/opinions_73660.htm)

132 See: AFR, "First migrant boat from Libya nears Italian shores", 26 March 2011. URL: <http://www.google.com/hostednews/afp/article/ALeqM5ifS4xArk5jPzv4SE8qeV4wJILA?docId=CNG.37378ace3822a8bc9b9d8f12757bbadc.11>; La Stampa, "Odissea sul barcone alla deriva recente disperati e un parto", 27 March 2011. URL: <http://www3.lastampa.it/cronache/sezioni/articolo/istp/395151/>; Il Fatto Quotidiano, "Storie di disperazione a Lampedusa: nella notte 700 arrivi. Ed è emergenza sanitaria", 27 March 2011. URL: <http://www.ilfattoquotidiano.it/2011/03/27/storie-di-disperazione-a-lampedusa-nella-notte-700-arrivi-ed-e-emergenza-sanitaria/100414/>

133 Francesco Viviano, "Sul barcone alla deriva nasce Yeabsera. In salvo il bambino della speranza", *La Repubblica*, 27 March 2011. Accessible at: <http://giovannitaurasi.wordpress.com/2011/03/27/sul-barcone-alla-deriva-nasce-yeabsera-in-salvo-il-bambino-della-speranza-di-francesco-viviano/>

134 Lieutenant (Navy) Michael McWhinnie, "HMCS Charlottetown assists drifting migrant vessel".

NATO's understanding of assistance thus seems to have been limited to a few elements of relief that would provide the minimal conditions for the boat to carry on its journey. This limited practice of assistance may be related to NATO's operational priorities (as stated above "issues of migration do not fall within the mandate of the mission") as well as to the potentials of becoming involved in the legal-political conflicts between coastal states described in sub-chapter 3.1.2. This was the case when on 11 July 2011 the Spanish Almirante Juan de Borbón operating under NATO command assisted a migrants' vessel in distress but was unable to disembark the rescued migrants for several days.<sup>135</sup>

### 3.2.3.2 Identification Elements Of The Two Helicopters Encountered By The Migrants

We will now provide all the elements in our possession that might contribute to the identification of the helicopter that the migrants' claim visited them twice during the afternoon and evening of 27 March 2011.<sup>136</sup>

Dan Haile Gebre describes the first encounter with the helicopter as follows: "It circled around us 4-5 times and came closer. It was making a lot of wind, and we almost lost our balance" (DHG, 93). Abu Kurke Kebato adds: "The helicopter came very close to us down, we showed him our babies, we showed them we finished oil, we tell them 'Please help us.'" (AKK, 31)

All testimonies confirm that the helicopter was "military" (AKK, 38; AKK2, 74; MAI, 27; FWT, 16-17) and equipped with a machine gun (DHG, 102). The helicopter cabin door was open and at least two people, who according to some of the survivors were wearing military uniforms and carrying arms, could be seen (DHG, 103; EMK2, 71; AKK, 24; AKK2, 83; FWT, 133; MAI, 27). Filmon Weldemichail Teklegergis remembers the colour of their uniform as being green (FWT, 224), while Abu Kurke says they were green and a sand-like colour (AKK2, 107-108). The colour of the helicopter is described as light green (BYI, 13) or green and grey (FWT, 112). All these elements exclude the possibility of the helicopter belonging to the Italian Coast Guard, which uses civilian white and red helicopters.

Abu Kurke continues: "I think I saw them take our picture. I think I saw a photo camera or something like that" (AKK, 41). Mohamed Ahmed Ibrahim confirms this particular point (MAI, 28), which is in fact consistent with protocols for vessel identification missions in the frame of NATO's monitoring of the embargo over Libya during Operation Odyssey Dawn.<sup>137</sup>

Furthermore, an important element revealed by witnesses is that the helicopter bore the English writing "ARMY" (AKK, 24; BYI, 16-19;) or "RESCU ARMY" (DHG, 107; FWT, 16) on its side (fig. 11). Most military ships contributing to the participating states/NATO operations off Libya were equipped with a helicopter but normally such a helicopter would belong to the Navy and would therefore bear the writing "NAVY" on its sides. It is known that Army helicopters were on-board ships taking part in the military intervention, but those mentioned in official sources were combat helicopters (like the British Army Apache Attack Helicopters<sup>138</sup>) which could not have performed SAR operations, and would be considerably different from those described by the migrants. Moreover,

<sup>135</sup> See a series of detailed posts on the blog [migrantsatsea.wordpress.com](http://migrantsatsea.wordpress.com) as well as the Statement by the Spanish Ministry of Defence "La Armada entrega a Túnez a los inmigrantes rescatados el pasado día 11", 16 July 2011. URL: [http://www.defensa.gob.es/gabinete/notasPrensa/2011/07/DGC\\_110716\\_Entrega\\_inmigrantes\\_Tunez\\_.html](http://www.defensa.gob.es/gabinete/notasPrensa/2011/07/DGC_110716_Entrega_inmigrantes_Tunez_.html). In summary, 114 migrants were rescued on 11 July 2011 by the Spanish Almirante Juan de Bordon, operating under NATO command. Shortly after the initial rescue of the migrant boat, 3 migrants were evacuated and turned over to Tunisian authorities. On orders from NATO command, the Juan de Borbón sailed to Malta and took a position 40 miles off the coast of that country, hoping to be able to disembark the migrants on the Island since their vessel was rescued within Malta's SAR. However, once again due to the legal-political conflict between coastal states in the Sicily Channel, Maltese authorities criticised the attempt to bring the rescued migrants to Malta given that the migrants should have been taken to Tunisia or Italy because both locations were closer to the original point of rescue. Only five of the migrants were airlifted to Malta for medical reasons on the 13th. On the 16th, instructed by the command of NATO, the Spanish frigate headed for the coast of Tunisia to start the transfer of the 106 immigrants who were still on board to the Tunisian Navy patrol boat Carthage.

<sup>136</sup> Filmon Teklegergis (FWT, 268) agrees with Dan Haile Gebre (DHG, 126) that it was the same helicopter that visited them twice, while Elias Mohamed (EM2, 104) and Mohamed Ahmed Ibrahim (MAI, 91) says there were two different helicopters. Mohamed Ahmed Ibrahim also adds that he cannot remember differences because there were very little. Abu Kurke Kebato does not mention neither a second visit nor a second helicopter.

<sup>137</sup> This practice is illustrated in a video showing the HMCS Charlottetown's Sea King helicopter on a reconnaissance mission during which the military take photographs of the ships they encounter for identification. [Natochannel.tv](http://natochannel.tv), "Maritime Helicopter Patrols", 6 April 2011. URL: [www.natochannel.tv](http://www.natochannel.tv) or <http://www.youtube.com/watch?v=sjV1o9GOhVg>

<sup>138</sup> British Ministry of Defence, "Apaches get ready to help protect Libyan civilians", 27 May 2011. URL: <http://www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/ApachesGetReadyToHelpProtectLibyanCivilians.htm>

according to the sourced reviewed, these types of helicopters were not deployed in military operations in Libya until 4 June 2011 onwards.<sup>139</sup>

Nevertheless, the Westland Lynx<sup>140</sup>, a battlefield utility helicopter of the British Army which does bear the writing “ARMY” on its side and can be used for SAR operations, was spotted in June 2011 in Malta on-board the HMS Ocean, a landing platform dock ship that took part to the military operation in Libya (fig. 13). During our interview with Dan Haile Gebre, we presented him with several photographs of different helicopters in operation at the time of events and when we showed the image of the Westland Lynx helicopter of the British Army, he immediately said it was “exactly like this” (DHG, 100) (fig. 12). The aspect of this particular helicopter seems in fact very similar to that described by the migrants, not only because of the “ARMY” writing, but also in terms of its colour and typology. However, according to the sources we have consulted, the HMS Ocean only joined the operations in the Mediterranean in June.<sup>141</sup> This specific ship and its helicopters cannot therefore have been involved in the “left-to-die boat” case but we cannot exclude the possibility that similar ships, British or belonging to other national navies, could have carried army helicopters.<sup>142</sup>

If the particularities of the observed writing of the word “ARMY” are correct, this would narrow down the nationality of the helicopter as belonging to an English speaking country either taking part in the military operations (the US, the UK and Canada) or geographically located within an helicopter’s operative range (Malta). Both the US and the UK had at the time a broad military presence deployed in the Mediterranean, among which helicopters of the typology described are therefore more likely to be found.<sup>143</sup> On the contrary, the only Canadian ship present at the time of the events in the Central Mediterranean was the HMSC Charlottetown, which carried one Sea King helicopter. This aircraft only bears numbers written on its side and belongs to the Navy (fig. 15). Moreover, it has a profile dissimilar to Dan Haile Gebre’s description. All of these factors make it very unlikely that this was the helicopter described by the migrants. Finally, Malta’s Armed Forces involvement also has to be ruled out, because the helicopters at their disposal, although being used in SAR operations, are not able to travel such long distances according to Malta MRCC.<sup>144</sup>

Consequently, while we are unable to identify the helicopter in question, the convergent testimonies are very precise in their description of particulars that point to the involvement of a military helicopter. Although the word “ARMY” written on the helicopter as identified by the testimonies points to an US or UK asset, the involvement of other national armies in this episode cannot be excluded.

### 3.2.3.3 Hypothesis Concerning Participating States/NATO Response

Based on the previously mentioned case of assistance by NATO as well as on the survivors’ testimonies, the possibility that participating states/NATO did not respond to the distress signal has to be considered unlikely. According to the elements in our possession, we provide the following hypothesis as to the action participating states/NATO took in response to the reception of the distress signal:

- Following the reception of the information concerning the distress of the migrants sent out by Rome MRCC, NATO maritime command instructed its closest naval asset to identify the vessel and assess its condition. It should be noted that the distance indicated by the NATO spokesperson, 24 nautical miles

139 NATO, “NATO attack helicopters increase pressure on Qadhafi regime”, 4 June 2011. URL: [http://www.nato.int/cps/en/natolive/news\\_75021.htm](http://www.nato.int/cps/en/natolive/news_75021.htm)

140 For a technical description of the helicopter, see: <http://www.army.mod.uk/equipment/aircraft/1532.aspx>

141 British Ministry of Defence, “UK and French ships rendezvous off Libyan coast”, 19 September 2011. URL: <http://www.mod.uk/DefenceInternet/DefenceNews/MilitaryOperations/UkAndFrenchShipsRendezvousOffLibyanCoast.htm>

142 To our knowledge, these helicopters would more likely be found on Landing Platform Docks, which usually carry amphibious assets.

143 Dan Haile Gebre even mentions at a certain point that the writing on the side of the helicopter might have been “US RESCUE ARMY”, but he’s not sure about this particular detail (DHG, 107-108).

144 Senator Tineke Strik, “Lives lost in the Mediterranean Sea: who is responsible?”, p.13



can be covered by most NATO ships present in the area in around one hour<sup>145</sup> and in around 15 minutes by a military helicopter of the type found on-board those same ships.<sup>146</sup> The distance of 11 nautical miles indicated in Senator Tineke Strik's report in relation to the Spanish frigate Mendez Núñez can be covered by this ship in less than half an hour at its top speed.

- Alternatively it is possible that participating states' naval assets were even closer and could send a helicopter.
- The NATO's or participating states' helicopter conducted a first assessment and deemed the condition of the migrants and of the vessel good enough not to demand its assistance.
- As was the NATO practice in the precedent analysed above, the helicopter left but the participating states/NATO's closest naval asset did however continue to track the migrants' ship.
- Within less than five hours, the same helicopter was sent back to provide a few packets of biscuits and bottles of water.
- The migrant boat continued for 5-7 hours before running out of fuel and starting to drift.

The above hypothesis however cannot be proven with the elements in our possession and demands further disclosure on the part of participating states/NATO forces to prove or disprove, as well as to identify the helicopter in question.

### **3.2.4 Participating states/NATO Detection Of The Migrants' Vessel During Its 14 Days Of Drift**

We have established that NATO and participating states' naval assets were informed of the migrants' distress. However, and whether or not participating states/NATO's closest naval asset did send a helicopter to assess the migrants' condition and provide food and water (which we consider highly probable as discussed above), the passengers were not provided with a form of assistance that could avert their tragic fate. Nevertheless, given the on-going military intervention and in particular the operation aiming at monitoring the MSA involving 16 naval assets on 4 April 2011 and mobilising extremely sophisticated sensing equipment, could participating states/NATO not have detected a Zodiac boat approximately 10 metres in length drifting very slowly during 14 days, 11 of which within NATO's MSA and the remaining three within the highly surveilled Libyan territorial waters?

While NATO and participating states have so far not disclosed precise information about the surveillance equipment mobilised by Naples Maritime command and participating states/NATO naval assets to monitor the area, we may nonetheless offer general indications of the high degree of surveillance present at the time of events in this area. These were well summarized by Vice Admiral Rinaldo Veri, Commander Maritime Command Naples' words of warning on 4 April 2011: "Anyone who believes they can sail through NATO's layers of surveillance and interdiction needs to think again."<sup>147</sup>

#### **3.2.4.1 Surveillance Means Deployed Prior To The 2011 Intervention: Operation Active Endeavour**

In order to assess NATO's maritime surveillance capacity in the frame of its intervention in Libya, it is important to understand that it relied on an already existing system deployed within the Operation Active Endeavour

<sup>145</sup> The top speed of the ships present in the area as of the 24 March 2011 (discussed in section 3.2.1.1) ranges between 18 and 30 knots (35 and 50 km/h). 24 nautical miles (nm) corresponds to around 44 kilometres (km).

<sup>146</sup> The speed of the CH-124 Sea King helicopter on board of the HMCS Charlottetown is 211 km/h. See [http://www.navy.forces.gc.ca/cms/1/1-a6\\_eng.asp](http://www.navy.forces.gc.ca/cms/1/1-a6_eng.asp)

<sup>147</sup> NATO, "VADM Veri holds Press Conference aboard ITS Etna", 4 April 2011. URL: <http://www.jfcnaples.nato.int/page167503642.aspx>

(OAE).<sup>148</sup> OAE was first launched after the 9/11 attacks to provide a deterrent presence and protect civilian traffic in the Western Mediterranean from the threat of terrorism. It progressively evolved to encompass the entire Mediterranean and provide detailed surveillance and analysis of all traffic. In order to detect threats it produces a multisensor, semi-automated Recognised Maritime Picture (RMP).

In his contribution to the May 2010 NATO Review online magazine, Commander Brian Finman, the Expeditionary Warfare Branch Head in the Operations Division of NATO maritime command in Naples, provides a good overview of how the RMP was produced:

“Watchstanders in the Maritime Operations Centre can process vast amounts of raw data received from shore-based, sea-based, and airborne sensors. Some of this data comes in the form of Automated Identification System (AIS) signals, which all commercial vessels greater than 300 tons are legally obliged to transmit. With an expanding array of networked sensors based in over 15 countries around the Mediterranean and Black Sea, this information system provides real-time data on a daily average of 8,000 contacts. Today’s network represents a quantum leap in surveillance capacity over just a few years ago. With so much raw information available, the trend in MSA is to develop technological tools that can compare in real-time the transmitted data to database information in order to validate the contacts’ names, registry numbers, cargo, owners, recent and upcoming ports of call, etc. These tools enable watchstanders to focus on anomalous contacts and concentrate intelligence and maritime analyst resources on irregular behaviour, such as unexplained loitering or course deviations”.<sup>149</sup>

In summary, OAE had developed an extremely sophisticated system that relied on: land based sensors (such as coastal radar stations); sensing capacity on board naval assets deployed on a permanent basis (such as the two Standing NATO Maritime Groups (SNMGs)) as well as that provided by naval assets temporarily in the area; airborne sensors provided by Maritime Patrol Aircraft from a variety of NATO contributing nations as well as AWACS.<sup>150</sup> NATO maritime command has also increasingly turned to the use of Synthetic Aperture Radar imagery to monitor maritime traffic.<sup>151</sup> These multiple sources of data were brought together in NATO’s Naples’ Headquarters Maritime Command (HQ MC). These were first analysed in an automated manner to detect anomalous behaviour, which the watchstanders in the Maritime Operations Center could further inquire into. It is worth noting that the key anomalies mentioned by Commander Brian Finman - “unexplained loitering or course deviations ” - could describe the migrants’ vessel trajectory during its 14 days of aimless drifting.

The surveillance system developed in the frame of OAE was mobilised towards monitoring the embargo on Libya in 2011. It is from the very same maritime operational centre used for OAE that NATO monitored all shipping activity in the MSA 24/7 and directed its naval activities to impose the arms embargo on Libya.<sup>152</sup> In this context, the existing sensors and the data management system already in place were further supplemented by all the sensors on board participating states/NATO naval and air assets, of which the following examples illustrate the capacity.

#### 3.2.4.2 Participating States/NATO Detection Capabilities In 2011

As an example, we will briefly review the detection capabilities of the French aircraft carrier Charles de Gaulle, which was in operation during the time of events of the Libyan coast in the Gulf of Syrte. Despite its position

148 NATO Allied Maritime Command Naples, News Release, “Ten years of Operation Active Endeavour”, 26 October 2011. URL: [http://www.manp.nato.int/news\\_releases/mcnaples/pressreleases11/NR\\_52\\_11.html](http://www.manp.nato.int/news_releases/mcnaples/pressreleases11/NR_52_11.html)

149 Commander Brian Finman, “Keeping the Med safe - how it’s done”, in NATO review, 19 May 2010, [http://www.nato.int/docu/review/2010/Maritime\\_Security/EN/index.htm](http://www.nato.int/docu/review/2010/Maritime_Security/EN/index.htm). See also the video “The God’s eye view: Operation Active Endeavour” in the same edition of NATO review, 19 May 2010.

150 Ibid. See also the summary of OAE provided by the French Ministry of Defence: <http://www.defense.gouv.fr/english/content/view/full/68253>

151 R. Grasso, J. Horstmann, P. Ranelli, K. Bryan, C. Carthel, S. Coraluppi, A. Baldacci, “Performance assessment of sensors for maritime surveillance using sea trial data”, presentation at ESA SeaSAR10 Frascati 25-29 January 2010. URL: <http://earth.eo.esa.int/cgi-bin/confsea10.pl?abstract=542>

152 Natochanneltv, “NATO and Libya - Operation Unified Protector: The Command”, 1 April 2011. URL: [http://www.youtube.com/watch?v=jxujD9BQA-Q&feature=player\\_embedded#](http://www.youtube.com/watch?v=jxujD9BQA-Q&feature=player_embedded#)

“above 200 km” from the Libyan coast,<sup>153</sup> Rear Admiral Philippe Coindreau, Commander of the French task force, declared in an article dated 30 March 2011 that: “We know exactly where the Libyan ships are and what they are doing.”<sup>154</sup> This was enabled by the vessel’s electromagnetic detection systems. According to the description provided on the website of the French Ministry of defence, the CDG operated, amongst others sensing equipment, the DRBJ 11 B long-range 3D radar developed by Thales,<sup>155</sup> that enables detection up to 300km and allows to measure with precision the spatial coordinates of any mobile detected.<sup>156</sup> Participating states/NATO naval assets sensing capacities varied in terms of specific technologies, but they all mobilised very sophisticated means of surveillance.

The surveillance capacity of the MSA was further extended by mobilising participating states/NATO air assets (described in sub-chapter 3.2.1.3). In particular, the intelligence produced by AWACS (Airborne Warning and Control System) aircrafts provided both by NATO as well as by several other participating states (USA, UK and France) offers an example of the sensing capacity of their air assets.<sup>157</sup> According to Lieutenant-colonel Arnaud B, Chief of Mission on-board the French E-3F AWACS (fig. 29) which had been in operation above Libya since the 19th of March<sup>158</sup> “the rotodome on the aircraft’s roof contains two radars that allow us to ‘see’ everything flying and sailing in a radius of 400 km<sup>2</sup>.”<sup>159</sup> The AWACS detection capacity is able to identify rubber boats similar to that used by the migrants. On 14 June, NATO reported that “NATO assets including Intelligence, Surveillance and Reconnaissance (ISR) aircraft and Airborne Warning and Control System (AWACS) aircraft identified and tracked rigid-hulled inflatable boat (RHIB) activity off the Libyan coast west of Misrata near Zlitan”.<sup>160</sup> This intelligence allowed Attack helicopters to be deployed and destroy two RHIBs operated by pro-Gaddafi forces that posed a threat to maritime traffic in the area.

All detection capacities on-board participating states/NATO’s naval and air assets were assembled in Naples Maritime command and made available to all other assets in operation. Commander Craig Skjerpen, Captain of HMCS Charlottetown, detailed this process as follows in a video posted on natochannel.tv on 1 April 2011: “What we do is link up all our radar images together, all the ships, and from that we create sort of a map of all contacts in the area. We are also working with aircrafts that are tracking vessels. And from that we have a full picture of all vessels in the area”.<sup>161</sup>

In another video posted on natochannel.tv on 14 April 2011, we are taken on-board the Bettica as it manoeuvres towards its patrol sector, “near the border between Tunisia and Libya.” Mike Mühleberger, The NATO correspondent on-board describes a monitor presenting maritime traffic and squares delimiting large areas: “The area North of Libya has been divided into patrol sectors assigned to each NATO ship. By sharing information they can be more effective, and ensure that vessels are continuously tracked as they pass from one sector to another”<sup>162</sup> (fig. 32). These combined sensing capabilities provided an extremely precise overall picture. Commander Fabrizio Falzi, on-board the Italian Bettica, explains: “To be an asset amongst others assets part of NATO, means that you can have a complete overall situation of everything that is flying or sailing all around you, and not only in the immediate vicinity of your ship. Knowing what’s going on, also far away from you, helps you

153 Romain Rosso, “Le Charles-de-Gaulle accusé d’avoir laissé mourir 61 migrants”, L’Express, 9 Mai 2011. URL: [http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants\\_990737.html](http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants_990737.html)

154 Romain Rosso, “Libye: la marine pro-Kadhafi sous surveillance”, L’Express, 30 March 2011. URL: [http://www.lexpress.fr/actualite/monde/libye-la-marine-pro-kadhafi-sous-surveillance\\_977811.html](http://www.lexpress.fr/actualite/monde/libye-la-marine-pro-kadhafi-sous-surveillance_977811.html)

155 For a technical description of the Charles de Gaulle, see: <http://www.defense.gouv.fr/dga/equipement/naval/le-porte-avions-charles-de-gaulle>

156 Deputy François Cornut-Gentille, “Défense - Équipement des forces - Dissuasion”, “Avis” presented to the French National Assembly on 25 October 2011, p. 215. URL: <http://www.assemblee-nationale.fr/13/budget/plf2012/a3809-tvii.asp>

157 NATO, “AWACS: NATO’s ‘Eye In The Sky’”, URL: [http://www.nato.int/cps/en/SID-D366E59C-D740EDFA/natolive/topics\\_48904.htm?selectedLocale=en](http://www.nato.int/cps/en/SID-D366E59C-D740EDFA/natolive/topics_48904.htm?selectedLocale=en)

158 French Ministry of Defence, “A bord d’un E-3F au dessus de la Libye”, 24 June 2011. URL: <http://www.defense.gouv.fr/air/medias/carnet-de-vol/a-bord-d-un-e-3f-au-dessus-de-la-libye>

159 French Ministry of Defence, “Unified Protector: Mission en Awacs dans le ciel libyen”, 21 June 2011. URL: <http://www.defense.gouv.fr/actualites/articles2/unified-protector-mission-en-awacs-dans-le-ciel-libyen>

160 NATO, “NATO attack helicopters destroy pro-Qadhafi military equipment”, 14 June 2011. URL: [http://www.nato.int/cps/en/natolive/news\\_75418.htm](http://www.nato.int/cps/en/natolive/news_75418.htm)

161 Natochanneltv, “NATO and Libya - Operation Unified Protector: The Arms Embargo”, 1 April 2011. URL: [http://www.youtube.com/watch?v=dRqzRvvg2Y&feature=player\\_embedded#](http://www.youtube.com/watch?v=dRqzRvvg2Y&feature=player_embedded#)

162 Natochanneltv, “NATO and Libya - Italian patrol ship Bettica enforcing the arms embargo”, 14 April 2011. URL: <http://www.youtube.com/watch?v=fwVPv0sgsk8>

take the right decision in the right moment".<sup>163</sup>

From these kinds of statements, it would appear that participating states/NATO naval and air assets were equipped with technologies that offered an extremely high sensing capacity geared both towards combat operations and to monitoring the MSA. It is highly probable that some of the sensing capabilities mentioned above were sufficient to identify a Zodiac-style rubber boat approximately 10 metres long carrying 72 people. In addition to their own surveillance systems, participating states/NATO assets benefited from sensors already in place in the framework of Operation Active Endeavour as well as from NATO Maritime command's capacity for data fusion and analysis. The later was specifically designed to detect objects that appeared anomalous, such as a vessel drifting aimlessly for 14 days. It thus appears highly improbable that the migrants' vessel went undetected for so long within one of the most highly patrolled areas in the world. Moreover the survivors claim that on 3 or 4 April 2011 they encountered a military ship with one or two helicopters on-board that, despite clearly witnessing their distress, failed to assist them. We now turn to discussing the identification of this vessel.

### 3.2.4.3 Identification Elements Of The Military Ship Encountered By The Migrants

As we have described in the "Chain of Events" section, the migrants claim to have encountered a military vessel after several days of drift. We assessed this time to be between 3 and 4 April, towards the end of the afternoon. Dan Haile Gebre describes its approach in the following way: "At first the ship was very far. Maybe 700 m. they then circled around us, three times, until they came very close, 10m. We are watching them, they are watching us. We are showing them the dead bodies. We drank water from the sea to show them we were thirsty. The people on the boat took pictures, nothing else." (DHG, 152-153, EMK is consistent, see 26). According to survivors then, a military vessel approached intentionally the migrants' vessel until it came close enough to witness, and photograph, the evident distress of the migrants on board and yet failed to assist them.

The first attempt at identifying the military vessel the migrants claim to have encountered was led by the journalist Jack Shenker in his article for the Guardian. He mainly based his assessment on Abu Kurke Kebato's testimony, in which he claimed to have encountered an aircraft carrier with jets taking off.<sup>164</sup> After failing to receive any information from NATO, and following "extensive inquiries to ascertain the identity of the aircraft carrier", The Guardian "concluded that it is likely to have been the French ship Charles de Gaulle, which was operating in the Mediterranean on those dates".<sup>165</sup> This version was immediately contested by the French military, who claimed that at the time of events the Charles de Gaulle was operating in the Gulf of Sirte, faraway from the migrants' vessel trajectory, and none of its other naval assets was involved in the case.<sup>166</sup> It later appeared that at the time news media had mostly been relying on Abu Kurke Kebato's testimony, probably because his eloquence and excellent English gave him a role of "representation" in relation to the other survivors.<sup>167</sup> His testimony though, while altogether very reliable, was to our knowledge the only one to recall an aircraft carrier with jets taking off (AKK, 49-52). Several other testimonies, such as those of Dan Haile Gebre and Elias Mohamed Kadi, mentioned a smaller military ship carrying two helicopters (DHG, 176; EMK, 25). This version seems more plausible since there were many vessels corresponding to this description operating at the time of events.

During our interview with Dan Haile Gebre, we presented him with several photographs of different naval assets in operation at the time of events. When shown photographs of large aircraft carriers, he dismissed them as "too big". But he recognised the Italian vessel "Borsini", one of the "Commandante Class" ships in the Italian fleet, as

<sup>163</sup> *Ibid.*

<sup>164</sup> Jack Shenker, "Aircraft carrier left us to die, say migrants", 8 May 2011. URL: <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>

<sup>165</sup> *Ibid.*

<sup>166</sup> Romain Rosso, "Le Charles-de-Gaulle accusé d'avoir laissé mourir 61 migrants", L'Express, 9 Mai 2011. URL: [http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants\\_990737.html](http://www.lexpress.fr/actualite/monde/le-charles-de-gaulle-accuse-d-avoir-laisse-mourir-61-migrants_990737.html)

<sup>167</sup> This was also the case for Emiliano Bos's initial report on the case. "Quell'elicottero che non è tornato a salvarci", RSI, 15 April 2011. URL: [http://info.rsi.ch/home/channels/informazione/info\\_on\\_line/2011/04/15--Lelicottero-che-non-tornato-a](http://info.rsi.ch/home/channels/informazione/info_on_line/2011/04/15--Lelicottero-che-non-tornato-a)

similar to the boat they sighted. He said: “The front section was very small, with only room for one helicopter, and one helicopter in the back. (...). Yes, exactly like this, like two steps.” (DHG, 177) While Dan Gebre Haile did not identify this specific ship, his testimony leads us to believe that the military vessel the migrants encountered was within a similar class of vessels.

There were many participating states/NATO naval assets operating at in the MSA at the time of events in this category that could correspond to the “two step” structure recognised by Dan Haile Gebre. Amongst them are in particular frigates that incorporate in their design stealth features (as, for instance, those in the Italian and French “Horizon” class, the “Andrea Doria” and “Forbin”; those in the French “La Fayette” class, as the “Aconit”; or those in the Italian “Comandante” class, as the already mentioned “Borsini” and the “Bettica”) or those with a rather squared-off design (as, for instance, those in the Italian “Maestrale” class, as the “Libeccio”; those in the Spanish “Álvaro de Bazán” class, as the “Méndez Nuñez).

Dan Haile Gebre provides further elements that bring us closer to identification. He claims that the vessel bore writing on the front side, which he recalled in fragments while writing it on paper: “‘MF’...there is a ‘9’ then I think ‘29’ and then I am not sure of the following numbers. ‘MF’ is sure, ‘9’ is sure, maybe ‘MF 929...’” (DHG, 170-171). Filmon Weldemichail Teklegerkis remembers to have read a similar identification code on the side of the ship: “There was written MF 900 29 or something similar. I’m sure about the ‘MF’ acronym. There was ‘MF’ written on it” (FWT, 414-415). We have not found any ship bearing such writing on its side, although the structure of the writing Dan Haile Gebre describes does correspond to that of an identification code for a military vessel.

Dan Haile Gebre claims to have recognized a French flag floating on the top of the vessel’s centre tower (DHG, 171). He also believes he saw French flags on the shoulder pads of the uniforms of some of the militaries on deck, as well as a rooster insignia at the level of a heart (DHG, 156). This is a detail for which we have found no additional confirmation. However, amongst the “over one hundred people on deck” he recalls that those wearing what he recognised as military uniforms were a minority. Others were dressed in what he describes as a civil dress, and others still in a grey overall, like that of a mechanic (DHG, 157 and 181). While it is common for sailors in the navy to wear overalls during naval operations (see for example the French and Italian Navy) we have not found additional confirmation of the grey colour described.

Dan describes the reaction of the “captain”, who he believes was from a Francophone country, to these French emblems: “When the boat was circling around us, at the second circle the driver said: ‘These are French, they are going to save us.’ We asked: ‘How do you know?’ He replied: ‘The flag is French, the name is French, everything is French’ (DHG, 189). Filmon Weldemichail Teklegerkis also remembers to have read on the ship some words “which might have been French” and that other passengers claimed it was a French ship (FWT, 422-438).

As we have noted above, the migrants’ individual testimonies are remarkably consistent with one another. Furthermore at least 38 naval assets were operating in the MSA both in combat operations and in patrolling the embargo zone, and several amongst them were of the shape and size described by Dan Haile Gebre and carried at least one helicopter. It thus seems highly plausible that the migrants did encounter a military ship of the kind described by the survivors, however we have not been able to further verify the particulars they mentioned so as to lead to the identification of the naval asset in question.

A further question that remains unresolved is: “Why did the military vessel fail to assist the migrants despite witnessing evident signs of distress?” According to Dan Haile Gebre’s account, the military ship progressively came closer to the migrants’ vessel (circling around the migrants’ vessel three times), and seemed to have had the intention to identify it and/or assist it. Why did it not do so? We have no plausible hypothesis to offer in

answer to this question, which also left Dan Haile Gebre deeply puzzled:

“I have thought about this often, any human being should have rescued us, and at least given us some food and water! Even criminals should not be treated in this way. We had adults and children dying, we were drinking water, asking for help, but they didn’t give us anything, only taking pictures. So its difficult for me to understand how the people on the ship could behave this way. (...) The helicopter also has a responsibility, but when it left us we were still strong. But when we met this ship 30 people or so had died, some were dying right then and there, on our laps. After that we lost hope. We knew that we would die little by little.” (DHG, 239 -248)

### **3.3 CONCLUSION ON THE INVOLVEMENT OF PARTICIPATING STATES/NATO FORCES**

Initial evidence provided by the survivors’ testimonies mentioned encounters with military aerial and naval assets. Furthermore our drift model indicated that their vessel remained adrift for 11 days within NATO’s maritime surveillance area and for the remaining three days within Libyan territorial waters. This entire zone was populated by a large number of aerial and maritime assets deployed in support of the multi-state military operations in Libya. Taken together these materials prompted our enquiry into NATO/collation involvement in the incident of the “left-to-die boat”.

We can now say with certainty that:

1. The migrants’ vessel remained for its entire 15 day trajectory within NATO’s maritime surveillance area and Libyan territorial waters. It was NATO’s mission within the framework of Operation Unified Protector to monitor all traffic in this area so as to prevent the flow of arms and mercenaries and prevent attacks, but also, more generally, to protect civilians as per UNSCR 1973;
2. This area was populated by at least 38 maritime assets as well as many additional aerial assets during the time of the event. Their exact maritime laydown is difficult to ascertain, but we may say that the ships involved in monitoring the embargo area were deployed throughout the entire MSA according to patrol sectors, while the naval assets involved in combat operations were probably concentrated along the Libyan coast.
3. NATO maritime command in Naples and participating states/NATO naval assets were informed of the presence of a vessel in distress, respectively by telephone, fax, and via maritime distress signals. The information received clearly indicated the situation of distress and the necessity to assist the migrants;
4. Participating states/NATO had the detection capability to detect the migrants’ vessel during its 14 days of drift back towards the coast of North Africa.

A high degree of involvement on the part of participating states/NATO forces in the “left-to-die boat” case emerges from these four key points. Participating states/NATO forces had the information and the ability to assist the migrants but failed to do so in a way that would have prevented the deaths of 63 people.

With the elements of evidence in our possession, we attempted to corroborate the migrants’ statement claiming that they had encountered military aerial and naval assets that failed to assist them. We may now say that they are extremely convincing for the following reasons:

- The consistency of testimony between the survivors.
- Prior practices of assistance and vessel identification within NATO’s maritime surveillance area corroborates the migrant claims to having seen such ships.

- The number and type of air and naval assets in operation in the area at that time suggest that the likelihood of such sightings was entirely plausible.

We have argued that the survivors' claim that they encountered a military helicopter and a military ship that failed to assist them in a way that would have prevented their tragic fate, is highly probable given all the facts that we have gathered in the generation of this report. However further investigation and disclosure by the participating states/NATO will be required to arrive at a definitive conclusion.

## 4. CONCLUSION

This report has led us to inquire into the events that led to death of 63 passengers of the “left-to-die boat” case, one important case amongst the over 1,500 migrants who lost their life in the Mediterranean while fleeing Libya in 2011.<sup>168</sup> All these losses occurred despite the significant naval and aerial presence in the area due to Participating states/NATO operations in Libya.

In attempting to answer the question “what happened to the “left-to-die boat” and who was involved in the events leading to the deaths of 63 migrants?”, we employed novel forms of visualisations and spatial analysis, which allowed us to cross-reference the testimonies of the survivors between each other and with other verifiable sources of data., such as GPS coordinates of the vessel provided for different moments of its trajectory and a drift model calculated specifically for this report. By combining these different sources we arrived at the conclusion that the account of the survivors was highly accurate and credible and we were able to produce a coherent and precise picture of the how the events unfolded through space and time.

Several actors were involved in the events leading to the tragic fate of the “left-to-die boat”. The Gaddafi regime made the crossing of the Mediterranean extremely dangerous for hundreds of people leaving Libya, and in the case of the “left-to-die-boat” specifically. Secondly, according to the testimonies of the survivors, fishermen failed to assist the migrants they encountered in the open sea. Thirdly, Italy and Malta, although informed of the distress of the migrants and while the migrants’ vessel was on the threshold of the Maltese SAR zone, did not intervene to rescue them or ensure that a rescue was coordinated. Finally, at least one patrol aircraft, one helicopter and a military ship, whose identities still remain unknown, had direct contact with the boat. All these parties, although they were informed of the migrants’ distress and while they had the technical and logistical ability to assist the migrants, did not intervene in a way that could have averted the tragic fate of the passengers. The migrants’ vessel drifted slowly, during 14 days, within one of the most surveilled maritime areas in the world, populated by at least 38 naval assets.

Reviewing the different degrees of involvement on the part of all the actors involved in the “left-to-die boat” case, what emerges beyond individual acts or modes of inaction is a generalised reluctance on the part of all parties involved to assist the people on-board this vessel.

*How is it possible that the migrants were left to die despite these repeated encounters? Who exactly did they encounter? Who was present in the area, informed of their distress and yet failed to respond?* The account of events we have provided should serve as a first contribution to answering these questions, however only through further inquiry and disclosure by all parties involved will they receive the definite answers they deserve.

<sup>168</sup> UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”, Briefing Notes, 31 January 2012. URL: <http://www.unhcr.org/4f27e01f9.html>



## OVERVIEW

For the purposes of this report, the duration of the Libya conflict is identified as spanning from 15 February 2011, when public protests first began against the Gaddafi regime in Benghazi, to 23 October 2011, the date when the National Transitional Council officially declared an end to the conflict. By 7 October, 25,935 people had arrived in Italy and 1,530 in Malta after fleeing Libya. The highlighted section on the map below shows the central area of migration from Libya to Italy. The area contains national boundaries that belong to Libya, Tunisia, Italy and Malta.

1

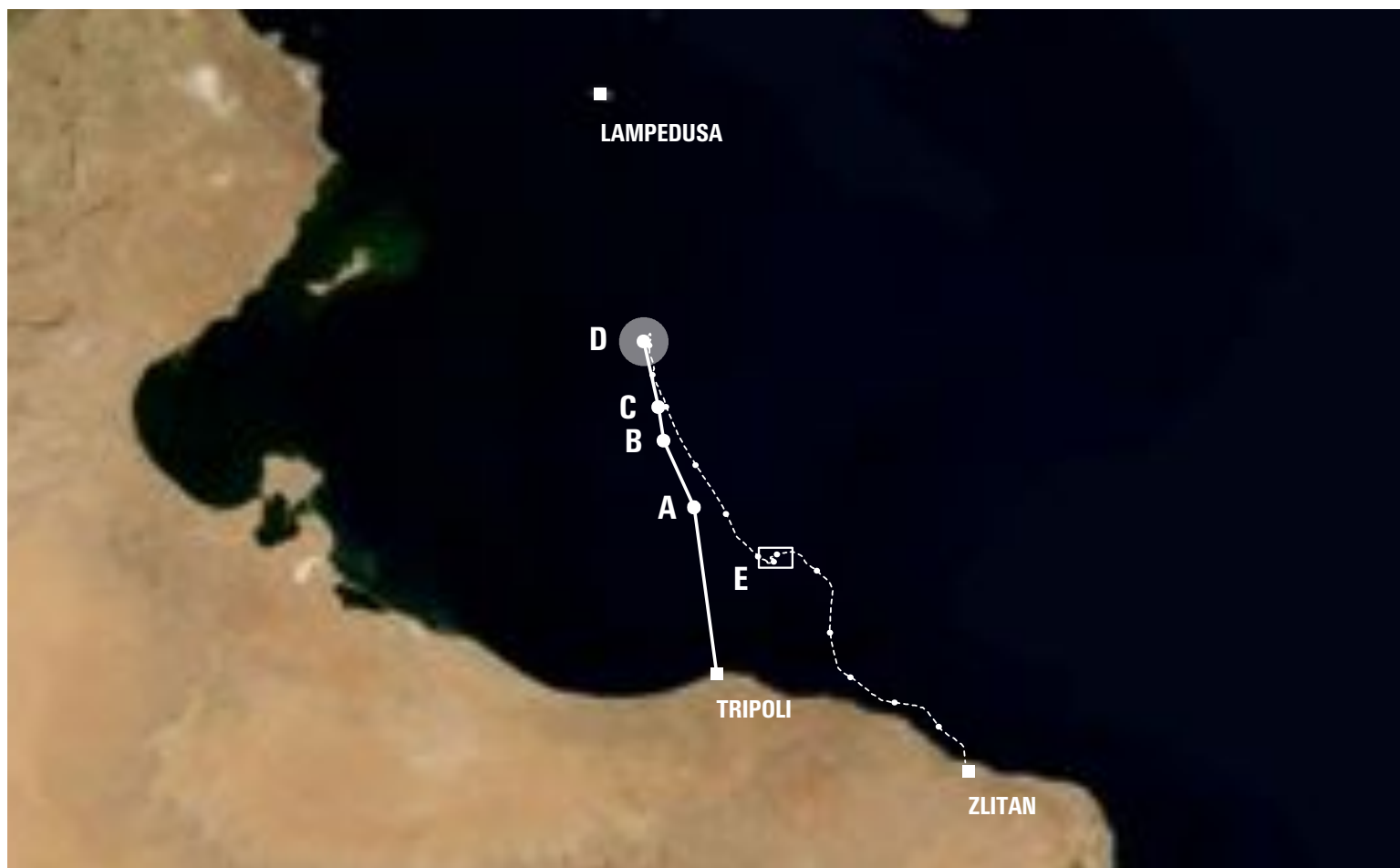


Fig. 1, View of entire Mediterranean with box (A) identifying the area of interest between Tripoli and Lampedusa.

## KEY EVENTS

The following is a summary of key events: the migrants' vessel left the Port of Tripoli between 00:00 and 02:00 GMT on 27 March 2011 with 72 migrants on board. The vessel was probably sighted by a French aircraft which transmitted its coordinates to Rome MRCC. After proceeding in the direction of Lampedusa for 15 - 18 hours, the migrants placed a distress call by satellite phone to an Eritrean priest based in Italy. The priest, in turn, called the MRCC in Rome to alert them to the fact that there was a vessel in distress. Shortly following this call, the MRCC in Rome published an Enhanced Group Call message and alerted both Malta MRCC and NATO HQ allied command in Naples that a vessel was in distress. It also provided them with the vessel's geographic coordinates in latitude and longitude at 16:52 GMT. Following the broadcast of the vessel's position, a helicopter arrived, observed the boat and left. After this visit by the helicopter, the position of the boat was determined a second time as 9 nautical miles NNW of the earlier position. The migrants then waited 4 - 5 hours in the same area, where their requests for help from some fishermen went unheeded. Still in the same position, the vessel was visited for a second time by a military helicopter that dropped biscuits and water before leaving. The vessel then continued NNW towards Lampedusa for 5 - 8 hours before running out of fuel at approximately 07:00 GMT on 28 March, at which time the boat began to drift. The boat drifted SSW for 7 - 8 days before it encountered a military ship. On 10 April, the boat landed south-east of Tripoli at Zlitan. Upon landing, 11 migrants were still alive. 2 died shortly thereafter.

2

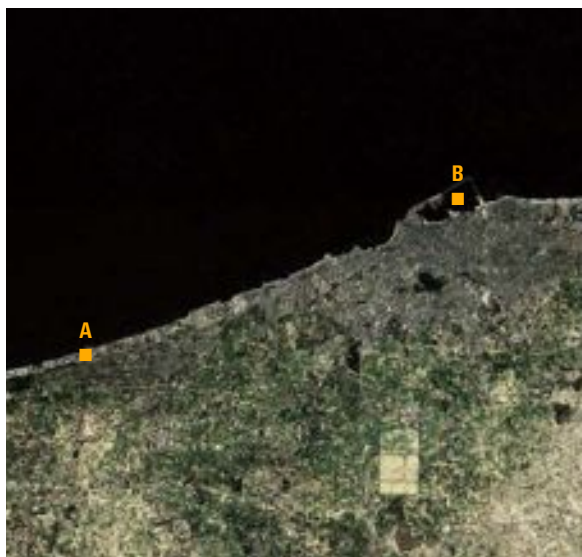


**Fig. 2,** Departure point at Port of Tripoli between 00:00 and 02:00 UTC on 27 March. Boat first spotted by a French aircraft at 14:55 GMT on 27 March at position LAT 33°40' N, - LON 13°05' E (A). GPS location of vessel (B) at 16:52 GMT on 27 March 2011 at position LAT 33 58.2 N – LON 12 55.8 E as determined by the MRCC based on locations established by the satellite phone provider Thuraya. The GPS position of the boat was determined a second time (C) at 19:08 GMT on 27 March at position LAT 34 07.11 N – LON 12 53.24 E, again based on information provided by Thuraya. The vessel began to drift (D) within a 4.3 nm radius of position 34 24.792 N – 12 48.576 E at approximately 07:00 GMT on 28 March. Between 3 and 5 April the migrants encounter a military ship (E). On 10 April the boat lands back at Zlitan.

VESSEL

The vessel used by the migrants was provided by the Libyan military. The exact manufacturer and model of the migrant’s vessel has not been established; however, the survivors’ testimonies are consistent with a Zodiac-style inflatable boat approximately 10 meters in length. From the information in our possession, it is unclear if it was a completely inflatable vessel or rather a Rigid-Hulled Inflatable Boat (RHIB vessels are constructed of a solid formed hull mounted with inflatable collars to maintain buoyancy). For the purpose of this report, and based upon the dimensions provided by survivors’ testimonies, specifications from the ASIS WB 12 have been used as a guideline. The vessel used by the migrants left the Port of Tripoli with twelve 20-litre containers of fuel.

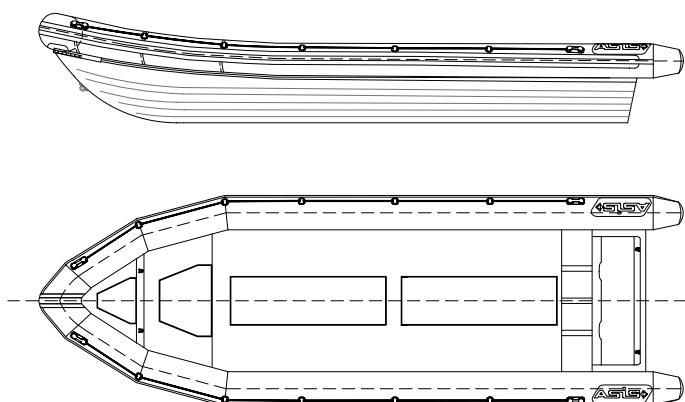
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Dimensions	
Overall length	11900 mm
Overall Beam	3770 mm
Internal Length	9600 mm
Internal Beam	2600 mm
Weight Empty	2500 Kg
Buoyancy Collar diameter	550mm

Capacity	
Max No. of Persons	25 Persons
MaxPayload incl. fuel*	3720 Kg
Floor Board Usable Area	22.2 m2
Buoyancy Volume	3758 L

**Fig. 3**, The Port of Tripoli in the Medina area where the vessel in question departed from **(A)** is one of two ports from which migrants were leaving during the conflict in Libya. The other site of departure, approximately 30 kilometers to the west, is the Sidi Bilal port in Janzur **(B)**. **Fig. 4**, Lorenzo Pezzani interviewing survivor Daniel Haile Gebre on 21 December 2011. The image shows Pezzani and Haile Gebre’s drawing of the migrants’ Zodiac style boat. **Fig. 5**, Plan and Elevation of ASIS RHIB model WB 12. **Fig. 6**, Specification sheet for ASIS WB 12. Note: Figs. 5 and 6 are provided as references for an RHIB vessel type of approximate length and do not provide the exact manufacturer or model of vessel used by the migrants.

## AIRCRAFT SIGHTING

On 27 March at 14:55 GMT, a French aircraft informed Rome MRCC of the sighting of a boat with about fifty persons on-board. The aircraft established the position of the boat and took a picture of the vessel that was sent to Rome MCRR.

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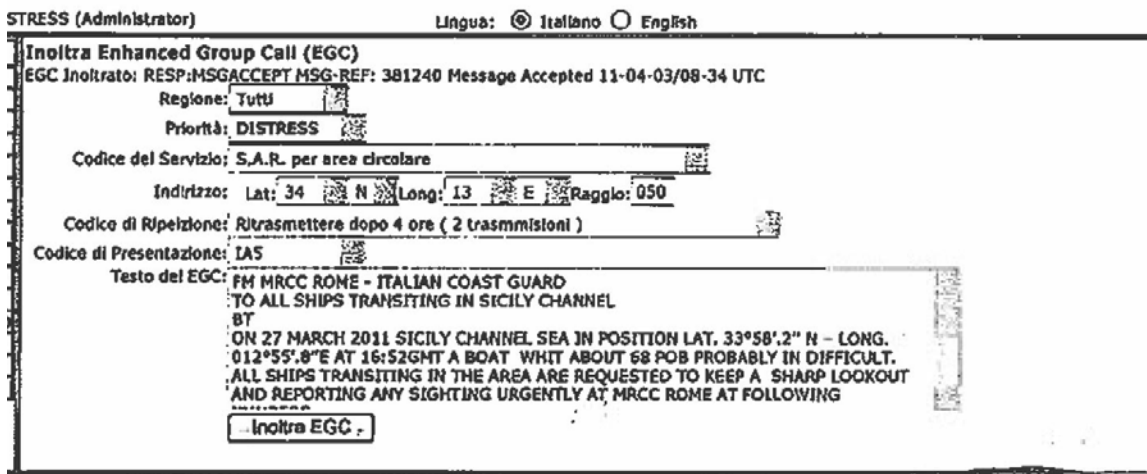


**Fig. 7,** Picture taken by the French aircraft and sent to Rome MRCC.

POSITIONING AND ALERT

The vessel's location was established at three points during the migrant's journey. After the first position was determined by the French aircraft, the second one was established using GPS coordinates by Thuraya, the satellite phone provider used by the migrants. This location was published by the Italian Coast Guard in geographic coordinates (latitude and longitude) in an Enhanced Group Call (EGC) distress signal intended to alert other crafts in the area. A second alert containing the same information was broadcast in the form of a HYDROLANT alert, which called for all vessels in the vicinity of the Sicily Strait (HYDROLANT areas 52, 53 and 56) to keep a "sharp look out" for a "vessel in need of assistance." A third position was established about 2 hours later approximately 9nm NNW of the previous one, again by Thuraya.

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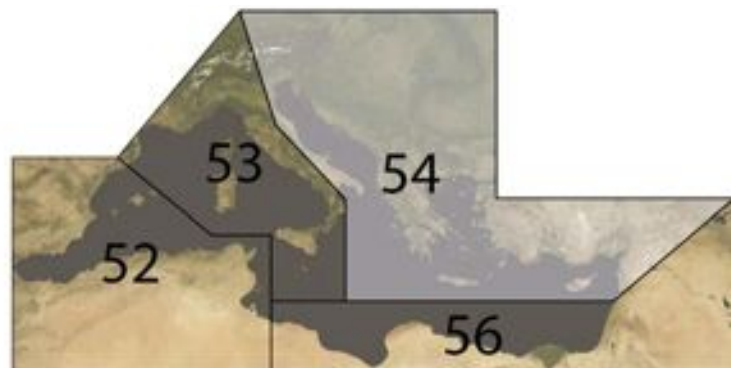


Fig. 8, The Italian Coast Guard issued an Inmarsat-C EGC at 18:54 GMT on 27 March 2011. The Italian Coast Guard based coordinates on the migrants' satellite phone calls. All Thuraya satellite phones are equipped with a GPS receiver that periodically transmits their locations to the Thuraya gateway, and are accurate within 100 meters. Fig. 9, A second HYDROLANT broadcast warning was issued at 04:06 GMT on 28 March 2011 communicating the same information. Fig. 10, HYDROLANT Broadcast Areas 52, 53 and 56 highlighted.

## HELICOPTER IDENTIFICATION

The migrants claim that on 27 March their vessel was overflowed by at least one military helicopter. Despite the migrants' requests for help, the aircraft only provided 8 bottles of water and a few packets of biscuits before leaving. Based on survivors' descriptions, we have tried to identify the helicopter in question among those that were participating to the military operations off the coast of Libya.

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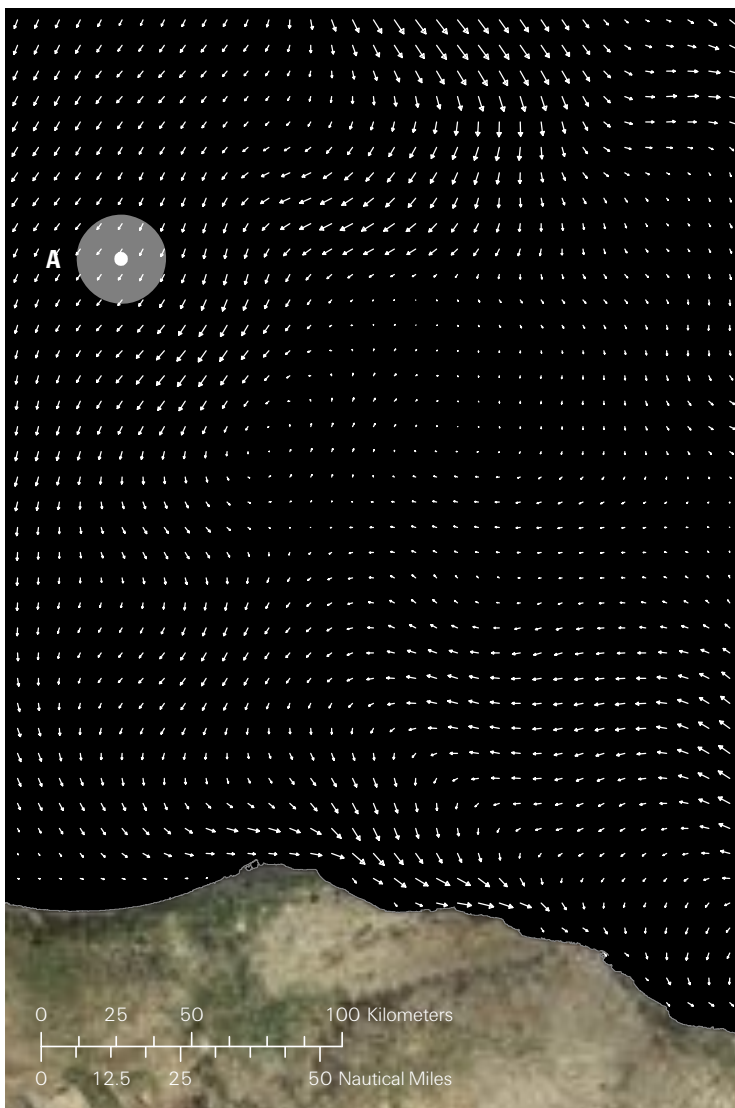
**Fig. 11**, Daniel Haile Gebre writes the text that he saw on the side of the helicopter. It reads "RESCUE ARMY," although he is not sure about the presence of the first word ("RESCUE"). **Fig. 12**, Haile Gebre, when shown the image of an United Kingdom Army Air Corps Westland Lynx, recognizes that it has a similar color to the helicopter that hovered over the migrants' boat. He says: "Like this, it was mimetic with grey and light green" (DHG, 113). **Fig. 13**, A United Kingdom Army Air Corps Westland Lynx AH.7 photographed onboard the HMS Ocean while making its port call in Malta Grand Harbour on 6 June 2011. **Fig. 14**, An airborne United Kingdom Army Air Corps Westland Lynx. The writing "ARMY" is visible on the initial portion of the tail. **Fig. 15**, The airborne Canadian Navy CH-124 Sea King helicopter, whose profile differs considerably from the British Westland Lynx and which does not bear the writing "ARMY" on the side.

## DRIFT MODEL

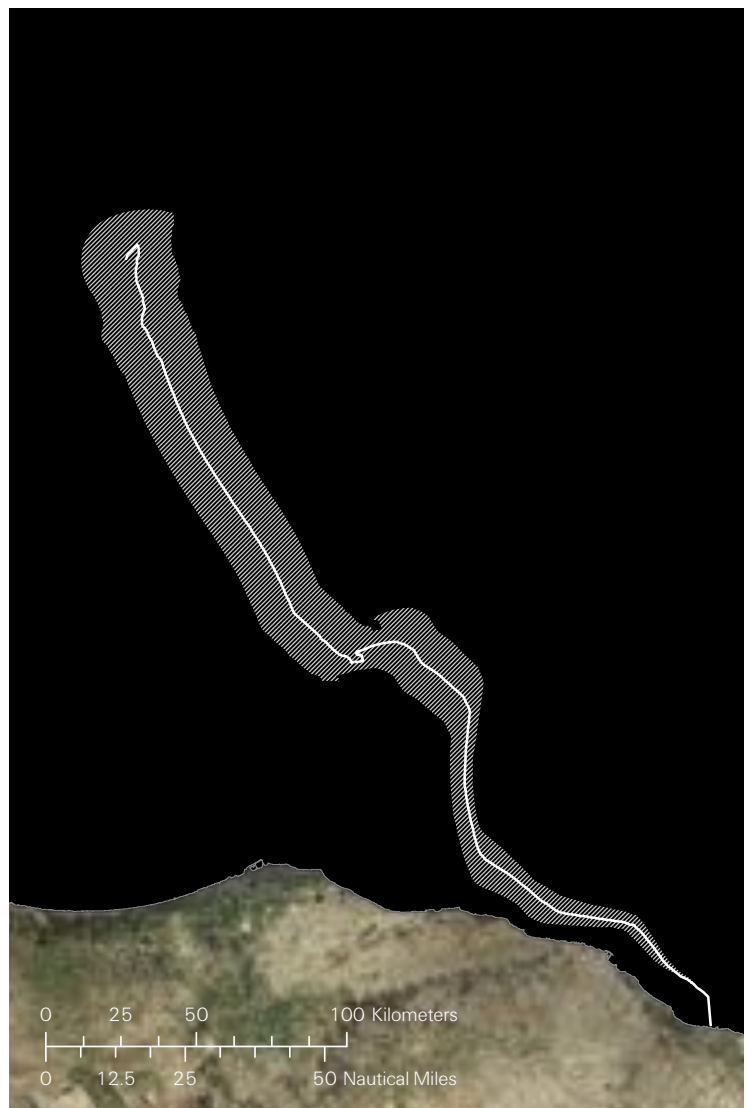
From the last position provided by the Thuraya Satellite phone's GPS signal, the vessel proceeded due NNW for another 5 - 7 hours at a speed of approximately 4 kt before running out of fuel. From this point on until landing at Zlitan 14 days later, the vessel floated without any use of its motor. Richard Limeburner, Senior Research Specialist in the Department of Physical Oceanography at the Woods Hole Oceanographic Institution, created a drift model for this report to simulate the path of the migrants' vessel over this 14 days period. Limeburner's model tracks the path of the vessel on the basis of ocean current data and wind data. Tidal currents, which can influence drift track, were ignored for this mode as they are relatively small within the area in question, and only occur periodically within a 24 hour cycle.

A complete summary of Limeburner's findings, methodology and data sources are included at the end of this report (Annex A).

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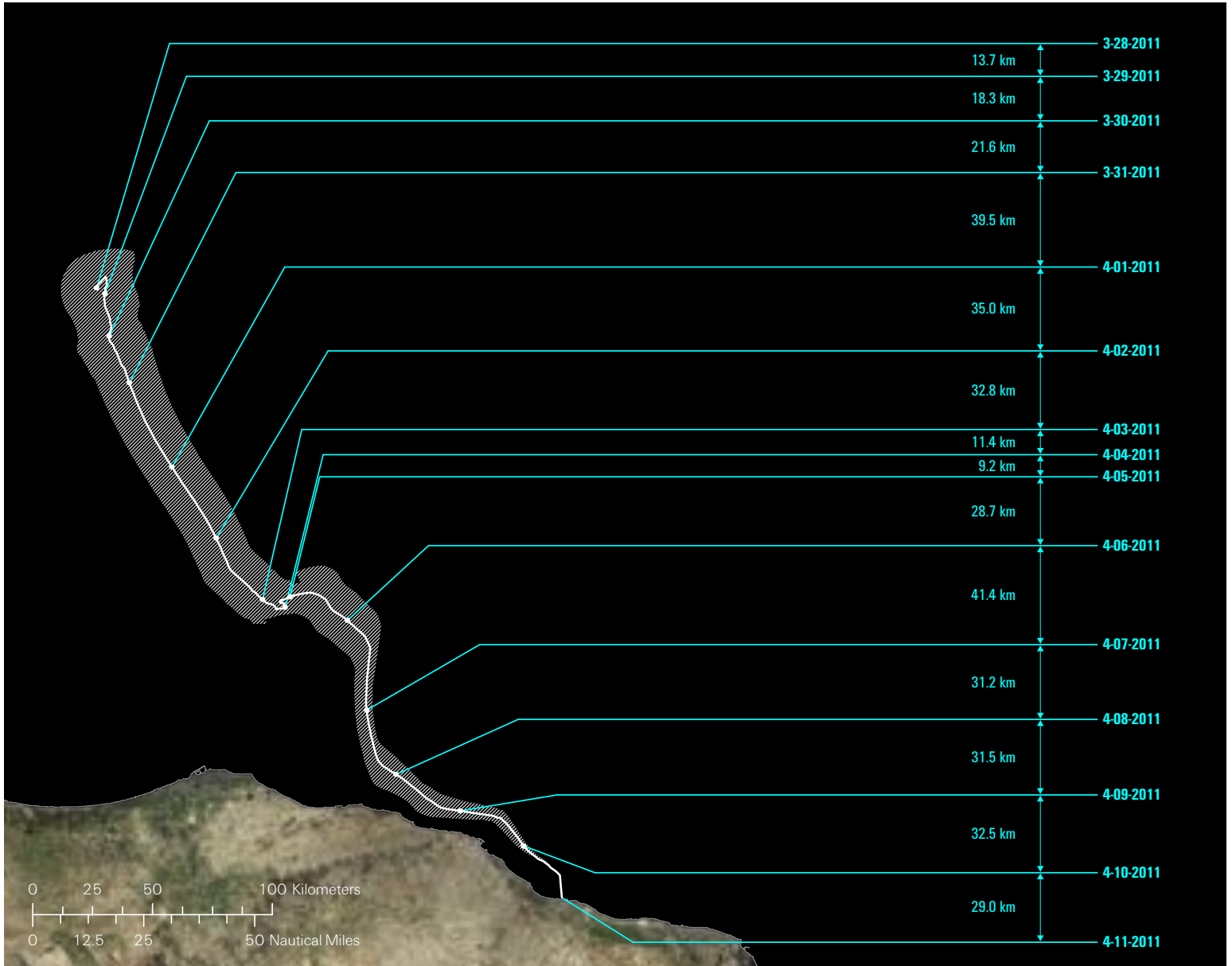


**Fig. 16**, The difference between the distance traveled over 5 hours and 7 hours at a speed of 4 kt provides an area of 8 NM within which the vessel began to drift. This area becomes the initial error in the drift model (A). **Fig. 17**, Over time, the margin of error in the drifting vessel's track linearly decreases to an area of less than 2.2 nm (B) after 5 April and less than 1 nm (C) after 8 April as it is constrained by the known position of landing.

DRIFT MODEL TIMELINE

The model provides hourly positions of the vessel from 28 March at 00:00 GMT until 10 April at 00:00 GMT.

18



**Fig. 18.** Hourly positions of the drifting vessel were calculated using daily Nucleus for European Modelling of the Ocean (NEMO) surface current data and hourly Lampedusa airport wind data. Sea surface currents were modeled by Istituto Nazionale di Geofisica e Vulcanologia (INGV) and the meteorological data was provided by Euroweather.



## MILITARY SHIP ENCOUNTER

The vessel encountered a military ship approximately midway between its departure and landing dates. Survivor testimony suggests that this encounter occurred at some point between 3 and 5 April. During this 72 hour period, the drift model shows that the vessel traveled 22.6 km (12.1 NM), the shortest distance covered during any two day period between 28 March and 10 April. During this period the wind decreased and the NNW current began to dominate drift, and the vessel remained in a relatively small area. Late on 5 April the winds strengthened and the vessel continued to drift SE again. The survivors describe an encounter that happened between 3 and 5 April during which a two-tiered military vessel equipped with 1 or 2 helicopters came within 10 meters of the migrants' boat. Personnel on the military vessel took photographs of the migrants before leaving.

19



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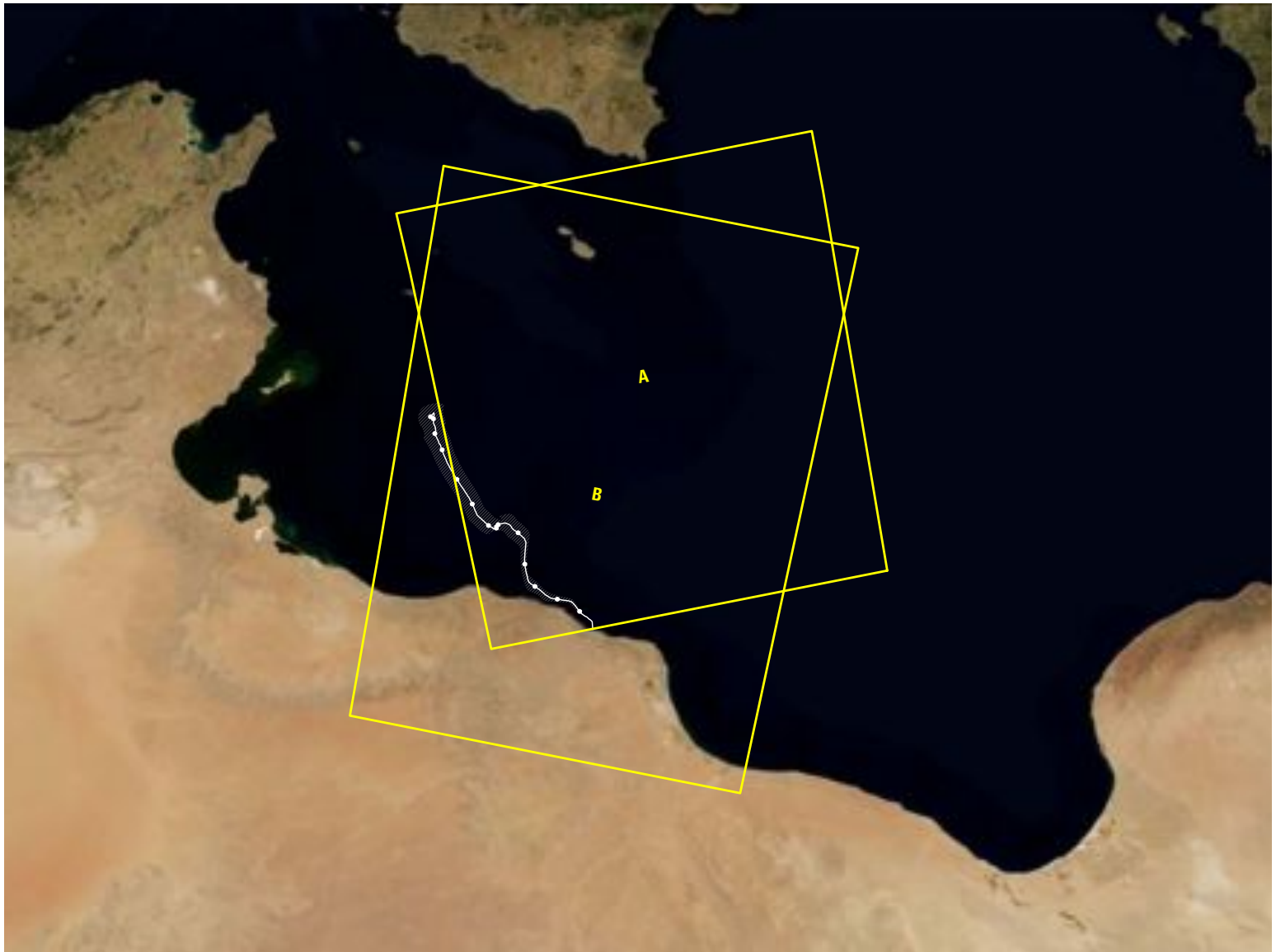


**Fig. 19**, Drift path for dates 3 and 4 April. **Fig. 20**, Lorenzo Pezzani interviewing survivor Daniel Haile Gebre on 21 December 2011. **(A)** Haile Gebre writes down the numbers he remembers on the ship's sides: "It had a number written on the front side: 'MF'...there is a '9' then I think '29' and then I am not sure of the following numbers. 'MF' is sure, '9' is sure, maybe 'MF 929...'" (DHG, 168). **(B)** When shown the image of the Italian ship Borsini, he recognizes the same shape of the ship that the migrants encountered: "The front section was very small, with only room for 1 helicopter, and 1 helicopter in the back, like this...yes, exactly like this, like two steps" (DHG, 174).

## SAR COVERAGE

Moderate to fine resolution satellite resources, such as optical satellite imagery, are not normally collected over the open ocean. However, Synthetic Aperture Radar (SAR) data is routinely collected over the Mediterranean Sea. As part of this report, a survey of available SAR data was taken for all available coverage within the Strait of Sicily for the period of 27 March – 10 April. The following SAR providers all have varying amounts and types of coverage over this area during the time frame: iTerraSAR-X, Palsar, COSMO Sky-Med, Radarsat 1, Radarsat 2 and Envisat-1. For the purposes of this report, Envisat data was acquired for 28 March and 29 March which provides a snapshot of maritime activity in the area.

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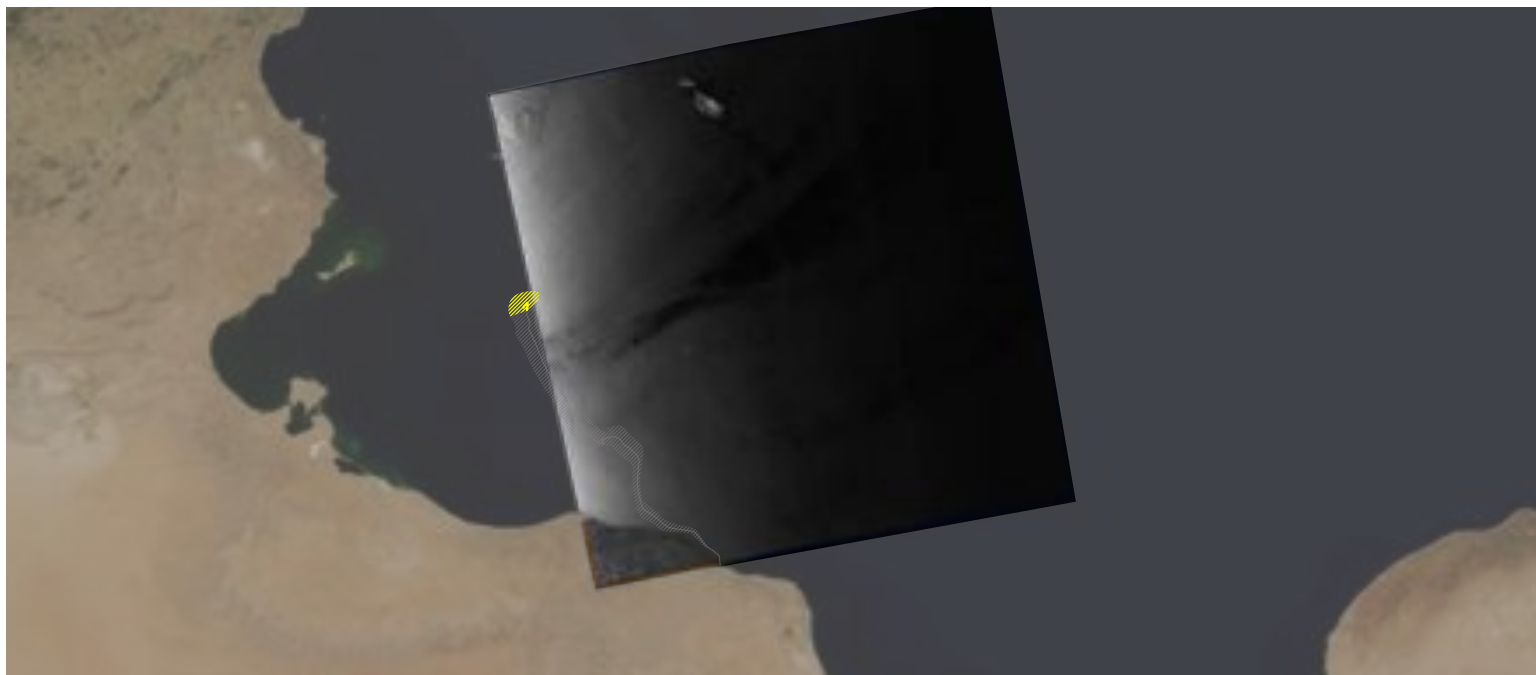


**Fig. 21,** Envisat-1 Wide Swath coverage area for 28 March 2011 (A) and 29 March 2011 (B).

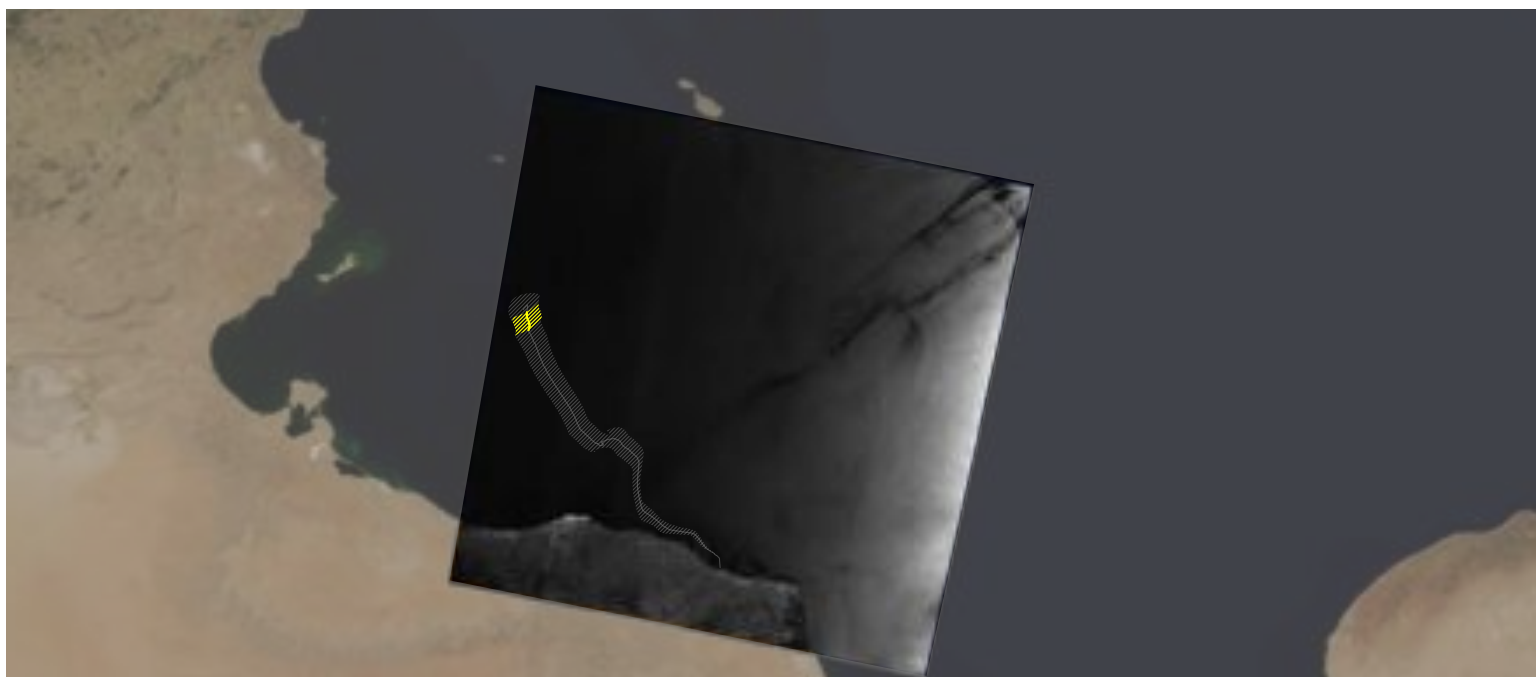
## SAR TILES

03-28-2011, 03-29-2011

22



23



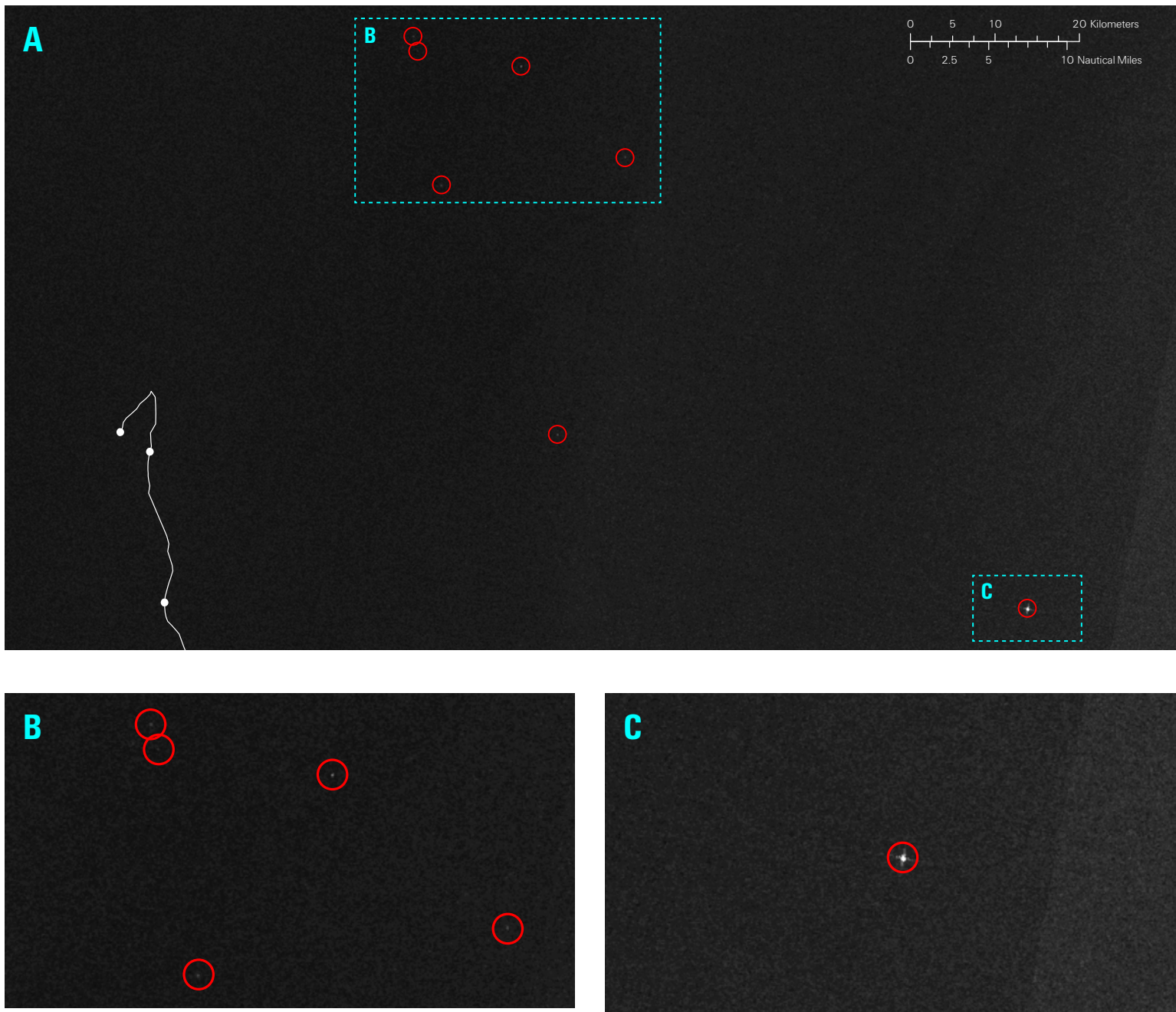
**Fig. 22,** Data displayed Envisat-1 Sensor: ASAR/WS,Product: ASA\_WS\_\_0P,Swath: WS, Start: 2011-03-28 20:56:33.71, Stop: 2011-03-28 20:57:38.80

**Fig. 23,** Data displayed Envisat-1 Sensor: ASAR/WS,Product: ASA\_WS\_\_0P, Swath: WS,Start: 2011-03-29 09:09:26.49, Stop: 2011-03-29 09:10:48.60

SAR VESSEL DETECTION

The SAR returns appear as bright pixels against the surrounding sea surface (eight times the brightness on average in the data analyzed for this report). In the case of the Envisat data, low variability of the background sea pixels means that even moderately bright returns indicate the presence of vessels.

24

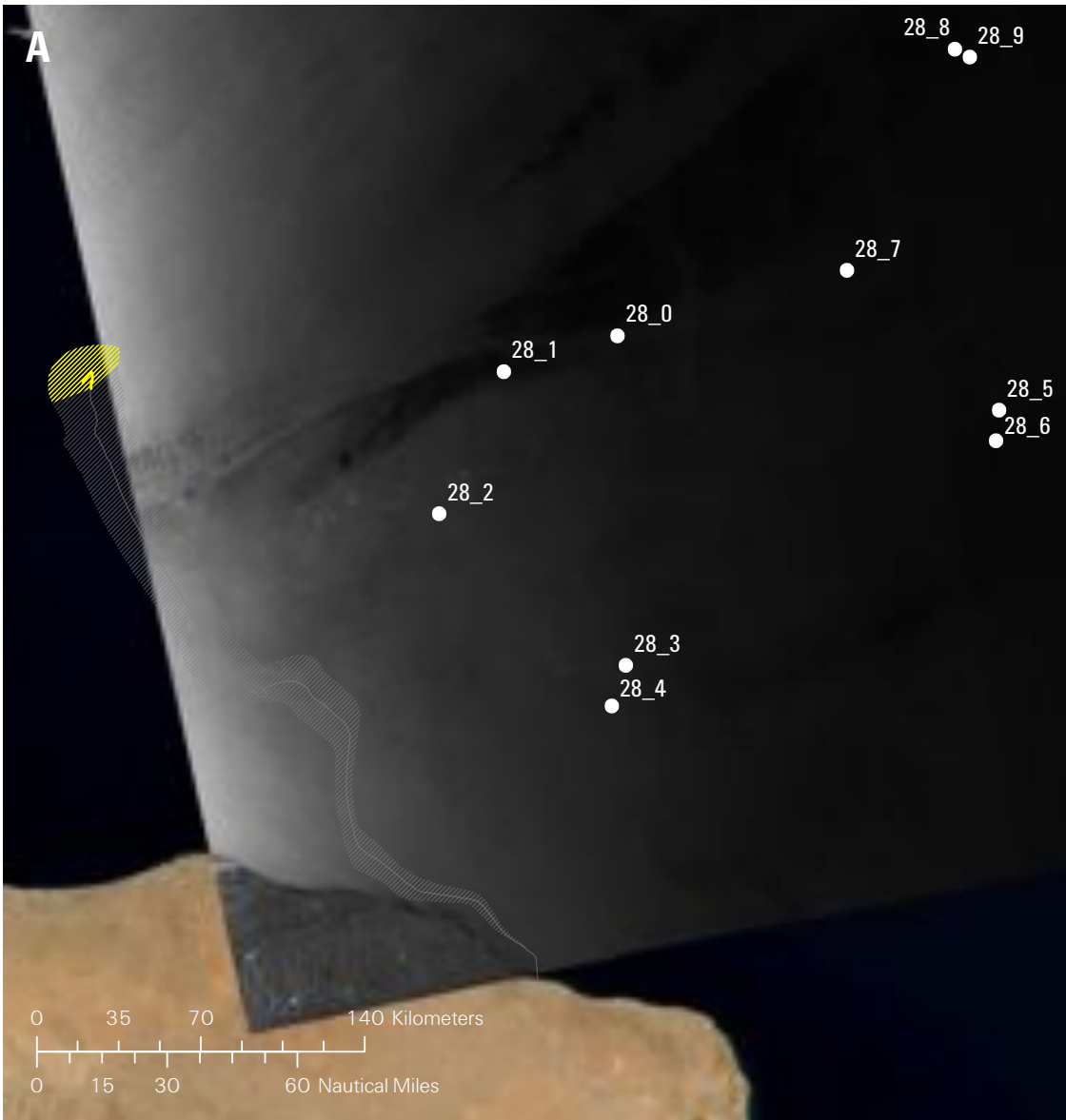


**Fig. 24.** Overview of ship detections from 29 March Envisat data (A) with enlargements of (B) and (C). The brightness of (C) is due to an interference pattern that occurs when the geometry of the target aligns for maximum return.

SAR ANALYSIS - 28 MARCH

For this report, Lawrence Fox III, Humboldt State University Emeritus Professor of Remote Sensing and consultant, provided analysis of the 28 and 29 March Envisat-1 data. Fox’s analysis provides estimates of ship length and quantification of confidence for all returns considered probable vessels. Envisat-1 radar returns considered probable vessels for this report appear, on average, eight times the signal strength of the surrounding sea surface. The resolution of the Envisat-1 data allows for high confidence detection of ships 75 meters and longer. On 24 March the U.S. Department of Defense disclosed that 38 NATO ships were being deployed in the frame of the 2011 military intervention in Libya. 37 of 38 ships were above 75 meters in length. Return 28\_2 was between 82 and 94 NM away from the ship’s drift, while return 28\_1 was between 89 and 105 NM away and return 28\_0 was between 115 and 132 NM away.

25



**B**

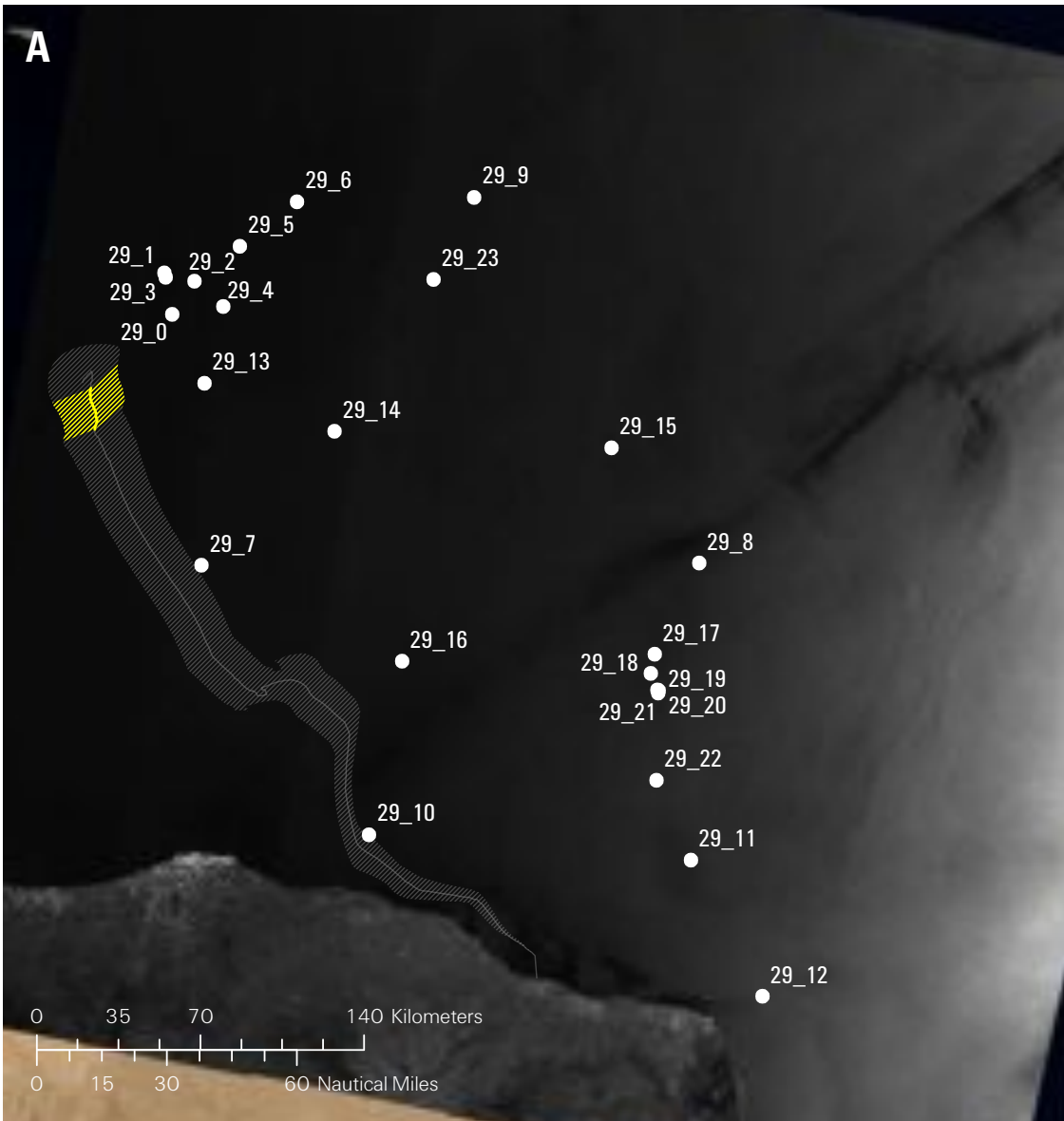
Return	Length	Confidence
28_0	225m	95%
28_1	150m	85%
28_2	150m	95%
28_3	50m	80%
28_4	30m	70%
28_5	150m	95%
28_6	50m	80%
28_7	75m	95%
28_8	150m	95%
28_9	200m	95%

Fig. 25, Envisat-1 data vessel detection for 28 March (A) with corresponding table of returns (B) documenting estimated length of vessel and confidence.

SAR ANALYSIS - 29 MARCH

Return 29\_13 was between 20 and 34 NM away from the ship's drift, while return 29\_3 was between 25 and 33 NM away and return 29\_1 was between 32 and 38 NM away.

26



Id	Length	Confidence
29_0	75m	80%
29_1	75m	70%
29_2	75m	95%
29_3	75m	80%
29_4	75m	70%
29_5	75m	90%
29_6	225m	95%
29_7	75m	80%
29_8	75m	70%
29_9	75m	80%
29_10	75m	80%
29_11	150m	95%
29_12	150m	95%
29_13	75m	80%
29_14	300m	95%
29_15	150m	95%
29_16	75m	80%
29_17	75m	95%
29_18	300m	95%
29_19	75m	80%
29_20	75m	80%
29_21	75m	70%
29_22	150m	95%
29_23	225m	95%

Fig. 26, Envisat-1 data vessel detection for 29 March (A) with corresponding table of returns (B) documenting estimated length of vessel and confidence.

## SEARCH AND RESCUE ZONES

The area in question is divided into Italian, Maltese and Tunisian Search and Rescue Regions (SRR). SRR have been internationally established for the express purpose of coordinating rescue operations and optimizing their effectiveness, efficiency and safety. States are obligated to exercise SRR services in the area under their responsibility and frequently engage in SAR agreements with neighboring States to coordinate operations and rescue services.

27

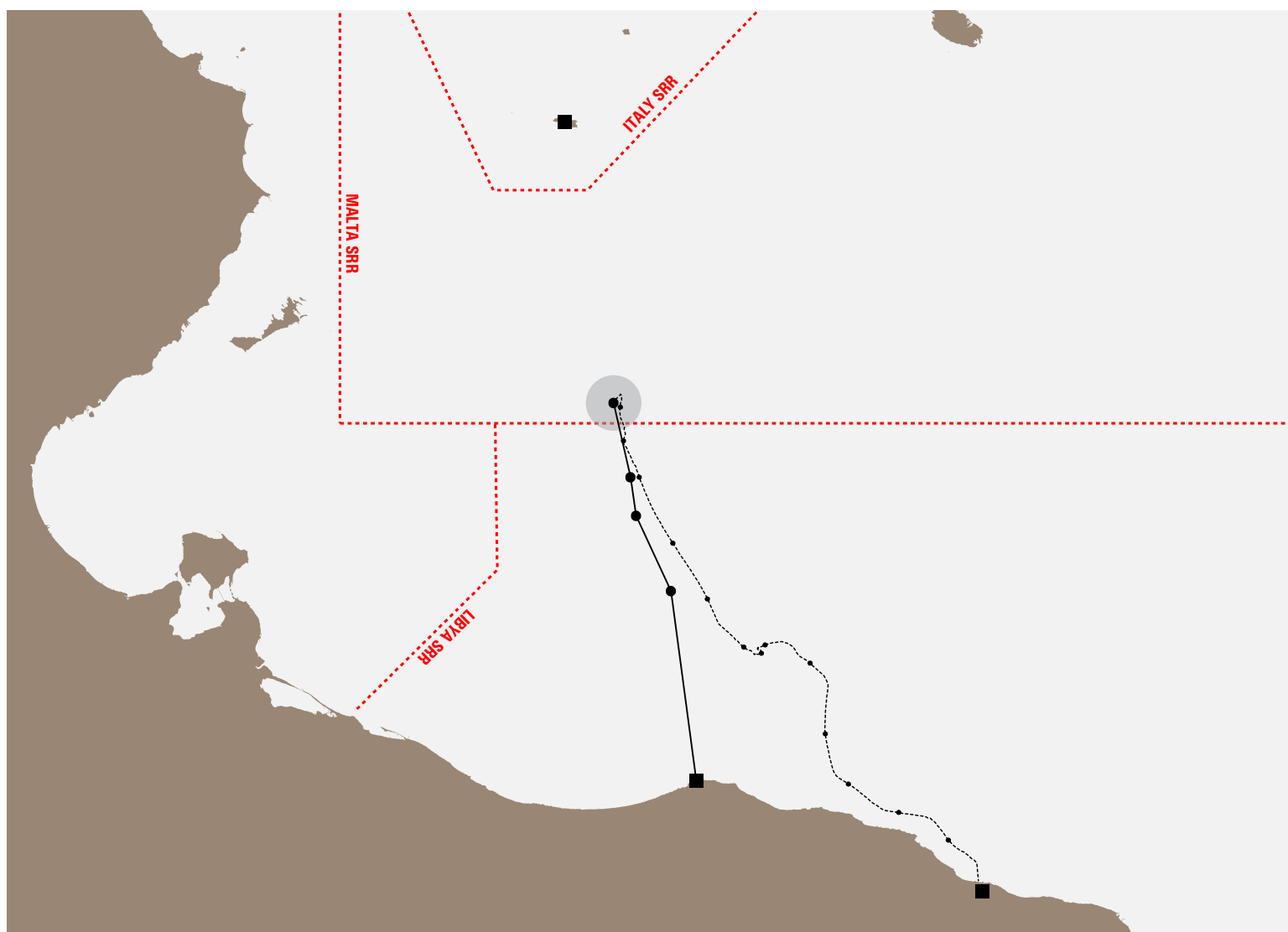


Fig. 27, Search and Rescue Regions within the Strait of Sicily.

## NATO MARITIME SURVEILLANCE AREA (MSA)

During the months of March and April 2011, a NATO led arms embargo was implemented in the waters off of Libya. The stated mission of the embargo, titled Operation Unified Protector, was to prevent the flow of arms, related material and mercenaries to Libya. Twelve nations provided naval assets to enforce the embargo: Belgium, Bulgaria, Canada, France, Greece, Italy, Netherlands, Spain, Romania, Turkey, United Kingdom and United States. Ships transiting through the embargo area were required to notify NATO of their cargo and destination. Using a synthesis of Automatic Ship Identification systems as well as surveillance and intelligence means, NATO verified shipping activity in the region to separate legitimate commercial, humanitarian and private traffic from suspicious vessels that warranted closer inspection. The Maritime Surveillance Area (MSA) encompassed by the Embargo Zone was established first on 23 March 2011 and was enforced within the following boundaries: Northern Limit 35 00 N, Western Limit 34 00 N 012 00 E, Southern Limit: Libya Territorial Waters, Eastern Limits 34 00 N 022 00 E and 33 00 N 025 00E. This area was revised on 8 April 2011 at which point the Northern Limit was changed 34 00N.

28

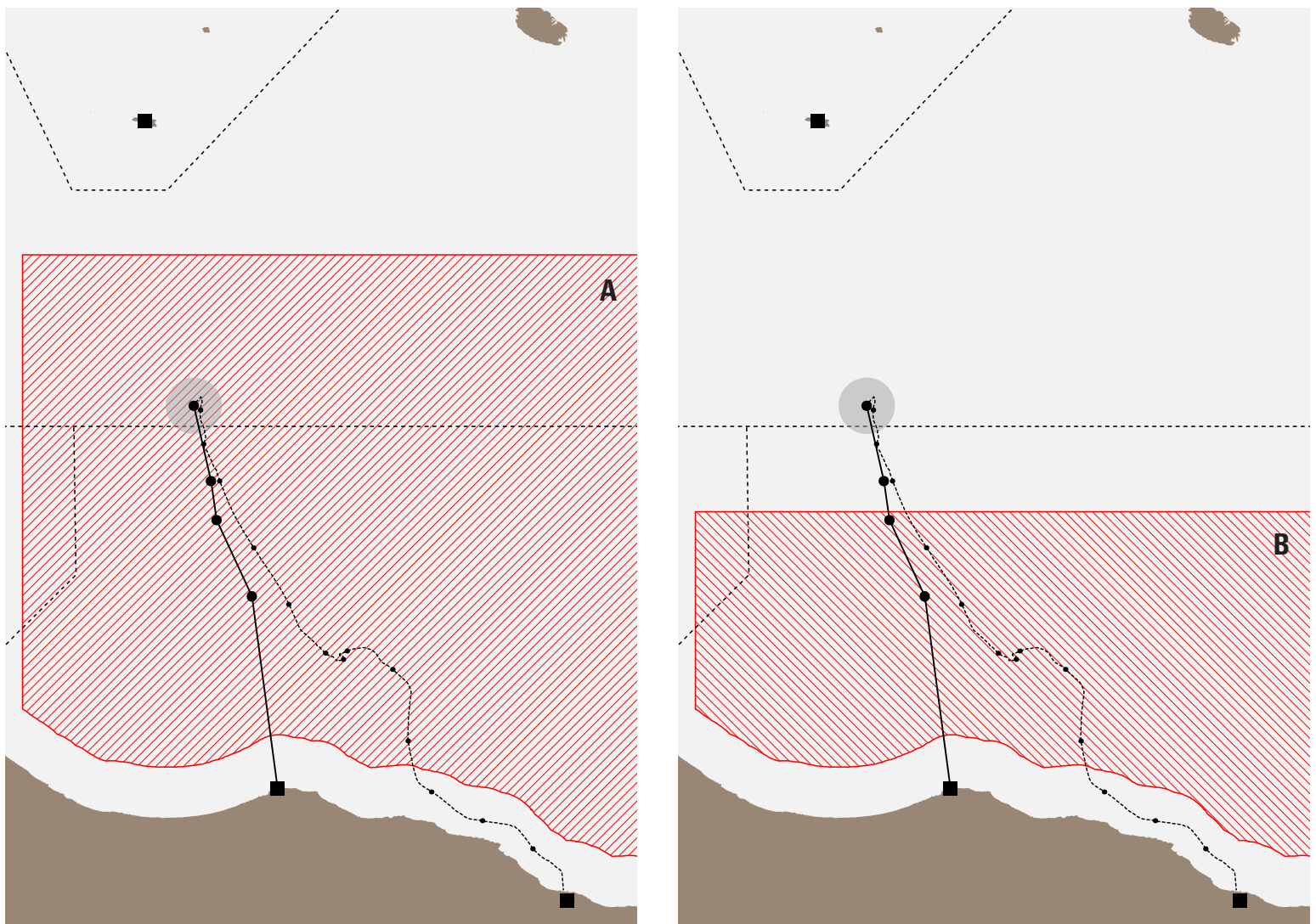


Fig. 28, Northern extents (A) of NATO MSA as of March 23, 2011 and revised northern extents (B) of MSA as of April 8, 2011



## PARTICIPATING STATES/NATO'S SENSING CAPABILITIES

NATO/coalition naval and aerial assets were equipped with technologies that offered an extremely high sensing capacity geared both towards combat operations and to the monitoring of the Maritime Surveillance Area. The different sensing capabilities were shared between naval and aerial assets, as explained by Commander Craig Skjerpen, Captain of HMCS Charlottetown, in a video posted on natochannel.tv on 1 April 2011: "What we do is link up all our radar images together, all the ships, and from that we create sort of a map of all contacts in the area. We are also working with aircrafts that are tracking vessels. And from that we have a full picture of all vessels in the area."

29



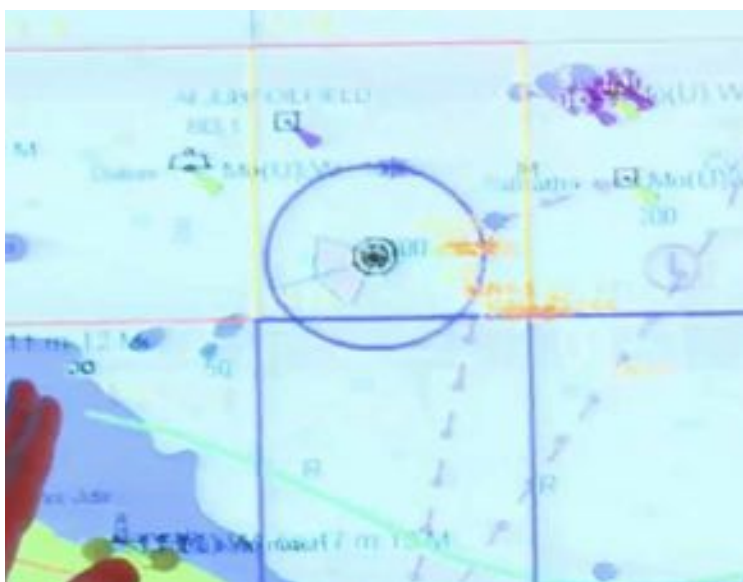
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**Fig. 29**, Inside French E-3F AWACS aircraft. **Fig. 30**, Inside the Operations Room of HMCS Charlottetown (Canada). **Fig. 31**, Inside NATO's Naples Maritime Command. Still from the NATO video "Operation Unified Protector." **Fig. 32**, Inside the operations room of Italian frigate Bettica, as it sails towards its patrol area, "near the border between Tunisia and Libya." Mike Mühleberger, NATO correspondent onboard, explains while describing a monitor presenting maritime traffic and squares delimiting large areas: "The area north of Libya has been divided into patrol sectors assigned to each NATO ship. By sharing information they can be more effective, and ensure that vessels are continuously tracked as they pass from one sector to another." Still from the NATO video "Italian patrol ship Bettica enforcing the arms embargo."

## NATO ASSISTANCE AT SEA

NATO has stated that during the military operations, “NATO ships have directly assisted in the rescue of more than 600 people in distress at sea and through coordination with national authorities and coast guards, NATO has facilitated the rescue of many hundreds more.” The review of a particular case of rescue that occurred between 25 and 26 March 2011 and saw the involvement of the Canadian HMCS Charlottetown and the Italian ETNA, provides important insight into the way NATO conducted its assistance to migrants.

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**Fig. 33**, Picture used in the Canadian Navy magazine *Crowsnest* (Lieutenant Michael McWhinnie, “HMCS Charlottetown assists drifting migrant vessel”, *Crowsnest*, Vol. 5, No. 2 Summer 2011, p. 4) to illustrate a rescue operation performed by the HMCS Charlottetown on 26 March 2011. In the background it is possible to see the HMCS Charlottetown itself, recognizable from its characteristic chimney openings. **Fig. 34**, Picture presented at a NATO press briefing in Brussels on 10 May 2011. The original caption of the picture reads: “On 26 March 2011 ETNA rescued a stricken boat off the Libya coast with 300 migrants, and carried out 2 medvac to Lampedusa, the first to take ashore a mother with her just born children and the second for a pregnant young woman that unfortunately lost her children.” **Fig. 35**, Picture presented at the same press briefing mentioned in the caption of Fig. 37, with the same original caption. In this image it is possible to read “MARINA MILITARE” and “NAVE ETNA” on one of the rubber boats approaching the migrant’s vessel.

## ANNEX A

## **Draft - Model Estimate of the Drifting Refugee Boat Trajectory near Libya during 2011**

Richard Limeburner

Senior Research Specialist  
Department of Physical Oceanography  
Woods Hole Oceanographic Institution (WHOI)  
Woods Hole, MA 02543 USA  
rlimeburner@whoi.edu

### **1. Introduction**

On March 27, 2011 a ~10 m rubber boat overloaded with 72 migrants departed the port of Gargash adjacent to the Medina of Tripoli, Libya. This vessel was bound for Lampedusa Island, Italy 160 nm (nautical miles) to the north northwest. Approximately 30 hours after departure the fuel was depleted and the vessel began drifting for 14 days under the influence of the wind and current. On April 10 the vessel came ashore on a beach near Zlitan, Libya with only 11 survivors. Other vessels near the drifting refugee vessel during the 14 day drift did not render any assistance. This report describes an effort to model the trajectory of the refugee vessel over the 14 days from when the drift began to the vessel's final grounding on the beach at Zlitan. The objective of this drift model is to help identify other vessels near the refugee vessel and inquire why they did not give assistance.

### **2. Chronology of Events**

Note: all times in this report will be GMT. Distances will be reported in nm (1 nautical mile = 1.85 km). Speeds at sea are given in kt (knots = nautical miles/hour)

27.03.2011, between 0000 and 0200: vessel departs Tripoli

27.03.2011, 1652 Tel/GPS position #1 - 33° 58.2' N 12° 55.8' E, 66.6nm/15hrs = 4.43kt

27.03.2011, 19.08 GMT: Tel/GPS position #2 - 34° 07.11' N - 12° 53.24' E, after which they waited 4-5hrs

28.03.2011, around 0100 the vessel starts to navigate again in the approximate direction of Lampedusa

28.03.2011, between 0600 and 0800: fuel runs out, adrift begins. Two time/position possibilities for the start of the drift could be calculated:

- if the vessel started to drift at 0600 (after 5hrs navigation) 22.2 nm north northwest of last GPS position

- if the vessel started to drift at 0800 (after 7hrs navigation) 31.1 nm north northwest of last GPS position

10.04.2011: ashore at Zlitan 32° 29.935' N 14° 33.926' E

### 3. Model Description

The track of the vessel is assumed to be due to the influence of ocean currents and the wind. Tidal currents also influence the vessel's track, but are ignored in this model since these currents are relatively small and mainly periodic every 24 hours in the sea just north of Tripoli and Zlitan.

Ocean currents were obtained from the MyOcean website <http://www.myocean.eu.org/index.php/products-services/catalogue>. MyOcean provides data mainly from EuroGOOS Regional alliances which have deeply contributed to structure the European Operational Oceanography community. The ocean currents were actually provided by the Istituto Nazionale di Geofisica e Vulcanologia (INGV) in Italy. INGV uses NEMO (Nucleus for European Modeling of the Ocean), a state-of-the-art modeling framework for oceanographic research, operational oceanography, seasonal forecasts and climate studies. See <http://www.nemo-ocean.eu/>

Wind data at the Lampedusa Island airport was obtained from EuroWeather <http://www.eurometeo.com/english/home>. Weather data at Libyan meteorological stations was unreliable in early 2011.

The refugee vessel was estimated to begin drifting at 0700 March 28, 2011 from 34° 24.792'N 12° 48.576'E after motoring at 4.4 kt toward Lampedusa Island for 6 hours from the last GPS position #2.

Hourly positions of the drifting vessel were calculated using the daily NEMO model surface current data and the hourly Lampedusa airport wind data. Vessels at sea usually drift at 3-5% times the wind speed depending on the cross sectional area of the vessel above and below the waterline. For the refugee rubber boat similar to a Zodiac we initially choose 4% of the wind speed for the vessels drift. Then we adjusted the windage to 4.8% for the estimated trajectory to end at Zlitan on April 10, 2011.

### 4. Results

The estimated track of the refugee vessel is shown as a red line in Figs. 1-3. Labeled in Fig. 1 are Tripoli where the vessel departed, GPS1 and GPS2 where the vessel's time and location were known, Adrift - the location where the vessel ran out of fuel and the drift began at 0700 on March 28, 2011, and Zlitan, Libya where the vessel finally came ashore. Lampedusa Island is the large island near the northern edge of Fig. 1. Also shown are the predicted ocean surface currents on March 30, 2011 from the NEMO computer

model. Yellow arrows indicating surface current speed and direction are shown every 6.25 km. A 25 cm/sec (0.5 kt) scale arrow is shown in the upper portion of the image.

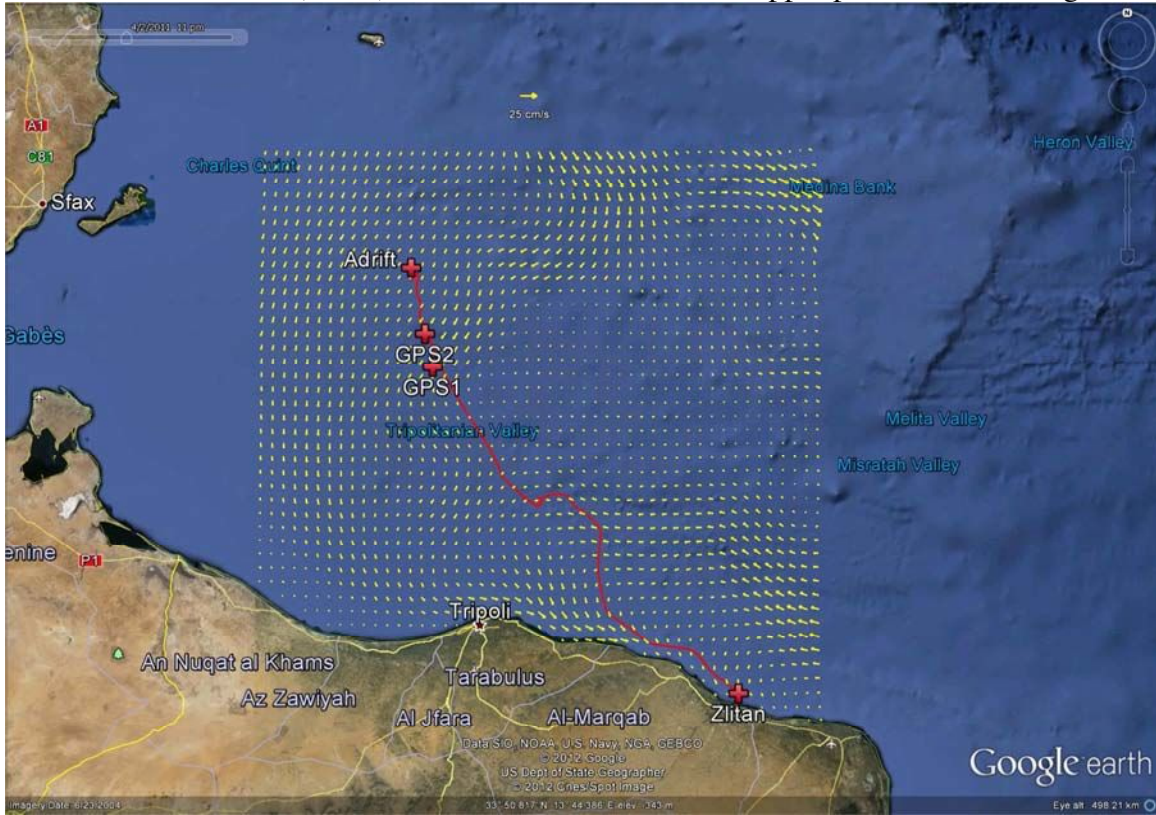


Fig. 1 Estimated track (red) of the refugee vessel adrift during 2011.

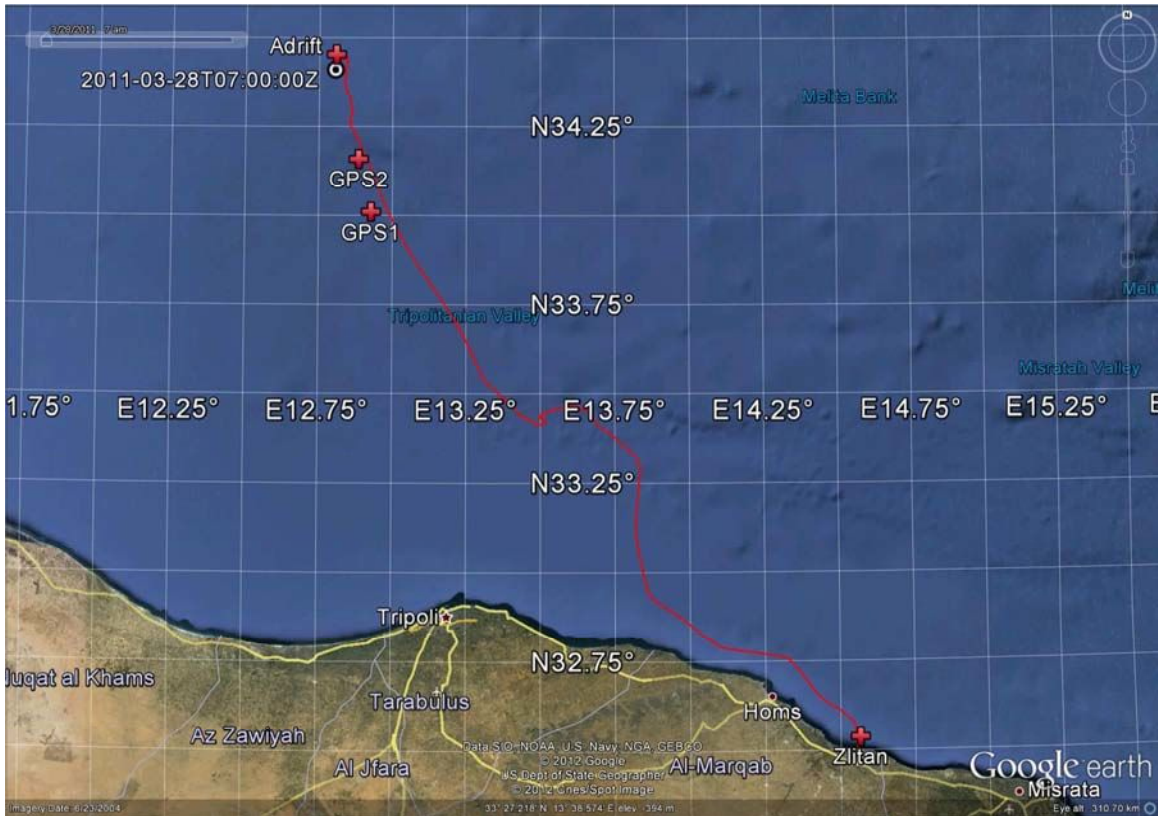


Fig. 2 Estimated track (red) of the refugee vessel adrift during 2011 with lat/lon.

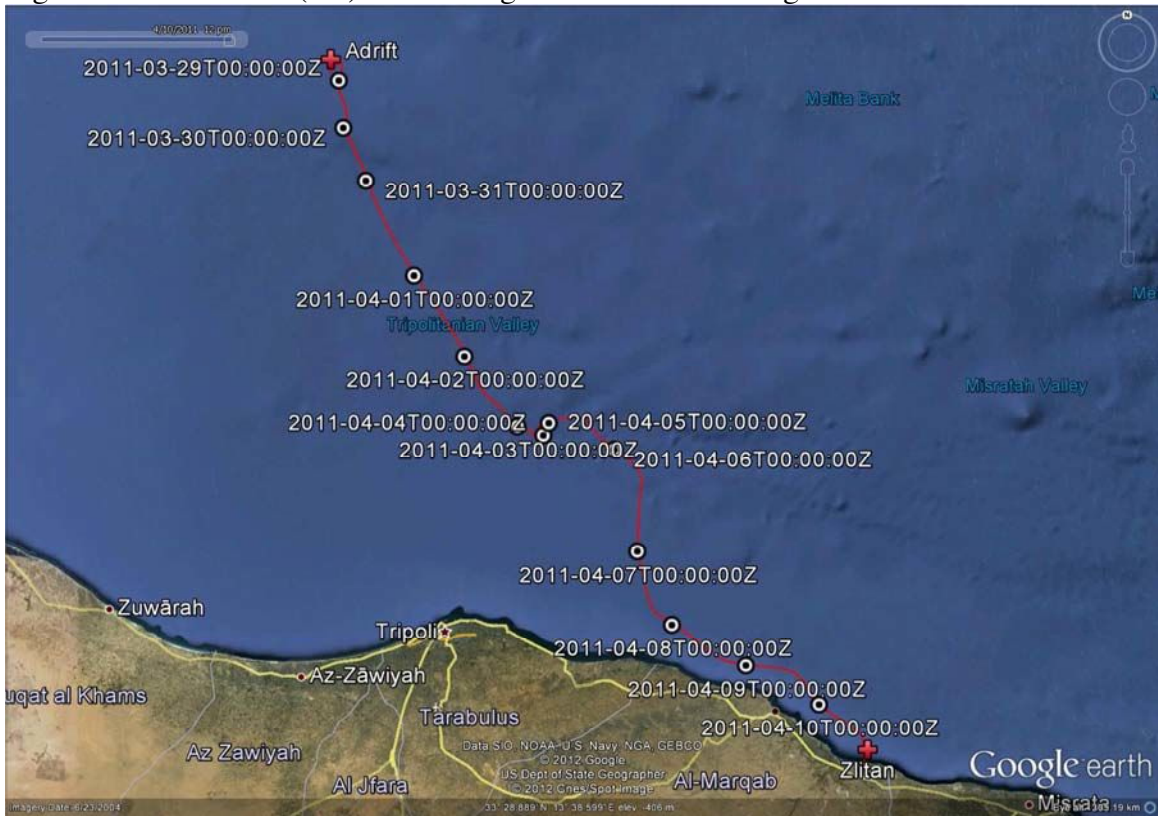


Fig. 3 Estimated track (red) of the refugee vessel with daily time labels.

The error in the model's estimated drift track was initially due to the uncertainty of the time and position where the vessel ran out of fuel and began to drift. An estimated error of +/- 2 hours to the time when fuel ran out and a speed of 4.0 kt implies the initial error around the Adrift position shown in Figs. 1-3 was a circle with a 8 nm radius.

Since the final location of the drifting vessel was known we can assume the error in the drifting vessel's track linearly decreases in time to a circle with less than 2.2 nm after April 5, 2011 and less than 1 nm after April 8.

## **5. Summary**

The estimated vessel drift was more strongly dominated by the southeastward winds than the surface currents by a factor of 2:1. The surface currents were predominantly south westward except near the coast of Libya where they were east southeastward parallel to the coast. The wind was generally east southeastward to southward during March/April 2011.

One limitation of the model estimated refugee vessel drift was the use of Lampedusa Airport wind data to represent the wind for the entire region being modeled. The Lampedusa meteorological data included atmosphere pressure, wind speed and direction, air temperature, humidity, visibility, rainfall and was reported regularly and appeared to be of good quality. Other meteorological data from Libya and Tunis for March/April 2011 had large time gaps and was limited in parameters recorded. Probably the wind data from Lampedusa was good over the open ocean but less representative within 10 km of the coast of Libya.

See the file named "model\_track\_animation.kml" for a Google Earth animation of the estimated refuge vessel's drift. When this file opens in Google Earth and a time slider appears at the top. Two pointers on the time slider can be separated to control the time stamp labeling of the animation. Try sliding the right slider closer to the left slider. On the top right above the time slider a play/pause button can be toggled to control the animation.

## **Acknowledgements.**

We thank MyOcean website <http://www.myocean.eu.org/index.php/products-services/catalogue> for distributing the surface current data. MyOcean provides data mainly from EuroGOOS Regional alliances which have deeply contributed to structure the European Operational Oceanography community. The ocean currents were actually produced by the Istituto Nazionale di Geofisica e Vulcanologia (INGV) in Italy. INGV uses NEMO (Nucleus for European Modeling of the Ocean), a state-of-the-art modeling framework for oceanographic research, operational oceanography, seasonal forecasts and climate studies. See <http://www.nemo-ocean.eu/>



We also thank EuroWeather for providing meteorological data at the Lampedusa Island airport. See <http://www.eurometeo.com/english/home>.

## ANNEX B

Benvenuto maritocap, Registered User PIN - DISTRESS (Administrator) Lingua:  Italiano  English

<b>Menu</b>	<b>Inoltra Enhanced Group Call (EGC)</b>
Home Page	EGC Inoltro: RESP:MSGACCEPT MSG-REF: 381240 Message Accepted 11-04-03/08-34 UTC
Info msg al Mobile	Regione: Tutti
Controlla messaggi verso Mobile	Priorità: DISTRESS
Leggi messaggi da Mobile	Codice del Servizio: S.A.R. per area circolare
Gestione Utenti Gateway	Indirizzo: Lat: 34 <input type="text"/> N Long: 13 <input type="text"/> E Raggio: 050
Rubrica	Codice di Ripetizione: Ritrasmettere dopo 4 ore ( 2 trasmissioni )
Inoltro EGC	Codice di Presentazione: IAS
Polling	Testo del EGC: FH MRCC ROME - ITALIAN COAST GUARD TO ALL SHIPS TRANSITING IN SICILY CHANNEL
Scaricamento DNID	BT
Richiesta Status del Messaggio	ON 27 MARCH 2011 SICILY CHANNEL SEA IN POSITION LAT. 33°58'2" N - LONG.
Visualizza Report di Posizione	012°55'8"E AT 16:52GMT A BOAT WENT ABOUT 68 POS PROBABLY IN DIFFICULT.
Gestione visualizzazione contenuto del DNID	ALL SHIPS TRANSITING IN THE AREA ARE REQUESTED TO KEEP A SHARP LOOKOUT
Visualizza Storico Posizioni	AND REPORTING ANY SIGHTING URGENTLY AT MRCC ROME AT FOLLOWING
Visualizza Mappa	<input type="button" value="Inoltra EGC"/>
Uscita (rimuove tutti i cookie)	

EV 1339

To 03/03/11

Next 03/11/2011

loc' the

**BROADCAST WARNING MESSAGES  
QUERY RESULTS**

**CATEGORY:** HYDROLANT  
**Warning Number:** 512 / 2011

HYDROLANT 512/2011 (52,53,54)

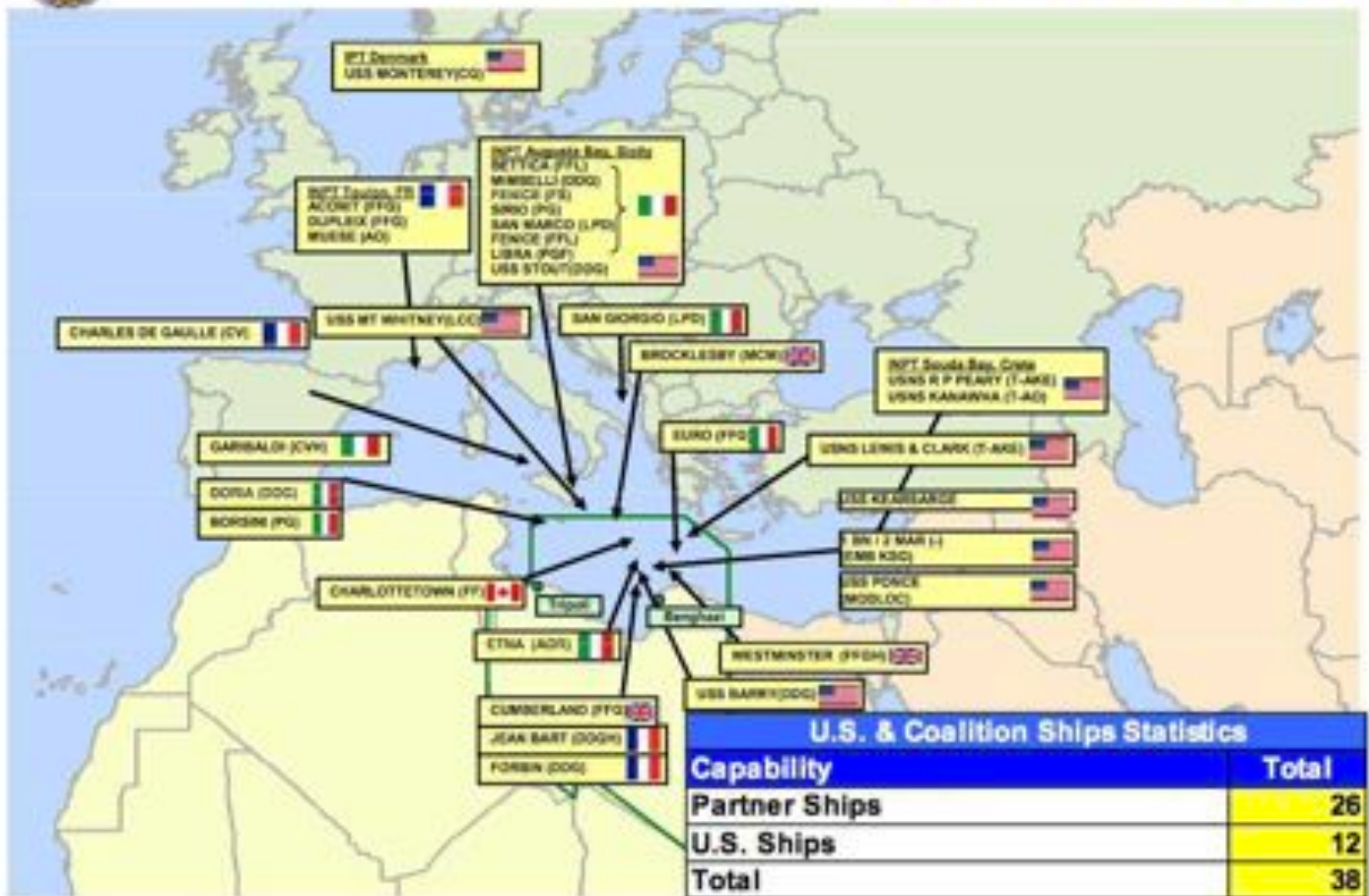
*(Cancelled by HYDROLANT 637/2011)*

EASTERN MEDITERRANEAN SEA.  
VESSEL, 68 PERSONS ON BOARD, IN NEED OF ASSISTANCE  
IN 33-58.8N 012-55.8E AT 271652Z MAR. VESSELS  
IN VICINITY REQUESTED TO KEEP A SHARP LOOKOUT,  
ASSIST IF POSSIBLE. REPORTS TO MRCC ROME,  
INMARSAT-C: 424744220,  
PHONE: 390 6592 4145 OR 3906 5908 4409,  
FAX: 390 6592 2737 OR 3906 5908 4793,  
E-MAIL: UFFICIO3.REPARTO3@MIT.GOV.IT.

( 280406Z MAR 2011 )

UNCLASSIFIED

## U.S. & Coalition Maritime Forces Laydown





### NATO Arms Embargo against Libya - Operation UNIFIED PROTECTOR - Area of Operation



NATO UNCLASSIFIED

## COALITION STRIKES





Warsaw, 28 November 2011  
Our ref: ~~17327~~28.11.2011  
Please quote when replying

**Souhayr Belhassen**  
President of FIDH  
**Olivier Clochard**  
President of Migreurope  
**Stéphane Maugendre**  
President of GISTI  
**Fred Mawet**  
Director of CIRÉ  
**Pierre Tartakowsky**  
President of LDH

Dear Madam, Dear Sirs,

Please accept my apologies for the delay in replying to your letter. I used this time to verify all the details of joint operations that were taking place in the Central Mediterranean between 22<sup>nd</sup> of March and 10<sup>th</sup> of April, which you wrote was the period during which the boat was drifting in the open sea.

You will find the outcomes of our internal examination in the two attached documents. The Agency will not be able to answer one of your questions in a precise manner. It is difficult to provide you with exact coordinates of the vessels between 22<sup>nd</sup> of March and 10<sup>th</sup> of April, as they were in constant motion. However we indicate precisely the operational area they were moving in.

I would like to use this opportunity to ensure you that one of the main objectives of all maritime operations coordinated by the Agency is to save lives. This year alone (until November) more than 22,000 persons were rescued within the framework of Frontex-coordinated Joint Operations (JOs), the majority of them south of Lampedusa.

All those rescue cases were coordinated by a competent MRCC (Maritime Rescue Coordination Centre) according to internationally approved SAR (Search and Rescue) procedures. Several Italian vessels taking part in the border control operation Hermes coordinated by the Agency were sent more than 140 times to help people in distress.

To put this effort into perspective, I just would like to underline the fact the Mediterranean Sea covers an area of 2.5 million km<sup>2</sup>; there are more than 20 countries with a Mediterranean coastline. If we take these numbers into account and compare them with the number of assets that take part in JO Hermes (usually two boats on duty) we can quickly draw the conclusion that Frontex as a coordinator of border control operations in the Central Mediterranean is not even a small-scale actor.





I would also like to share with you some of our observations concerning the SAR regime. Recent amendments to the Safety of Life at Sea (SOLAS) and SAR conventions underlie the duty of all Parties to coordinate and cooperate in rescue operations at sea. At the EU level there were guidelines issued (Council Decision of 26<sup>th</sup> of April 2010) to the Schengen Borders Code. Frontex for its part includes general principles and rules on interception as well as SAR and disembarkation in each Operational Plan. At the same time there is no common European voice in this regard.

From our experience we can highlight a number of issues that if solved would facilitate cooperation in this domain:

- increased capacity of coastal states to fully implement their obligations in terms of controls to prevent the departure of unseaworthy vessels (often persons on board are not aware of the conditions of a boat taking them to the open sea),
- increased SAR capacity of coastal states,
- agreement on a common definition of a “distress situation”,
- agreement on a common interpretation of SAR and SOLAS responsibilities to provide a place of safe disembarkation.

I hope this answer will be of help in your examination of this tragic incident. I remain at your disposal for any further questions you might have.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gil Arias", written over a horizontal line.

Gil Arias  
Deputy Executive Director

Enclosure:

1. Deployment of assets between 22<sup>nd</sup> of March and 10<sup>th</sup> of April 2011
2. Summary of maritime Joint Operations coordinated by Frontex

**PERIOD BETWEEN 22 MARCH AND 10 APRIL 2011 IN THE  
CENTRAL MEDITERRANEAN**

**A. Poseidon Sea Joint Operation**

**1.**

Operational area B coordinates:

A: 36°41'34"N      21°46'06"E

B: 34°52'13"N      24°43'39"E

C: 34°52'13"N      24°43'40"E

D: 34°55'33"N      26°15'35"E

E: 35°34'21"N      27°35'53"E

F: 35°16'02"N      27°42'50"E

G: 34°38'04"N      26°17'16"E

H: 34°25'40"N      24°42'38"E

I: 34°25'10"N      21°46'04"E

**2.**

Aerial Assets:

Airplane C-296M (Portugal)

\*No helicopters

Maritime Assets:

Offshore Patrol Vessel (Romania)

**B. Hermes Joint Operation****1.**

Operational area A coordinates (there was a no-fly zone established under the 35<sup>th</sup> parallel in order to avoid possible missile attacks from Libyan coast-line):

A: 36°45'N            012°15'E

B: 37°00'N            011°40'E

C: 35°15'N            011°42'E

D: 34°40'N            011°55'E

E: 34°04'N            011°30'E

F: 33°47'N            011°55'E

G: 35°35'N            013°18'E

**2.**

Aerial assets:

March: airplane ATR 42 (Italy), airplane C-295M (Portugal), Dornier 228 (the Netherlands)

April: airplane ATR 42 (Italy), airplane Piaggio (Italy)

\* No helicopters

Maritime assets (Italy only):

March: Coastal Patrol Vessel (x2)

April: Coastal Patrol Vessel (x2)

**C. Aeneas Joint Operation****1.**

Operational area Zulu coordinates:

A: 40°00'N            018°59'E

B: 37°49'N            016°39'E

C: 38°51'N            019°40'E

D: 37°25'N            020°10'E

Operational area Alfa coordinates:

E: 40°34'N            018°34'E

F: 40°34'N            018°54'E

G: 39°30'N            018°34'E

H: 39°30'N            018°54'E

Operational area Bravo coordinates:

I: 37°49'N            016°39'E

L: 37°49'N            017°09'E

M: 39°16'N            017°55'E

N: 39°16'N            018°25'E

**2.**

Aerial assets: (IT only)

April: airplane ATR 42 (x2)  
helicopter AB-412 HP  
helicopter AW-139

Maritime assets: (IT only)

April: CPV (x3)  
FIB (x5)

	Area	Aerial Assets (type: airplane/helicopter, country)	Maritime Assets (type: CPV/OPV/Fast Boat, country)	Land surveillance assets (country)	Experts (country)	Number of SAR cases	Number of persons rescued	Number of interviews carried out	Number of facilitators arrested	Crime detection (drug trafficking, pollution, illegal fishing, piracy, use of forged/falsified documents etc.)
Hera	between Canary Islands and West African coast	FWA x 3 (Iceland, Italy, Luxembourg)	CPV x 2 (Spain)	nil	no experts deployed	1	15	nil	4	nil
Indalo	Western Mediterranean Sea south of Spain	FWA x 7 (Spain, Italy, Slovakia, Finland, France, Luxembourg, Portugal), Helicopter x 1 (Spain)	CPB x 2 (Spain, Portugal), CPV x 3 (Italy, France, the Netherlands), OPV x 2 (Spain, Iceland)	nil	DBR (Belgium x 10, Spain x 8, France x 16, Portugal x 6, Germany x 4), ICC x 10, IO x 4, TL x 8	75	1919	412	38	102 illegal migration cases; 18 smuggling of drugs cases; 7 oil pollution cases.
Minerva	sea ports on the south coast of Spain	nil	nil	CO <sub>2</sub> equipment x 1 (Belgium), Heart Beat equipment x 13 (Spain)	BCE (Austria x 2, Belgium x 2, Bulgaria x 1, Estonia x 1, Spain x 9, France x 3, Italy x 4, Latvia x 1, the Netherlands x 6, Norway x 3, Romania x 3, Slovenia x1), DT (Belgium x 2, Switzerland x 1, 11 x Spain, Finland x 2, Latvia x 2, the Netherlands x 1, Portugal x 4, Romania x 2, Slovakia x1), DBR (the Netherlands x 1), Observers (Georgia x 4, Ukraine x 4), ICC x 5, IO x 1, TL x 9	nil	nil	49	13	338 illegal migration related cases (171 hidden in transportation means, 105 illegal border crossing, 56 related to documents false/falsified; 6 facilitation cases); 198 drug smuggling cases; 781 judicial requests; 34 stolen cars cases; 3 smuggling of goods cases
Hermes	South of Lampedusa and Sardinia	FWA x 11 (Italy, Spain, Poland, Portugal, the Netherlands, France), Helicopter x 2 (Italy)	CPV x 3 (Italy)	nil	Experts [DBR] x 16 (Portugal, Spain, Italy, the Netherlands, Belgium, Switzerland, Romania, France, Germany, Austria, Denmark, Hungary, Sweden)	144	20012	2025	165	1 pollution incident

	Area	Aerial Assets (type: airplane/helicopter, country)	Maritime Assets (type: CPV/OPV/Fast Boat, country)	Land surveillance assets (country)	Experts (country)	Number of SAR cases	Number of persons rescued	Number of interviews carried out	Number of facilitators arrested	Crime detection (drug trafficking, pollution, illegal fishing, piracy, use of forged/falsified documents etc.)
Aeneas	Ionian Sea	FWA x 5 (Italy, Slovakia, Finland, Iceland, Luxembourg), Helicopter x 2 (Italy, Germany)	CPV (Italy), FIB (Italy)*	nil	Experts [DBR] (Denmark x 4, Spain x 14, France x 1, Iceland x 2, Portugal x 2, Romania x 7, Sweden x 4), TL x 10	8	301	583	49	5 sea pollution incidents, 1 illegal fishing incident
Poseidon	Eastern Mediterranean / Aegean Sea	Helicopter x 3 (Romania, Latvia, Lithuania), FWA x 2 (Portugal, Iceland)	FIB x 5 (Latvia, Finland, Lithuania, the Netherlands), OPV x 2 (Romania, Iceland), CPV x 1 (Italy), CPB x 1 (Romania)	Mobile Surveillance Units x 3 (Latvia, Lithuania)	Experts [DBR] (Austria x 6, Germany x 6, Denmark x 1, Estonia x 2, France x 1, Hungary x 3, Lithuania x 7, Latvia x 4, Netherlands x 7, Norway x 4, Poland x 5, Romania x 8, Sweden x 2, Slovenia x 1, Slovakia x 2, UK x 1)	6	192	88	24	3 sea pollution incidents, 3 cigarette smuggling cases, 27 falsified documents detected

Acronyms	
CPB	Coastal Patrol Boat
CPV	Coastal Patrol Vessel
OPV	Offshore Patrol Vessel
FWA	Fixed Wing Aircraft
DBR	Debriefier / Interviewer
BCE	Border Checks Expert
ICC Staff	Coordinators
IO	Intelligence Officers (Risk Analysis)
TL	Interpreters
DT	Dog Team
FIB	Fast Interception Boat

**Bos, Emiliano**

---

**Da:** Eichenlaub Matthias [eichenlaub.matthias@hq.nato.int]  
**Inviato:** lunedì, 3. ottobre 2011 14:14  
**A:** Bos Emiliano  
**Cc:** Riley Chris  
**Oggetto:** your query 27 Sep

**Classification: NATO UNCLASSIFIED**

Dear Mr Bos

I apologise that it has taken us some time to get back to you. Please understand that this event dates back several months and it took a while to check all the facts.

You can use the following as a written statement in response to your specific query of last Tuesday 27 September.

This can be attributed to the NATO spokesperson Ms Oana Lungescu.

**"Migrant Vessel Events of 27 March 2011**

NATO maritime command did not receive a call for assistance in relation to this migrant ship. Instead, NATO received a general notice in the evening of 27 March 2011 from the Italian Authorities to alert them to the presence of a vessel in difficulty carrying 68 people.

This message was not an instruction to begin search and rescue, nor did it request assistance. The message simply requested NATO to keep the Italian coast guard updated "in case of sighting" of the vessel. A telephone call had been made from the boat and coordinates of the call were provided. At the time the message was received, the nearest NATO vessel was 24 nautical miles away from the aforementioned vessel.

Commanders of ships under NATO command are fully aware of their obligation under the Safety of Lives At Sea convention (SOLAS). As such, NATO ships do everything they can to respond to distress calls and provide help when necessary, which they did on several occasions during the Libya operation.

Since the start of the embargo operation, NATO ships have directly assisted in the rescue of more than 600 people in distress at sea. Through coordination with national authorities and coast guards, we have facilitated the rescue of many hundreds more.

**Further Background**

Since 23 March 2011, NATO warships and aircraft have been patrolling the approaches to Libyan territorial waters to prevent the flow of arms, related material and mercenaries to Libya.

Issues of migration do not fall within the mandate of this mission. However all ships under NATO command are fully aware of their responsibilities with regard to the International Maritime Law regarding Safety of Life at Sea (SOLAS). As such, NATO ships do everything they can to respond to distress calls and provide help when necessary, which they did on several occasions;

For example, on 26 March 2011, NATO ships responded to information that two migrant ships with over 500 people on board were in distress, which were then provided direct assistance by the Italian authorities. That included a NATO ship using its helicopter to airlift two women and a newborn child to medical help.

On 10 July 2011, a NATO ship responded to a vessel in distress approximately 75 miles off the coast of Libya. The NATO vessel provided medical support, food and offered mechanical assistance to the distressed migrants. In response to a deterioration of the humanitarian situation onboard, the 114 migrants were transferred onto the NATO ship in accordance with the Safety of Life at Sea (SOLAS) protocol and delivered to safety in Tunisia".

Matthias Eichenlaub

---

Press and Media Section  
Media Operations Centre  
NATO HQ  
Office: +32 (0) 2 707 1028  
Mobile: +32 (0) 475 752 291



ASSISTANT SECRETARY GENERAL FOR OPERATIONS  
LE SECRÉTAIRE GÉNÉRAL ADJOINT POUR LES OPÉRATIONS

27 March 2012

OPS(2012)0133

Dear Ms Strik,

Thank you for your letter of 10 February 2012, in which you ask for further detailed information on specific points.

1. Regarding the location of, and actions taken by, the ITS ETNA operating under NATO command at the period concerned, we have received the following information from the Italian authorities.

ETNA received only one distress call on 26<sup>th</sup> March 2011 and performed a Search and Rescue operation saving 243 people on a boat. On 27<sup>th</sup> March 2011 at the moment of the MRCC fax to which your letter refers the ITS ETNA was 155 nautical miles from the position reported by the MRCC fax. On the following day, the ship conducted various operational activities (flight operations included) 120/150 nautical miles away from the position reported by the MRCC fax. The helicopter on board never established contact with boats in difficulties on the sea and never released food or material to boats with people on board. In general, no Italian helicopter operated in rescue or in support of boats in need.

As for any other Italian ship, on 27<sup>th</sup> March at the moment of the MRCC fax, the closest Italian ship to the distress point was ITS Borsini at 37 nautical miles away from the position reported by the distress call.

Finally, the only other Italian ship operating in the area was ITS Garibaldi - 120/150 nautical miles away from the MRCC fax point.

2. Regarding the location of, and actions taken by, the ESPS MENDEZ NUNEZ operating under NATO command at the period concerned, the Spanish delegation in NATO provided the following information, which was separately sent to you by the Minister of National Defence of Spain in response to your letter of 10 February 2012:





Regarding the reception of the 27 March 2011 initial notification from the Maritime Rescue Coordination Centre Rome of a small boat probably in difficulty, the Spanish authorities confirm that neither a fax nor any other kind of communication was received by the Spanish frigate MENDEZ NUNEZ related to this issue or events referenced in your letter. They add that, on the 26<sup>th</sup> and 27<sup>th</sup> of March, the ship participated in two other search and rescue operations.

With regard to the reported sightings of one helicopter, the Spanish authorities confirm that the helicopter of the frigate MENDEZ NUNEZ did not see or make contact with the small boat in question.

Finally, the Spanish authorities reiterate that all Spanish vessels are aware of their relevant obligations under maritime law, including those with respect to rendering assistance to persons or ships in distress, and recall that during Operation Unified Protector the Spanish frigate MENDEZ NUNEZ actively assisted many vessels in distress.

3. In response to your third question, concerning the fax sent to MCHQ Naples by the MRCC Rome on 27 March 2011 and asking if it was passed to all assets involved in the NATO operations in the area of concern, I can confirm that during the period concerned, all information on the possible movement of migrant vessels was systematically and subsequently passed to the NATO units at sea for their maritime situational awareness. In the tragic incident in question, despite the imprecise nature of the request for information contained in the MRCC fax, which was not a formal request for assistance or "distress call", it was forwarded to NATO Task Force units under its operational control.

In addition, it should be noted that during Operation Unified Protector, SHAPE had meetings with the International Organisation for Migration (IOM), United Nations High Commissioner's Office for Refugees (UNHCR) and the International Maritime Organisation (IMO) to better coordinate in terms of migrants at sea. Contact details were exchanged to improve smooth and functional communication. When migrants were spotted, this was notified to both the responsible national coast guard in that particular Search and Rescue (SAR) area as well as the IOM and UNHCR, in order to be better prepared for a possible landing of migrants. This system worked to the satisfaction of the organisations involved.

It is also worth noting that during the entire period of Operation Unified Protector, NATO maritime assets directly aided the rescue of over 600 migrants in distress at sea, including hundreds the day before the MRCC fax. In all cases, NATO warships did everything they could to respond to distress calls and provide help when necessary. In addition, through coordination with national authorities, NATO has indirectly facilitated the rescue of many hundreds more. Commanders of warships under NATO command were, and remain, fully aware of their obligations under the International Law and Law of the Sea and responded appropriately.

I hope these elements answer your questions and remain available should you have further questions.

Yours Sincerely,



Stephen Evans

Mrs Tineke Strik  
Rapporteur  
Committee on Migration, Refugees and Population  
Parliamentary Assembly  
Council of Europe  
67075 Strasbourg Cedex  
France