The Italian Civil Aviation Authority's ban on human rights monitoring over the Mediterranean and Law Decree 145/2024: State interference in private rescue operations

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Abstract

The tension between national border control and the duty to rescue at sea is increasingly evident in Mediterranean States, particularly in Italy. Recent ordinances and legislation have targeted non-governmental organisations (NGOs) conducting search and rescue (SAR) operations, including shipmasters and aircraft pilots monitoring for vessels in distress. This article examines Italy's regulatory framework, focusing on measures issued by the Italian Civil Aviation Authority (ENAC) and their incompatibility with international maritime and aviation law, especially regarding the duty to assist persons at sea. Special attention is given to Article 11 of Law Decree 145/2024, which governs private aircraft operations and mandates compliance with national Maritime Rescue Coordination Centre instructions – including those from Libyan authorities – raising serious human rights and legal concerns. These developments are situated within a broader pattern of State interference in humanitarian SAR efforts. The article argues that restricting NGO aerial surveillance undermines rescue effectiveness, increases the risk of preventable deaths,

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and challenges Italy's compliance with international legal obligations. Evidence shows NGO aircraft play a vital role in detecting distress situations. Rather than impeding their operations, Italy should adopt a regulatory approach that enables cooperation and affirms the fundamental legal and moral duty to save lives at sea.

Keywords: Search and rescue, Italy, ENAC, Libya, place of safety, UNCLOS, private aircraft.

1. Introduction

The conflict between the legal framework established to safeguard national borders and the duty to rescue at sea is becoming increasingly acute in Mediterranean coastal States. In Italy, this tension is reflected in the adoption of ordinances and legislation targeting non-governmental organisations (NGOs) involved in search and rescue (SAR) operations – specifically, the shipmasters of rescue ships and the pilots of aircraft monitoring the Mediterranean Sea to report vessels in distress.

The SAR system plays a crucial role in ensuring that assistance is available to persons in distress, whether at sea or in the air. States that are Parties to the Safety of Life at Sea (SOLAS) Convention,[1] the International Convention on Maritime Search and Rescue (Hamburg Convention),[2] and the Convention on International Civil Aviation (Chicago Convention)[3]

1. Safety of Life at Sea Convention (adopted on 17 June 1960, entered into force on 26 May 1965) 1184, 1185 UNTS 2 (SOLAS).

2. International Convention on Maritime Search and Rescue (adopted 27 April 1979, entered into force 22 June 1985) 1405 UNTS (Hamburg Convention).

3. Convention on International Civil Aviation (adopted 7 December 1944, entered into force 7 April 1947) 15 UNTS 295 (Chicago Convention).

have accepted the obligation to provide aeronautical and maritime SAR coordination and services for their territories, territorial seas, and, where appropriate, the high seas.[4]

The International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) coordinate global efforts among States to provide effective SAR services. Their objective is to establish a worldwide system that guarantees the availability of rescue operations wherever they are needed.[5] To achieve this, the world is divided into Search and Rescue Regions (SRRs), each with a specific Rescue Coordination Centre (RCC) responsible for overseeing SAR operations within its designated area of responsibility. In the maritime domain, this role is carried out by the Maritime Rescue Coordination Centre (MRCC). In Italy, the MRCC is operated by the Italian Coast Guard.

Against this backdrop, the Italian Civil Aviation Authority (ENAC)[6] – the national authority responsible for the regulation and oversight of civil aviation in Italy – has issued specific regulations affecting SAR operations, including prohibitions on the operational activities of NGO aircraft and vessels engaged in humanitarian monitoring and rescue missions in the Central Mediterranean.

This paper begins by providing background information on the existing regulatory framework in place in Italy (Section 2), before analysing the measures issued by ENAC and highlighting their incompatibility with both the law of the sea and international aviation law, particularly when assessed through the duty to render assistance at sea (Section 3). It

4. E.g., International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual, Volume II, par. 1.1.3. For more details on the SAR system, see Seline Trevisanut, *Practice of Shared Responsibility in International Law*, (CUP 2017) 426; Rick Button, 'International law and search and rescue. Operational law in international straits and current maritime security challenges' (2018) 70 Naval War College Review 101.

5. IAMSAR Manual, Volume II, para 1.1.1.

6. *Ente Nazionale per l'Aviazione Civile* (ENAC).

then offers a concise examination of Article 11 of Law Decree 145/2024, which governs the activities of private aircraft (Section 4). These regulatory developments are discussed within the broader framework of State interference in private SAR operations at sea.

Finally, the article assesses whether domestic legal frameworks that directly or indirectly condition compliance with instructions from MRCCs – including the Libyan MRCC – on the imposition of coercive measures, such as significant administrative penalties or criminal sanctions, are consistent with international legal obligations. It also examines whether the practice of the Italian MRCC in instructing private aircraft operators and shipmasters to follow orders issued by the Libyan Coast Guard – despite credible knowledge that rescued persons will be returned to Libya – complies with applicable norms of international law (Section 5).

2. National legal framework

Italy's aviation legislation is primarily governed by the Italian Navigation Code.[7] Part II ("Air Navigation") of the Navigation Code constitutes the foundational legal framework for civil aviation in Italy, covering areas such as aircraft registration, airworthiness, pilot licensing, airport management, and air traffic rights. The Code has undergone several amendments to ensure alignment with international obligations and European Union (EU) standards, particularly following Italy's accession to the Chicago Convention and its integration into the EU Single European Sky

7. *Codice della Navigazione*, R.D. 327/1942.

initiative.[8]

Italian legislation addresses aviation security through the National Civil Aviation Security Programme,[9] developed pursuant to Regulation (EC) No. 300/2008.[10] The central regulatory authority for civil aviation in Italy is ENAC, established by Legislative Decree No. 250/1997.[11] ENAC is tasked with ensuring compliance with both domestic and international aviation standards and is vested with broad administrative, technical, and supervisory powers over air carriers, airports, and aeronautical personnel.[12]

8. Established under Regulation (EU) 2024/2803. OJ L, 2024/2803. The EU Single European Sky (SES) initiative is a regulatory framework launched by the European Commission in 2004 with the aim of reforming the fragmented architecture of European air traffic management (ATM). Its main objective is to improve the efficiency, capacity, and safety of European airspace by moving beyond the limitations imposed by national borders. This is pursued through the centralisation and harmonisation of air traffic control systems across EU member states, fostering cross-border cooperation and introducing common performance targets. The initiative was significantly reinforced by Regulation (EU) 2024/2803, which consolidates and updates previous SES legislation. The regulation aims to optimise the use of airspace, reduce delays, enhance safety standards, and contribute to the environmental sustainability of the aviation sector, aligning with broader EU goals such as the Green Deal and the Paris Agreement. It also emphasises a performance-based approach to air navigation services, greater integration through functional airspace blocks, and modernised air traffic management supported by the SESAR (Single European Sky ATM Research) programme.

9. The *Programma Nazionale per la Sicurezza dell'Aviazione Civile* (National Civil Aviation Security Programme) is the Italian regulatory framework that establishes policies, procedures, and measures to protect civil aviation from acts of unlawful interference. Managed by the Italian Civil Aviation Authority (ENAC), the programme complies with Regulation (EC) No 300/2008 and Commission Implementing Regulation (EU) 2015/1998, ensuring a harmonised level of security across all Italian airports. Its purpose is to safeguard passengers, personnel, aircraft, and facilities through a structured and risk-based approach to aviation security.

10. OJ L 97, 9.4.2008.

11. OJ L 177, 31.07.1997.

12. OJ L 177, 31.07.1997, Article 2; Article 687 of the Italian Navigation Code; ENAC Technical Regulation, Title I, Part II (ENAC Activities), Chapter B (Technical Regulatory Activities) and Chapter D (Supervisory Activities).

ENAC exercises wide-ranging regulatory functions, including the licensing and certification of air operators, airport oversight, and the monitoring of airworthiness,[13] in accordance with Regulation (EU) 2018/1139[14] and relevant European Union Aviation Safety Agency (EASA) regulations.[15] Additionally, ENAC contributes to the liberalisation of air transport and the economic regulation of airport services, particularly under the framework of Regulation (EC) No. 261/2004[16] on air passenger

13. OJ L 177, 31.07.1997, Article 2; Article 687 of the Italian Navigation Code; ENAC Technical Regulation, Title I, Part II (ENAC Activities), Chapter E (Certification Activities) and Chapter F (Airworthiness Requirements).

14. OJ L 212, 22.8.2018.

15. ENAC implements a wide range of EASA regulations that cover various domains of civil aviation safety. ENAC applies Regulation (EU) 2018/1139 as the legal basis for its oversight activities, including certification, licensing, and safety monitoring. Another key regulation is Commission Regulation (EU) No 965/2012 on Air Operations (Air OPS), which sets out rules for commercial and non-commercial air operations. ENAC is responsible for ensuring compliance by Italian air operators, including monitoring flight time limitations, crew qualifications, and operational procedures. For pilot licensing, ENAC implements Commission Regulation (EU) No 1178/2011 (Part-FCL), which governs training, testing, and licensing of flight crew. It certifies Approved Training Organizations (ATOs), issues licenses, and ensures adherence to EASA training standards. In the field of aerodromes, ENAC enforces Commission Regulation (EU) No 139/2014, which lays down requirements for the certification and operation of airports serving commercial air traffic. ENAC certifies Italian airports and verifies compliance with safety infrastructure and operational procedures. Regarding aircraft maintenance and continuing airworthiness, ENAC applies Commission Regulation (EU) No 1321/2014. ENAC approves maintenance organizations, supervises Continuing Airworthiness Management Organizations, and ensures that aircraft registered in Italy remain airworthy. ENAC also enforces Commission Regulation (EU) No 376/2014 on occurrence reporting, which establishes rules for mandatory and voluntary safety incident reporting. In the area of air traffic services, ENAC implements Commission Regulation (EU) No 2015/340, which governs the licensing and training of air traffic controllers (Part-ATCO). It is responsible for issuing licenses, approving training programs, and supervising compliance of air navigation service providers. These EASA regulations are transposed into ENAC's own technical regulatory framework, including its "*Regolamento Tecnico*", "*Circolari Operative*", and specific national guidance documents, ensuring that European standards are effectively applied within the Italian civil aviation system.

16. OJ L 046, 17/02/2004.

compensation and assistance.[17]

ENAC also regulates airport tariffs and air service agreements, in coordination with the Italian Competition Authority[18] and the Transport Regulation Authority.[19] In response to the rapid development of emerging technologies, Legislative Decree No. 96/2005[20] and subsequent amendments have expanded ENAC's mandate to include the regulation of unmanned aircraft systems and urban air mobility, in line with EASA's U-space framework.[21] More recently, Law No. 77/2020 has reinforced

17. ENAC has been designated as the National Enforcement Body (NEB) for the implementation of Regulation (EC) No. 261/2004, which establishes common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellation, or long delay. Legislative Decree No. 69 of 27 January 2006 sets out the penalty provisions for infringements of the regulation and identifies ENAC as the competent authority for detecting violations and imposing the prescribed penalties. ENAC is also the designated body responsible for enforcing Regulation (EC) No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. Legislative Decree No. 24 of 24 February 2009 governs the penalties for breaches of the provisions of the regulation and assigns ENAC the responsibility for detecting violations and imposing the corresponding sanctions.

18. The *Autorità Garante della Concorrenza e del Mercato* is an independent Italian administrative authority established under Law No. 287 of 1990, tasked with monitoring and promoting fair competition.

19. The *Autorità di regolazione dei trasporti* is an independent administrative authority operating in the regulation of public utilities, established pursuant to Law No. 481 of 1995.

20. Legislative Decree 96/2005.

21. See Commission Implementing Regulation (EU) 2021/664 (OJ L 139, 23.4.2021). The EASA's U-space framework is a regulatory and operational initiative designed to enable the safe, efficient, and secure integration of unmanned aircraft systems (UAS), or drones, into the airspace, particularly in low-level airspace (typically below 120 meters). It establishes a set of digital and automated services – known as U-space services – to support the large-scale use of drones, while minimizing risks to manned aviation and people on the ground. The U-space framework defines the roles and responsibilities of national authorities, air navigation service providers (ANSPs), and newly introduced entities called U-space service providers (USSPs). These USSPs are responsible for delivering core services such as network identification, geo-awareness, flight authorisation, and traffic information to UAS operators. The framework is part of EASA's broader effort to develop a harmonised European drone ecosystem, complementing the EU drone regulation package (such as Regulation (EU) 2019/947 and Regulation (EU) 2019/945).

national sustainability objectives by promoting the decarbonisation of air transport and supporting investment in advanced air mobility solutions.[22]

While ENAC operates under the administrative supervision of the Ministry of Infrastructure and Transport, it enjoys operational independence and collaborates closely with EASA to ensure that Italy's civil aviation governance is harmonised with international and EU standards. As the national civil aviation authority, ENAC also holds regulatory and supervisory authority over Italy's Flight Information Regions (FIRs), which are designated portions of airspace in which the State is responsible for providing air traffic control, flight information services, and alerting services,[23] as defined under the ICAO framework.[24]

It is important to note that the geographic boundaries of Italy's FIRs do not coincide precisely with those of its SRRs. Although some overlap may exist, the two are established for different purposes and according to distinct criteria. As such, ENAC does not appear to hold specific regulatory authority over SAR activities within SRRs.

The regulatory framework governing aircraft operations in Italy, as set out in the national Regulations for Aircraft Operations in Italy (RAIT),[25] provides that standard aviation rules may be waived for certain special operations, including SAR missions. In particular, RAIT.3112 stipulates that SAR activities must be conducted in accordance with the provisions of the competent State authority. The establishment of a SAR area may lead to the imposition of airspace restrictions, such as no-fly zones or other limitations communicated through notices to airmen. Additional

22. Law No. 77/2020.

23. David W. Wragg, *A Dictionary of Aviation* (Osprey 1973) 133.

24. Pablo Mendes de Leon, *Furthering the Frontiers of International Law: Sovereignty, Human Rights, Sustainable Development* (Brill 2021) 223–246.

25. See Regolamento "Regole dell'Aria Italia" (ENAC Regulation on rules for the Italian airspace) 4 edn rev.2 of December 20, 2024.

operational information may be provided via advisories broadcast by Air Traffic Services (ATS) units over standard air-to-ground frequencies.[26] When a SAR area is activated, aircraft involved in rescue operations must coordinate with ATS units and maintain continuous radio contact with the Italian Coast Guard.[27]

3. Analysis of the ENAC ordinances

3.1 Scope and content

Between 3 and 6 May 2024, ENAC issued seven ordinances – identical in content – addressed to seven different Sicilian airports. Each was titled "*Phenomenon of irregular migration by sea from the North African coasts. Prohibition of the operational activity of NGO aircraft and vessels in the Central Mediterranean Sea scenario*."[28]

In line with national law, the ordinances stipulate that the institutional body authorised to intervene in and coordinate SAR activities – through the RCC or designated Rescue Sub-Centres[29] – is the General

26. RAIT.3112(1), 11.

27. RAIT.3112(2), 11.

28. The ordinances are addressed to the airports of *Catania Fontanarossa* (Direzione Territoriale ENAC Sicilia Orientale, ordinanza n. 02/2024, 03.05.2024); *Comiso* (Direzione Territoriale ENAC Sicilia Orientale, ordinanza n. 03/2024 03.05.2024); *Pantelleria* (Direzione Territoriale ENAC Sicilia Occidentale, ordinanza n. 01/2024, 03.05.2024); *Lampedusa* (Direzione Territoriale ENAC Sicilia Occidentale, ordinanza n. 02/2024, 03.05.2024); *Palermo Punta Raisi* (Direzione Territoriale ENAC Sicilia Occidentale, ordinanza n. 01/2024, 06.05.2024); *Palermo Bocca di Falco* (Direzione Territoriale ENAC Sicilia Occidentale, ordinanza n. 01/2024, 06.05.2024); and *Trapani Birgi* (Direzione Territoriale ENAC Sicilia Occidentale, ordinanza n. 01/2024, 06.05.2024). All the ordinances are available here at <<https://www.enac.gov.it/la-normativa/normativa-enac/ordinanze/>>.

29. Secondary coordination facilities established under the SAR framework. They function under the authority of the RCC.

Command of the Port Authorities (*Capitaneria di Porto*) of the Italian Coast Guard, which must be recognised as the sole national maritime authority competent in SAR matters.[30] Accordingly, ENAC holds that NGO involved in SAR operations bear responsibility for "improper sea intervention situations",[31] defined as "the rescue – from makeshift boats – of migrants coming from North African routes".[32]

In particular, the ordinances frame the presence and activities of NGO-operated aircraft as exacerbating the institutional burden borne by the Italian Coast Guard in maritime intervention efforts,[33] while also alleging that such operations may endanger the safety of migrants when conducted outside the parameters of protocols formally sanctioned by the competent maritime authority.[34]

On grounds of national security,[35] Article 1 of the ENAC ordinances determines that "anyone conducting [SAR] activities not in line with the provisions of the current regulatory framework" is subject to sanctions under the Navigation Code, including the potential administrative detention of aircraft as a punitive measure.[36] It may be contended that the use of the term "anyone" in Article 1 of the ordinances could be construed as extending their scope – including the imposition of sanctions for non-compliance – to encompass NGO-operated vessels conducting SAR operations without prior authorisation. Such an interpretation may shed light on the somewhat incongruous invocation of the United Nations Convention on the Law of the Sea

30. ENAC ordinances, Preambular para 8.
31. Ibid., Preambular para 11.
32. Ibid., Preambular para 9.
33. Ibid., Preambular para 10.
34. Ibid., Preambular para 12.
35. Ibid., Preambular para 13.
36. Ibid., Article 1.

(UNCLOS)[37] in the preambular section of the ordinances.[38]

Yet, the ENAC ordinances must be interpreted against the backdrop of Article 792 of the Navigation Code, which defines ENAC's mandate as limited to functions of policing and surveillance of "air navigation", including air safety, air transport, and the management of airspace.[39] The phrase "anyone conducting [SAR] activities not in line with the provisions of the current regulatory framework", therefore, should be interpreted as applying to NGO-operated aircraft, but not to rescue vessels. Besides, the "improper actions of interventions" prohibited and subject to penalties under the ordinances remain ambiguous.

Given the role played by NGO aircraft in the Mediterranean – primarily involving the monitoring of maritime areas and the reporting of distress situations – it can be inferred that the "improper actions of intervention" targeted by these measures are likely to include *monitoring* flights over national and international airspace, as well as the act of *reporting distress* cases.

Using this inference as a starting point, it becomes necessary to assess whether restrictions imposed on NGO aircraft engaged in monitoring and reporting activities are compatible with international legal frameworks governing maritime rescue, airspace regulation, and Italy's obligations to ensure effective SAR operations within its assigned SRRs.

37. United Nations Convention on the Law of the Sea (adopted on 10 December 1982 and entered into force on 16 November 1994), 31363 UNTS.

38. ENAC ordinances, Preambular para 4.

39. See also the ENAC Statute, approved with interministerial Decree (DI) No. 13 of 19 January 2015.

3.2 Compatibility of restrictions on NGO aircraft engaged in *monitoring* activities with international and domestic law

The first issue to be addressed is whether the prohibition imposed on NGO aircraft from conducting *monitoring* activities – effectively restricting their access to national and international airspace – is compatible with international law. This requires a twofold analysis: first, whether overflight of a State's territory by NGO aircraft complies with international legal norms; and second, whether such overflight through international airspace is similarly permissible.

3.2.1 Overflight of State territory by NGO aircraft

It is a well-established principle of international law that a State's sovereignty extends not only over its land territory but also over its territorial sea and the airspace above it.[40] This principle is codified in Article 2(1)

40. Malcom N. Shaw, *International Law* (CUP 2021) 476; Myron Nordquist (ed), *United Nations Convention on the Law of the Sea 1982* (Brill Nijhoff 2011) 145; DP O'Connell, *The International Law of the Sea* (Oxford Law Pro 1982) 124; Renate Platzöder (ed), *Third United Nation Conference* (Oceana Publications 1987) 132; Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea* (Manchester Unversity press 2022) 57; Donald R. Rothwell et al., *The Oxford Handbook of the Law of the Sea* (OUP 2015) 62; Lilian del Castillo, *Law of the Sea, From Grotius to the International Tribunal for the Law of the Sea* (Brill Nijhoff 2015) 48; Yoshifumi Tanaka, *The International Law of the Sea* (CUP 2019) 94; James Crawford, *Brownlie's Principles of Public International Law* (OUP 2019) 241; Jean A. Martial, 'State Control of the Air Space over the Territorial Sea and the Contiguous Zone'(1952) 30 Canadian Bar Review 245; L.J. Bouchez, 'The Concept of Effectiveness as applied to Territorial Sovereignty over Sea-Areas, Air Space and Outer Space' (1962) 9 Netherlands International Law Review 151; Kay Hailbronner, 'Freedom of the Air and the Convention on the Law of the Sea' (1983), 77 American Journal of International Law 490; See also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) [1986] ICJ Rep 14 and *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4.

UNCLOS, which also reflects customary international law.[41]

UNCLOS remains the foundational legal framework governing maritime zones and related activities. While predominantly focused on the legal regime of the seas and oceans, several of its provisions address the status of the airspace above maritime zones and the rights and obligations of aircraft operating therein.[42]

This regime is complemented by the Chicago Convention, which affirms in Article 1 that each contracting State has complete and exclusive sovereignty over the airspace above its territory. Article 2 further defines "territory" to include land areas and adjacent waters under sovereignty, suzerainty, protection, or mandate.

Under Article 5 of the Chicago Convention, non-scheduled civil aircraft of contracting States enjoy the right to transit the airspace of other contracting States without prior authorisation and to make non-traffic stops.[43] However, this freedom is not absolute: overflown States retain regulatory authority for safety and security purposes and may require landings.[44] Article 15 reinforces the principle of non-discrimination, requiring that "[e]very airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions

41. Satya N. Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. I, (Martinus Nijhoff Publishers 2002) 125; Brian D. Lepard, *Customary International Law. A New Theory with Practical Applications* (CUP 2010) Chapter 10.

42. E.g., Articles 34, 49, 78, 87, 110, 111, 135, 212, 222, 224.

43. Chicago Convention, Article 5, first sub-paragraph: "Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights..."

44. Ibid.

of Article 68, be open under uniform conditions to the aircraft of all the other contracting States."[45]

The Convention also provides specific exceptions to the principle of free overflight. Article 5 allows States to impose routing requirements or special permissions for flights over regions lacking adequate navigational infrastructure.[46] Article 9 authorises restrictions or prohibitions on overflights for reasons of military necessity or public safety, provided such measures are geographically defined, uniformly applied, and duly notified to other States and to the ICAO.[47]

Italian domestic law adheres closely to this international framework. Article 3 of the Italian Navigation Code adopts the definitions established by the Chicago Convention and affirms national sovereignty over the airspace above both land territory and territorial sea. Consistently, the RAIT defines "national airspace" as encompassing the airspace over the national territory and territorial sea of the Republic.[48]

Domestic provisions on airspace control are elaborated in Article 793 of the Navigation Code ("Prohibition of Overflight"), which states that:

> [ENAC] may prohibit overflight of certain areas of the national territory for security reasons. When there are military or security or public order reasons, ENAC, upon request of the competent administration, shall prohibit overflight of certain areas of the national territory. The Ministry

45. Ibid., Article 15, first sub-paragraph. Also note that, Article 68 of the Chicago Convention, as referenced in the first sub-paragraph of Article 15, empowers each State to designate the routes to be followed by international air services within its territory, as well as the specific airports such services may utilise.

46. Ibid., Article 15, second sub-paragraph.

47. Notably, Article 9(a) specifies that such prohibitions must be uniform, geographically reasonable, and promptly notified to other States and the ICAO; and Article 9(b) allows temporary, exceptional restrictions in emergencies or for public safety, provided they apply equally to aircraft of all nationalities.

48. RAIT, Article 2(12). Italy's compliance with its international obligations, in any case, finds a general legal justification in Article 10(1) of the Italian Constitution.

of Infrastructure and Transport may also prohibit air navigation over the entire national territory for exceptional reasons of public interest.

ENAC Circular ATM-05B (13 May 2021)[49] details the procedures for establishing "reserved airspace" – temporarily designated areas for the exclusive or restricted use of specific users. These may include airspace restrictions for public events (e.g., firework displays), military exercises, or operations linked to public figures, demonstrations, explosive ordnance disposal, or natural disasters.

Article 793, however, refers only to "security" without clarifying whether this includes "national security", a distinct concept from public security. While public security relates to the protection of individuals and public order, national security is oriented toward the protection of the State from internal and external threats.[50] The Navigation Code's sparse reference to national security may reflect legislative caution, given its ambiguous conceptual contours and unclear position within the broader legal categories of public order and State defence.[51] This indeterminacy raises rule-of-law concerns, particularly where judicial oversight is required.[52]

In the absence of an explicit domestic legal basis authorising flight restrictions on grounds of national security, the legality of ENAC ordinances directed at civil – especially NGO-operated – aircraft in international airspace remains open to challenge.

49. ATM-05B Circular of 13/05/2021 "Update and general revision"; ENAC also updates the guidelines provided for the first time in 2010 regarding "Temporary airspace restrictions".

50. See David A. Baldwin, 'The concept of security' (1997), 23 Review of International Studies 5 and Denis Iroshnikov, 'Theoretical Issues of "Security" Concept' (2019), 12 Journal of Politics and Law 34.

51. See Victoriia Zagurska-Antoniuk, 'National security and public administration in modern political systems' (2020) 66 Galician economic journal 187.

52. Ibid. See also Denis Iroshnikov, 'A Systematic Approach to the Understanding of National Security in the Legal Dimension' (2018), 11 Journal of Politics and Law 11.

3.2.2 Overflight in international airspace

Beyond the territorial sea, States no longer exercise full sovereignty but instead possess limited functional jurisdiction,[53] particularly within the exclusive economic zone (EEZ)[54] and over the high seas. The airspace above these maritime zones is classified as international and governed by the freedoms codified in UNCLOS and customary international law, including, notably, the freedom of overflight.[55]

The principle of freedom of overflight was first formally articulated during the Paris Peace Conference of 1919–1920, wherein the Aeronautical Commission's report affirming such a freedom received near-unanimous endorsement from the participating States.[56] Although the 1944 International Civil Aviation Conference, which culminated in the adoption of the Chicago Convention, did not expressly reiterate this principle in the treaty text, the preparatory works and deliberations of the Conference nonetheless reflected a broad consensus among States that international

53. Shaw (n 40) 495; Nordquist (n 40) 145; O'Connell (n 40) 124; Platzöder (n 40) 154; Churchill (n 40) 82; Tanaka (n 40) 186; Crawford (n 40) 250.

54. See Part V UNCLOS.

55. Tanaka (n 40) 554; Pete Pedrozo, 'Maintaining Freedom of Navigation and Overflight in the Exclusive Economic Zone and on the High Seas' (2020) *Indonesian Journal of International Law*, Vol. 17, No. 4, 477. See Articles 58(2) and 87(1)(b) UNCLOS.

56. John Cobb Cooper, 'The International Air Navigation Conference, Paris 1910' (1952) 19 Journal of Air Law and Commerce Journal of Air Law and Commerce, 127. The Commission – composed of technical and diplomatic delegates from the victorious Allied and Associated Powers – had been created by the Conference to draft the aviation clauses of the post-war peace treaties and to prepare a separate multilateral air-law instrument. Its report, adopted almost unanimously by the plenary Conference in May 1919, became the blueprint for Articles 313-320 of the Versailles Treaty and for the separate Convention Relating to the Regulation of Aerial Navigation signed in Paris on 13 October 1919, both of which affirmed – though later narrowed – the freedom of overflight. Aeronautical Commission, Report on Aerial Navigation, Paris Peace Conference Doc. No. 164 (7 May 1919) in Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919, vol XIII, ch. XX, 'Aerial Navigation', 641–647.

airspace lies beyond the scope of any single State's sovereign jurisdiction.[57]

Italian aviation law, as codified in the RAIT, defines "national airspace" as comprising the airspace within the limits of the territorial sea. This definition excludes the airspace over the EEZ, which is therefore subject to the legal regime applicable to the high seas.[58] Notably, the RAIT contains no substantive provisions concerning the high seas – a likely indication that, in such zones, only the standards prescribed in the ICAO Annexes or regionally coordinated ICAO procedures apply.

The absence of sovereignty over airspace above the high seas entails a corresponding absence of territorial jurisdiction *stricto sensu*. The legal fiction that ships and aircraft constitute extensions of a State's territory – a concept often metaphorically described as "floating islands"[59] – has been consistently rejected in contemporary international law.[60] Both

57. Article 12 of the Chicago Convention stipulates that air navigation over the high seas must be regulated without exception by uniform rules established by ICAO, and that compliance with these rules must be ensured by the States to which the aircraft belong. The binding provisions of Article 12 are not limited to routes and the conduct of flights but also extend to air traffic control and the safety of air navigation. These rules define the legal status of such airspace and implicitly exclude any alternative claims by individual States regarding activities conducted within it. See Antonio De Rosa, Vincenzo Simonetti, *Lezioni di diritto aeronautico militare*, (Stato Maggiore dell'Aeronautica – Ufficio Generale Consulenza e Affari Giuridici 2017) 219.

58. Italy "authorised" the establishment of an EEZ through Law No. 14 of 14 June 2021, pending the issuance of an executive decree. For more details, see Tullio Scovazzi, 'The Italian Exclusive Economic Zone', in Pierandrea Leucci and Ilaria Vianello (eds.), *ASCOMARE Yearbook on the Law of the Sea. Volume 2: Fisheries and the Law of the Sea in the Anthropocene Era* (Luglio Editore 2023). See also Kay Hailbronner, 'The legal regime of the airspace above the exclusive economic zone' (1983) 8 Air and Space Law, 30; Shaw (40) 499.

59. Rolando Quadri, *Le navi private nel diritto internazionale* (Giuffrè 1939) 37; Herman Meyers, *The Nationality of Ships* (Martinus Njhoff 1967) 32; Amina Maneggia, *La giurisdizione negli spazi marini non sottoposti a sovranità territoriale* (Wolters Kluwer 2022) 108.

60. Nagendra Singh, *Maritime Flag and International Law* (Sijthoff 1978) 14; Lorenzo Schiano di Pepe, 'La questione della nazionalità delle navi dinanzi al Tribunale internazionale per il diritto del mare' (2002) Rivista di Diritto Internazionale, 329. Shaw (n 40) 525; Tanaka (n 40) 186; Crawford (n 40) 285; Francesco Salerno, Diritto Internazionale (Wolters Kluwer 2021) 371; Benedetto Conforti and Massimo Iovane, *Diritto internazionale* (Editoriale Scientifica 2023) 329.

UNCLOS and international case-law oppose this notion, favouring instead the principle of *extraterritoriality*, under which jurisdiction over vessels and aircraft beyond national territory is exercised through the concept of nationality.[61] This is reflected in Article 17 of the Chicago Convention, which provides that "aircraft have the nationality of the State in which they are registered." Nationality thereby serves as the basis for both prescriptive and enforcement jurisdiction in international airspace, mirroring the legal treatment of ships on the high seas.[62]

This principle is echoed in Italian domestic law. Article 7 of the Navigation Code affirms that "[t]he liability of the shipowner and the operator of the aircraft for acts or facts attributable to the crew is governed by the national law of the ship or the aircraft." Similarly, Article 8 provides that "[t]he powers, duties, and responsibilities of the shipmaster or captain of the aircraft are governed by the national law of the ship or aircraft."

Nevertheless, despite the international repudiation of onboard territoriality, Italian legislation continues to reflect this concept. Article 4 of the Navigation Code stipulates that "Italian ships on the high seas and Italian aircraft in areas or spaces not subject to the sovereignty of any State shall be considered as Italian territory." This provision, however, constitutes a purely domestic legal fiction and does not confer sovereignty under international law.

A coherent reading of the principles of onboard jurisdiction and the freedom of overflight leads to the conclusion that no State other than the State of Registry may lawfully interfere with the activities of civil aircraft in international airspace. While limited exceptions to this rule do exist –

61. E.g., Article 92(1) UNCLOS affirms that ships on the high seas are subject to the exclusive jurisdiction of their flag State, except in exceptional circumstances expressly provided for by international treaties or conventions. See also *Corfu Channel* case (n 40) and *Enrica Lexie* Case (Italy v. India) (Merits) [2020] PCA, 2015-28.

62. See Articles 91 and 94 UNCLOS.

particularly in relation to aviation security, crime prevention, or specific forms of international cooperation[63] – such exceptions are narrowly construed within the aviation domain, reflecting its distinctive operational and legal characteristics.

Although certain States have sought to extend regulatory control beyond their sovereign airspace – a tendency often labelled as *aerial contiguity*[64] – the exercise of public authority beyond national borders is permissible only under narrowly circumscribed conditions in international and domestic law. Notably, SAR operations are not among the permissible bases for extraterritorial regulatory action. This is confirmed in Article 13 of the Italian Navigation Code, which expressly provides that "[t]he obligations arising from assistance, rescue, and recovery operations carried out on the high seas are governed by the national law of the ship or aircraft that rendered the assistance or performed the recovery." Accordingly, ENAC lacks the jurisdiction to impose legal consequences on foreign-flagged civil aircraft, including those operated by NGOs, for activities conducted in international airspace.

This interpretation was recently affirmed by the Administrative Court of the Lazio Region (*TAR Lazio*), which annulled ENAC's order of 17 November 2023, titled *"Coast Guard Reconstruction of the Activities of the NGO Aircraft Colibrì 2 – Report on the Events of 11 November 2023"*.[65] The order alleged that the Austrian-registered aircraft operated by the NGO Pilotes Volontaires had engaged in unlawful conduct in interna-

63. For example, universal jurisdiction may justify the intervention of states other than the flag State. Two recent major aviation incidents – the downing of Malaysia Airlines Flight MH17 and the crash of Ukrainian International Airlines Flight PS752 in Tehran on 8 January 2020 – illustrate the application of universal jurisdiction in the context of air criminal law. E.g., see Sarah Williams, 'Mh17 and the International Criminal Court: a Suitable Venue?' (2016) MelbJlIntLaw 9, 17(1) Melbourne Journal of International Law 210.

64. See De Rosa, Simonetti (n 57) 220-221.

65. Regional Administrative Court (TAR) of Lazio, 19 June 2024, RG. No. 00567/2024, judgment No. 12644/2024, made public on 21 June 2024.

tional airspace and directed the organisation to cease such activities, under threat of sanctions.[66]

The annulled provision closely resembled other ENAC orders under current judicial review. The NGO was accused of having "improperly operated outside national and supranational rules, endangering the safety of migrants, who were not assisted according to the prevailing and approved protocols of the Maritime Authority",[67] and was instructed to refrain from further activities in the SAR domain, with a warning that continued operations could result in "sanctions such as the administrative detention of the aircraft."[68] However, the facts established that the flight occurred outside Italian sovereign airspace and involved an Austrian-registered aircraft. The court therefore held that ENAC had exceeded its prescriptive competence, as it purported to exercise regulatory authority over a foreign-registered aircraft operating in international airspace. The ruling explicitly found that "it is clear that ENAC, in issuing the contested provision, exceeded its territorial competence, improperly exercising a power (the power of oversight and air police)."[69]

In conclusion, a State – and by extension, its civil aviation authority (ENAC in the case of Italy) – may not lawfully impose restrictions on the freedom of overflight enjoyed by foreign-flagged civil aircraft operating in international airspace. Such restrictions may only be imposed within national airspace and under exceptional conditions expressly recognised in law, such as those relating to flight safety, military necessity, or public emergencies. In the absence of a clearly established legal basis in either international or domestic law, any restriction on foreign aircraft grounded in national security considerations remains of dubious legal validi-

66. Ibid., para 8, 5.

67. Ibid., para 8, 4.

68. Ibid.

69. TAR Lazio (n 65), para 10.1.3.

ty. Moreover, the ENAC-imposed restrictions examined herein are not territorial (*ratione loci*)[70] but functional in character, as they selectively target aircraft engaged in SAR operations, as further addressed below.

3.3 Compatibility of restrictions on NGO aircraft *reporting distress* situations with international and domestic law

The second issue under consideration concerns the compatibility of restricting NGO-operated aircraft from *reporting distress* situations with international law. These activities have been characterised by the ENAC ordinances as "improper intervention activities" and a "substantial evasion of the regulatory framework for [SAR]".

As a preliminary matter, it is essential to underscore that the international SAR regime is predicated on the prompt and effective communication of distress situations. This obligation is firmly embedded in a range of international legal instruments.

The Hamburg Convention[71] obliges States to act expeditiously when informed of persons in distress at sea within their designated SAR regions. Specifically, it requires competent national authorities to coordinate without delay and to ensure that appropriate assistance is rendered.[72] RCCs must also maintain up-to-date operational information[73] and implement procedures to obtain the data necessary for effective SAR interventions.[74] Critically, the Convention neither centralises the authority to report maritime distress in a single institutional actor nor prohibits

70. The ordinances do not establish a 'no-fly zone' in the airspace over the State's territory.

71. It is worth noting that reference to the Hamburg Convention is contained both in the ENAC ordinances and in Italy's Law No. 147/1989, whereby it is incorporated into the national framework.

72. Hamburg Convention, Chapter 2, para 2.1.9.

73. Ibid., Chapter 4, para 4.1.1.

74. Ibid., Chapter 4, para 4.2.3.

pilots, vessels, or other third parties from notifying SAR authorities of emergencies

In this context, ENAC ordinances cite Presidential Decree No. 662/1994, which implements Law No. 147/1989 and thereby transposes the Hamburg Convention into Italian law. The decree designates the General Command of the Port Authorities (*Capitaneria di Porto*) of the Italian Coast Guard as the national MRCC,[75] responsible for organising and managing SAR operations within Italy's maritime area of responsibility.[76] However, this designation pertains strictly to coordination and does not confer an exclusive competence to receive or validate distress reports. This reading aligns with broader international legal obligations under UNCLOS,[77] SOLAS,[78] and established principles of customary international law,[79] all of which affirm the duty of shipmasters and relevant actors to render assistance to persons in distress at sea.

The International Aeronautical and Maritime Search and Rescue Manual (IAMSAR Manual), jointly issued by the IMO and the ICAO, reinforces this decentralised and inclusive approach to distress reporting. It affirms that any capable asset – whether vessel or aircraft – has a positive obligation to assist, and that distress alerts may and should be transmitted through a variety of channels to ensure a timely response.[80] Italian domestic law similarly reflects and reinforces these internation-

75. Presidential Decree No. 662/1994, Article 3(1)(a).

76. Ibid., Article 4(2).

77. UNCLOS, Article 98.

78. Article 10 of the International Convention on Salvage (adopted on 28 April 1989, entered into force on 14 July 1996), 1953 UNTS.

79. See Irini Papanicolopulu, 'The duty to render assistance, in peacetime and in war: A general overview' (2016) International Review of the Red Cross, 98(2), 491-514, 494; and Felicity Attard, 'Limitations on the duty to render assistance at sea under international law', in Pierandrea Leucci and Ilaria Vianello, *ASCOMARE Yearbook on the Law of the Sea. Volume 1 – Law of the Sea, Interpretation and Definitions* (Luglio Editore 2022), 49-50.

80. IAMSAR Manual Volume II, para 1.3.4.

al norms. Article 69 of the Navigation Code ("Assistance to Vessels in Danger and Shipwrecked Persons") mandates that maritime authorities initiate immediate rescue efforts upon learning of an incident at sea. Where direct intervention is unfeasible, they must alert other competent bodies.[81] Furthermore, in the absence of a timely maritime response, the duty to act transfers to the local municipal authority.[82] These provisions make clear that the duty to intervene does not depend on the source of the distress information.

Additional articles in the Navigation Code substantiate this legal framework: Article 489 ("Duty of Assistance"), Article 490 ("Duty of Rescue"), and Article 1158 ("Omission of Assistance to Vessels or Persons in Danger") collectively impose a general obligation to provide aid, regardless of how or by whom the distress report is initiated.

Section 310 of the National SAR Plan[83] ("Emergency Reporting and Evaluation of Information") provides further clarity. It expressly stipulates that any public or private entity that becomes aware of a maritime distress situation must immediately notify the competent Maritime SAR Organisation. Acceptable reporting pathways include emergency services, law enforcement, military command centres, foreign SAR entities, and NGOs. The IAMSAR Manual echoes this broad reporting framework, affirming that all distress situations should be communicated by any means necessary to ensure the prompt mobilisation of rescue efforts.

Collectively, this legal and operational architecture – international and domestic – is designed to serve a singular, overriding objective: the preservation of human life at sea. Given that NGO-operated aircraft and vessels may, in many cases, be the first to detect persons in distress and

81. Navigation Code, Article 69(1).

82. Ibid., Article 69(2).

83. National SAR Plan, 2020 edition, adopted by decree of the Ministry of Infrastructure and Sustainable Mobility on 4/2/2021, No. 45. The National SAR Plan implements what is prescribed by Rule 4.5 of the Annex to the Convention.

may be better positioned to initiate or coordinate a rapid response, the prompt transmission of such information is not merely permissible but indispensable. The IAMSAR Manual underscores the urgency of early intervention, observing that survival rates for injured individuals can decline by up to 80% within the first 24 hours, while the chances of survival for uninjured persons decrease significantly after 72 hours.[84] Within this framework, reports from NGOs and other non-State actors constitute not unlawful interference, but critical components of an effective and lawful SAR system.[85]

3.4 Enforcing ENAC Ordinances

ENAC has initiated enforcement of its 2024 ordinances through administrative sanctions targeting NGO-operated aircraft in at least two recent cases. The first involves *Seabird*, a German-registered aircraft operated by Sea-Watch, which was fined €2,064 on 21 May 2024.[86] According to ENAC's enforcement notice,[87] on 14 May the aircraft "overflew the Libyan SAR area, instructing a ship of the same NGO to carry out a rescue operation in Libyan waters"[88] – a rescue operation which the Libyan authorities allegedly "did not authorise for this specific case."[89] Sea-Watch has rejected this account, stating that the distress alert was transmitted to

84. IAMSAR Manual Volume II, para 1.3.4.

85. Therefore, the master of a vessel retains discretion over how to conduct rescue operations in compliance with applicable legal frameworks. See IAMSAR Manual, Volume II, para 3.1.2.

86. Sea Watch Italy, available at <<https://x.com/SeaWatchItaly/status/1792962961419673910>>; See also Human Rights Watch, Italy Threatens to Ground Rescue Planes in the Mediterranean, 22 May 2024, available at <<https://www.hrw.org/news/2024/05/22/italy-threatens-ground-rescue-planes-mediterranean>>.

87. ENAC, Direzione Territoriale Sicilia Occidentale, ordinanza-ingiunzione 5/2024.

88. Ibid., 1.

89. Ibid.

all relevant maritime authorities, including Italy, the EU, and Libya, in accordance with standard emergency protocols. The organisation further contends that the rescue took place in international waters, albeit within the Libyan-designated SAR zone – not within Libya's territorial sea.[90]

The second case concerns a Swiss-registered aircraft operated by the Humanitarian Pilots Initiative,[91] which was likewise fined €2,064 for an alleged incident on the same date.[92] The sanctioning decision mirrors that issued against Sea-Watch, alleging unauthorised overflight of the Libyan SAR region and direction of a rescue operation absent express clearance from the Libyan Coast Guard.[93]

In both cases, the sanctions appear to rely on communications received from Libyan authorities indicating that the respective rescue operations lacked authorisation. Italian authorities accepted this representation as a sufficient legal basis for imposing penalties under national law.[94]

This enforcement approach raises serious legal concerns. As established under the Hamburg Convention, SAR zones are created not to confer sovereign rights or exclusive control, but to assign responsibility for coordinating rescue efforts in service of a single overriding objective: the protection of human life at sea. The functional mandate granted to coastal States within their SAR regions does not entail a right to prohibit

90. Extracts of the court documents reviewed by the author but not publicly available.

91. ENAC, Direzione Territoriale Sicilia Occidentale, ordinanza-ingiunzione 6/2024.

92. Ibid.

93. Information obtained by court documents reviewed by the author but not publicly available.

94. See Luca Pons, 'Sea Watch multata per aver soccorso migranti, la Ong: "Governo ci sanziona su indicazione della Libia"' (22 May 2024) FanPage, available at <<https://www.fanpage.it/politica/sea-watch-multata-per-aver-soccorso-migranti-la-ong-governo-ci-sanziona-su-indicazione-della-libia/>>; and Alessia Candito, 'Multe per tenere a terra gli aerei ong, l'Enac sanziona Seabird. "Ce lo hanno detto i libici"' (21 May 2024) La Repubblica, available at <<https://palermo.repubblica.it/cronaca/2024/05/21/news/migranti_ong_enac_multa_seabird_libia-423061749/>>.

or penalise rescue activities by other actors, particularly where such activities are undertaken in response to clear distress and in compliance with customary international law obligations.[95]

More broadly, international law – reflected in instruments such as UNCLOS, SOLAS, and the Hamburg Convention, and entrenched in customary practice – imposes an unequivocal duty on all capable actors to render assistance to persons in distress at sea. This obligation is not contingent upon the prior approval of the responsible coastal State, particularly where such approval is delayed, withheld, or inconsistently granted. Accordingly, the absence of express authorisation from Libyan authorities cannot, in and of itself, constitute a lawful basis for penalising NGO aircraft or vessels engaged in *bona fide* rescue operations in international waters.

ENAC's sanctions risk blurring the line between the SAR authorities' coordination role and an effective regulatory monopoly over maritime rescue operations. Such an approach distorts the legal architecture underpinning the international SAR regime by recharacterizing essential, life-preserving interventions as administrative violations. This interpretation is at odds with the core legal principle that the duty to render assistance to persons in distress at sea constitutes a peremptory obligation, one that supersedes procedural formalities and cannot be subordinated to discretionary State authorisation.[96]

95. Trevisanut (n 4) 439; Steven Haines, 'Developing Human Rights at Sea' (2021) 35 OceanYB 18; Irini Papanicolopulu, *International Law and the Protection of People at Sea* (OUP 2018) 132; Natalie Klein, 'Geneva Declaration on Human Rights at Sea: An Endeavor to Connect Law of the Sea and International Human Rights Law' (2022) 53 OceanDev&IntlL, 232.

96. See (n. 95).

4. Analysis of Law Decree 145/2024

Following the adoption of the seven ordinances by ENAC, as analysed above, the Italian Government issued a new Law Decree (No. 145/2024) on 11 October 2024. Article 11 (paragraphs 2 octies to 2 sexiesdecies)[97] of this Decree is specifically dedicated to regulating the activities of private aircraft in SAR operations. The new legislation stipulates that pilots of private aircraft departing from or landing in Italian territory, and engaging in non-occasional search activities related to rescue operations, are required to notify the competent authorities in the area "immediately and with priority" and to follow their instructions. The article also specifies that the pilot "must comply with the operational instructions of the responsible [MRCC]."

Violations of these provisions may result in fines of up to €10,000, and the aircraft may be detained for a period of up to 20 days.[98] In the case of repeated violations committed with the same aircraft, an additional administrative sanction of two months' detention will apply; in the event of further repeated violations, the aircraft will be subject to confiscation.[99] ENAC personnel, the Coast Guard, and police forces have the authority to bring charges for violations, with ENAC being the sole body responsible for imposing sanctions.

The emphasis on the duty to report to the competent authorities "immediately and with priority" is somewhat peculiar, given that communication with coastal States' rescue coordination centres is already standard practice for NGOs. There is no evidence to suggest that NGO aircraft have failed to report distress situations at sea immediately and with pri-

97. Law Decree 145/2024 (converted in Law 187/2024).

98. Law Decree 145/2024, Article 11(d), which amends Law Decree 130/2020, Art. 1, adding par. 2-*terdecies*.

99. Ibid., adding para 2-*sexiesdecies*.

ority to all relevant authorities. This is corroborated by data provided by the Deputy General Commander of the Italian Coast Guard during his hearing on the approval of the Law Decree.[100] The data in *Table 1* show how reports from NGO aircraft have consistently prompted rapid interventions by the nearest available vessels, irrespective of their affiliation, including those of national authorities and the European Border and Coast Guard Agency (Frontex).

Table 1 - NGO aerial sightings and the corresponding vessels intervening in 2024[101]

ANNO 2024				ASSETTO INTERVENUTO				
Assetto aereo	ONG	Sede	N avvistamenti	ONG	GDF	Cp	Frontex	Unità governative estere
Sea Bird 1	SEAWATCH	Lampedusa	17	7	4	3	2	1
Sea Bird 2	Humanitarian Pilots initiative	Lampedusa	73	21	10	17	2	23
Colibri	Pilotes Volontaires	Lampedusa	26	9	5	11	0	1
TOTALE			**116**	**37**	**19**	**31**	**4**	**25**

It is noteworthy that in the aforementioned proceedings for violations of ENAC ordinances – the *Seabird* and *Humanitarian Pilots Initiative* cases – the issue was not the failure of the aircraft to communicate distress situations to the relevant authorities, but rather the coordination by the Libyan authorities. In both cases, the rescue appears to have occurred without the authorisation of the Libyan authorities, i.e., without following the operational instructions of the Libyan Joint Rescue Coordination Centre.

100. Hearing of Admiral Inspector Sergio LIARDO, Deputy Commanding General of the Harbour Master Corps-Coast Guard, available at <<https://documenti.camera.it/leg19/documentiAcquisiti/COM01/Audizioni/leg19.com01.Audizioni.Memoria.PUBBLICO.ideGes.48612.23-10-2024-15-35-08.339.pdf>>.

101. Ibid, Annex 2. Unofficial translation of the table's items: *Anno 2024* (Year 2024); *Assetto Intervenuto* (Intervening vessels); *Assetto aereo* (aircraft); *ONG* (NGO); *Sede* (location); *N Avvistamenti* (Number of sightings); *GdF* (Italian Financial Police); *Cp* (Italian Port Captaincy); and *Unità Governative Estere* (Foreign Governmental Units).

5. Balancing State sovereignty and human rights in SAR operations: The role of Italy and Libya in migrant rescue

5.1 Libya's SAR zone

After acceding to the Hamburg Convention on 2 June 2005, Libya unilaterally declared the establishment of its own SAR area in July 2017, a declaration later withdrawn.[102]

On 14 December 2017, Libyan authorities issued a communication to IMO informing it that the Libyan Government of National Accord had declared the Tripoli flight information region, which had been communicated to and approved by the International Civil Aviation Organization, to be the "Libyan Search and Rescue Region". [103] Moreover, the Region was publicised by IMO on the Global Integrated Shipping Information System website in June 2018.[104]

Although the IMO's published information includes reference to a Libyan MRCC,[105] a 2018 UN report indicates that the centre was not expected to become fully operational before 2020, with support and

102. 'Libya Drops Claim to Search-and-Rescue Zone, IMO Confirms', News Deeply, 14 December 2017, available at <<https://deeply.thenewhumanitarian.org/refugees/executive-summaries/2017/12/14>>. *Cfr.* "The IMO Secretariat has just received on 10 December 2017, an official communication from the Government representative of Libya, to withdraw their previous official notification, dated on 10 July 2017, to the IMO Secretary-General on their Government's designation of Libyan SRR."

103. UN Security Council, Report of the Secretary-General: Implementation of Resolution 2380 (2017), 31 August 2018, UN doc. S/2018/807, para 12.

104. Ibid.

105. IMO, Global SAR Plan, Rescue Co-ordination Centre / Libya (website), available at <<https://gisis.imo.org/Public/COMSAR/RCC.aspx?CID=LBY&Action=View&ID=2032>>.

assistance provided by the Italian Coast Guard.[106] The same report states that Italian coastguard was leading, within the framework of the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa, a European Union project – "Libyan Maritime Rescue Coordination Centre (LMRCC) Project" – to assist the Libyan authorities in establishing a fully operational MRCC in order to efficiently coordinate search and rescue operations within the Libyan SRR.[107] Italy notified the IMO about this project. [108]

Moreover, Italy signed a Memorandum of Understanding (MoU) in February 2017,[109] which played a crucial role in facilitating the establishment of Libya's SAR zone.[110] The MoU provided substantial financial and technical assistance, including "making recourse to funds made available by Italy and the European Union",[111] enhancing the operational capacity of the Libyan Coast Guard.

Despite widespread criticism, the agreement was automatically renewed on 2 November 2022 for an additional three-year period – as provided by the automatic renewal clause in the absence of termination

106. UN Security Council (n 103) para 12.

107. Ibid.

108. IMO, Sub-Committee on Navigation, Communications and Search and Rescue, 5th session, NCSR 5/INF.17, 15 December 2017.

109. Signed in Rome on 2 February 2017, available at <<https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf>>.

110. Martino Reviglio, 'Externalizing Migration Management through Soft Law: The Case of the Memorandum of Understanding between Libya and Italy' (2019) Global Jurist 20; Diego Zambiasi, Emanuele Albarosa, 'Externalizing rescue operations at sea: The migration deal between Italy and Libya' (2024) Journal of Economic Geography 18; Michela Ceccorulli, 'Triangular migration diplomacy: the case of EU–Italian cooperation with Libya' (2022) 53(3) Italian Political Science Review 328.

111. MoU, Article 2(2).

by either party[112] – reflecting Italy's continued commitment to migration control. The EU has devoted around EUR 700 million to Libya during 2014-20, including EUR 59 million to increase the operational capacity of the Libyan Coast Guard and the General Administration for Coastal Security. [113] Both Italy and the EU contributed vessels and training to improve the operational effectiveness of Libyan officers.[114]

5.2 Italy's coordination with Libya in SAR operations

The analysis of the ENAC ordinances, the *Seabird* and *Humanitarian Pilots Initiative*'s proceedings, and Law Decree 145/2024 highlights significant concerns regarding how pilots can fulfil their obligations under international law while adhering to Italian law. The tension between State sovereignty and human rights protection at sea is evident in Italy's efforts to regulate SAR operations through its cooperation with the Libyan Coast Guard. Since 2018, Italy's MRCC has functioned as the regional hub, while the Libyan Joint Rescue Coordination Centre has operated as a sub-regional

112. Ibid., Article 8.

113. Answer given by Ms Johansson on behalf of the European Commission to the written question from Ms. Susanna Ceccardi, European Commissioner. Subject: Training the Libyan coastguard saves lives: increase in EU funding for maritime policing projects. Date: 21 April 2022. Available at <<https://politique.pappers.fr/question/training-the-libyan-coastguard-saves-lives-increase-in-funding-for-maritime-policing-projects-QECR924939>>.

114. Andrea Beck, 'Italian and EU Funding of the Libyan Coast Guard: How Italian External Border Immigration Policies Have Created Crimes Against Humanity, Public Ignorance, and Legal Accountability Issues' (2024) 5(1) Immigration and Human Rights Law Review 1.

entity.[115] On 24 September 2024, the EU Delegation, acknowledging its role as Libya's primary partner in migration management, celebrated the completion of EU-funded training programs aimed at improving Libya's SAR capabilities.[116] It was announced that by 28 October 2024, Libya's EU-funded SAR centre would become fully operational, marking a significant milestone after years of delays.[117] However, concerns persist regarding Libya's ability to uphold the essential legal and operational standards necessary to maintain an effective SAR zone.

The actions of the Libyan Coast Guard have repeatedly raised alarms over violations of international law of the sea and human rights law.[118] The

115. See Melanie Fink, 'In search of a safe harbour for the Aquarius: the troubled waters of international and EU law' (2018) EU Immigration and Asylum Law and Policy, available at <<https://eumigrationlawblog.eu/in-search-of-a-safe-harbour-for-the-aquarius-the-troubled waters-of-international-and-eu-law/>>. The Libyan authorities have confirmed that their Coast Guard maintains continuous communication with MRCC Rome and receives critical information on SAR distress cases (transcript of interview with Brigadier Masoud Abdel Samad (Nov. 10, 2017) cited by Violeta Moreno Lax, 'Meta-Borders and the Rule of Law: From Externalisation to 'Responsibilisation' in Systems of Contactless Control' (2024) 21 Netherlands International Law Review, 54. This collaboration was further substantiated by judicial proceedings in the Open Arms case of March 2018, where it was established that MRCC Rome regularly transmitted distress alerts to the Libyan Joint Rescue Coordination Centre, thereby enabling subsequent rescue operations. See *Open Arms*, 27 March 2028, Preliminary Investigating Judge of the Catania Court, available at <<https://www.statewatch.org/media/documents/news/2018/apr/it-open-arms-sequestration-judicial-order-tribunale-catania.pdf>>. The Libyan Coast Guard has therefore continuously been involved in rescue and interception operations, even without the Libyan Joint Rescue Coordination Centre being fully operational – see Itamar Mann, 'Maritime Legal Black Holes: Migration and Rightlessness in International Law' (2018) 29(2) European Journal of International Law, 353.

116. See EU Neighbours South, Training for Change: EU-Funded Initiatives Boost Libya's Rescue Operations, 27 September 2024, available at <<https://south.euneighbours.eu/news/training-for-change-eu-funded-initiatives-boost-libyas-rescue-operations/>>.

117. EU Observer: 'After years of delays, Libya's EU-funded rescue centre set to become operational', 28 October 2024, available at <<https://euobserver.com/migration/ar7e0b8ee6>>.

118. Carla Ferstman, 'Human Rights Due Diligence Policies Applied to Extraterritorial Cooperation to Prevent "Irregular" Migration: European Union and United Kingdom Support to Libya' (2020) 21 German Law Journal, 459; Aphrodite Papachristodoulou, 'The Exercise of State Power over Migrants at Sea Through Technologies of Remote Control: Reconceptualizing Human Rights Jurisdiction' (2024) 73 International & Comparative Law Quarterly, 931; Zambiasi, Albarosa (n 110) 41; Patrick Müller and Peter Slominski, 'Breaking the legal link but not the law? The externalization of EU migration control through orchestration in the Central Mediterranean' (2021) 28 Journal of European Public Policy, 801.

UN High Commissioner for Refugees indicated frequent failures to respond to distress calls, deploy SAR patrols in a timely manner, and ensure the safe recovery of all individuals in peril at sea.[119] Moreover, the Libyan Coast Guard has employed aggressive and hazardous tactics that endanger migrant lives, often resorting to force to prevent resistance from those facing return to Libya,[120] where they risk abuse in detention centres.[121]

119. UN High Commissioner for Refugees (UNHCR), *Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea* (September 2020), available at <<https://www.ecoi.net/en/file/local/2037541/5f1edee24.pdf>>.

120. See Lizzie Dearden, 'Libyan Coastguard 'Opens Fire' During Refugee Rescue as Deaths in Mediterranean Sea Pass Record 1,500', *The Independent* (24 May 2017), available at <<https://www.independent.co.uk/news/world/europe/refugee-crisis-deaths-mediterranean-libya-coastguard opens-fire-drowned-gunshots-ngos-rescue-boat-a7754176.html>>; Reuters in Rome, 'Libyan Coastguard' Speedboat Attacked Migrant Dinghy, Says NGO', *The Guardian* (21 October 2016), available at <<https://www.theguardian.com/world/2016/oct/21/men-on-libyan-coastguard-boat-reportedly-attack-dinghy-of-refugees-and-migrants>>; Médecins Sans Frontières (MSF), MSF Accuses Libyan Coastguard of Endangering People's Lives During Mediterranean Rescue (24 May 2017), available at <<https://www.msf.org/msf-accuses-libyan-coastguard-endangering-people%E2%80%99s-lives-during-mediterranean-rescue>>; Al Jazeera, 'Caught on camera: Libyan coastguard shoots at migrant boat', *Al Jazeera* (1 July 2021) available at <<https://www.aljazeera.com/news/2021/7/1/caught-on-camera-libyan-coast-guard-shoots-at-migrant-boat>>; Sea Watch, *Episodes of Violence by the so-called Libyan Coast Guard and Libyan Coastal Security at sea* (May 2023), available at <<https://documenti.camera.it/leg19/documentiAcquisiti/COM03/Audizioni/leg19.com03.Audizioni.Memoria.PUBBLICO.ideGes.9852.25-07-2023-10-53-26.786.pdf>>; Eleonora Vasques, 'Exclusive: Libyans fired at rescuers while performing a rescue at sea' (July 2023) Euractiv, available at <<https://www.euractiv.com/section/migration/news/exclusive-libyans-fired-at-rescuers-while-performing-a-rescue-at-sea/>>.

121. Nadia Al-Dayel, Aaron Anfinson and Graeme Anfinson, 'Captivity, Migration, and Power in Libya' (2021) 9 Journal of Human Trafficking 280. See also UN Office of the High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Detained and Dehumanised': Report on Human Rights Abuses Against Migrants in Libya (December 2016), available at <<https://www.ohchr.org/sites/default/files/Documents/Countries/LY/DetainedAndDehumanised_en.pdf>>; OHCHR in cooperation with the UNSMIL, 'Abuse Behind Bars: Arbitrary and unlawful detention in Libya' (April 2018), available at <<https://www.ohchr.org/sites/default/files/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf>; UNHCR, Annual results report 2022 Libya (2022), available at <<https://reporting.unhcr.org/sites/default/files/2023-06/MENA%20-%20Libya.pdf>>; International Criminal Court (ICC), Statement of ICC Prosecutor, Karim A.A. Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya (2022) available at <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint>>; OHCHR, Report of the independent fact-finding mission on Libya, A/HRC/52/83) (2023), available at <<https://view.officeapps.live.com/op/view.aspx>>.

These actions raise doubts about the safety of disembarkation in Libya, as required under international law.[122] The determination of a 'place of safety' under the law of the sea requires a case-by-case assessment,[123] considering whether rescued individuals would face persecution, torture, arbitrary detention, or inhuman treatment upon disembarkation. Since 2013, Italian case law has repeatedly affirmed that Libya cannot be considered a place of safety due to systematic human rights violations, as evidenced in

122. IMO, Resolution MSC.167(78), *Guidelines on the Treatment of Persons Rescued at Sea*, 20 May 2004, para 6.12. AR Convention, Annex, para 1.3.2; Seline Trevisanut, *Search and Rescue Operations at Sea,* in André Nollkaemper and Ilias Plakokefalos, *The Practice of Shared Responsibility in International Law* (CUP 2017) 431. According to Papastavridis, disembarkation at a place of safety may be regarded as an 'obligation of result'. See Efthymios Papastavridis, *The interception of vessels on the high seas: contemporary challenges to the legal order of the oceans* (Bloomsbury Publishing 2014) 298. While the SAR regime does not establish any explicit obligation for States to disembark persons rescued within a SAR region in their own territory, scholars have argued that such a residual obligation exists if no other safe place of disembarkation can be found. See Thomas Gammeltoft-Hansen, *The Perfect Storm: Sovereignty Games and the Law and Politics of Boat Migration*, in Violeta Moreno-Lax and Efthymios Papastavridis, *'Boat Refugees' and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights* (Brill Nijhoff 2016) 69. The Council of Europe Commissioner for Human Rights, in a recommendation from June 2019, emphasised the need for the choice of a disembarkation location to be based on further 'human rights-based considerations', including 'the extent to which disembarked persons could be subjected to arbitrary deprivation of liberty, or whether they would be vulnerable to trafficking or exploitation'. Council of Europe Commissioner for Human Rights, Lives Saved. Rights Protected. Bridging the Protection Gap for Refugees and Migrants in the Mediterranean (2019) 27. IMO, FAL.3/Circ.194, 22 January 2009, Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea, para 2.5; Parliamentary Assembly of the Council of Europe Resolution 1821 (2011) on the interception and rescue at sea of asylum-seekers, refugees and irregular migrants, para 5.2.

123. IMO, Resolution MSC.167(78) (n 122) para 6.15 and 6.17; IMO and UNHCR, *Rescue at Sea. A Guide to Principles and Practice as Applied to Refugees and Migrants*, 2015. See also Irini Papanicolopulu and Giulia Baj, 'Controllo delle frontiere statali e respingimenti nel diritto internazionale e nel diritto del mare' (2020) 1 Diritto, Immigrazione e Cittadinanza, 24. Any assessments regarding the status of survivors or other issues not directly related to rescue operations may only be addressed once the individuals have disembarked; IMO, Resolution MSC.167(78) (n 122) paras 6.19 and 6.20.

the *Zawiya camp* case (2017),[124] *Vos Thalassa* case (2021),[125] and various rulings involving migrant pushbacks.[126]

Despite this, Italy has introduced legal measures to ensure that SAR activities comply with State policies, often requiring coordination with the Libyan Coast Guard. Therefore, the issue arises: can pilots of private aircraft disregard instructions from the responsible MRCC to coordinate the disembarkation of rescued persons in an unsafe location, based on

124. Court of Assizes of Milan, 10 October 2017, Judgment n. 10/2017, available at <<https://www.questionegiustizia.it/data/doc/1601/sentenza_corte_assise_milano_10_ott_1_dic_2017.pdf>>. The Court of Assizes of Milan convicted the prison guards of the Zawiya detention camp in Libya for having committed abuse, rape, torture, and murder in that camp, providing evidence of systematic violations of fundamental rights in Libya that prevent it from qualifying as a place of safety for disembarkation.

125. Court of Cassation, 16 December 2021, Judgment n. 1498/2021, available at <<https://www.centrostudilivatino.it/wp-content/uploads/2022/05/Corte-di-Cassazione-sentenza-Vos-Thalassa.pdf>>. Migrants rescued at sea who resisted return to Libya were acquitted of violence charges on self-defence grounds. The Court of Cassation upheld the Court of Trapani's ruling that they had the right to resist to protect themselves from being sent to an unsafe place, in accordance with the principle of non-refoulement under international, EU, and national law.

126. In the *Asso 28* case (June 2024), the Italian-flagged ship's captain was convicted of abandoning minors and vulnerable persons after transferring about 100 rescued migrants to a Libyan patrol boat, as Libya is not a place of safety. The Italian Court of Cassation affirmed the flag State's jurisdiction over the migrants' human rights, upholding the non-refoulement principle. See Court of Cassation, 1 February 2024, Judgment n. 4557/2024, available at <<https://www.altalex.com/documents/news/2024/02/15/sbarco-abbandono-migranti-si-dolo-eventuale>>. In the *Asso 29* case (July 2024), the Court of Rome ruled that by transporting rescued migrants to Libya, the Italian-flagged merchant ship exposed them to torture, unlawful detention, violence, and death. On 2 July 2018, under the coordination of the Italian military ship "Duilio" the "Asso 29" assisted a malfunctioning Libyan patrol boat that had intercepted around 150 people. The Italian Navy Base in Tripoli instructed the "Asso 29" to follow Libyan orders, transfer the migrants on board, and return them to Libya. The Court found that, despite Libyan coordination and the presence of the Libyan authorities, Italy remained responsible under international law. It held that Italy exercised or should have exercised effective control over the migrants and was obligated to bring them to safety in Italy rather than returning them to Libya. Court of Rome, 26 June 2024, RG n. 4782/2021, available at <<https://www.asgi.it/allontamento-espulsione/caso-asso-29-arriva-a-sentenza-la-libia-non-e-un-luogo-sicuro-dove-condurre-i-migranti/>>.

their own SAR obligations under the law of the sea or human rights law? Moreover, can a pilot refuse to follow instructions from the Libyan Coast Guard if doing so would result in the disembarkation of rescued individuals in Libya?

Although the questions raised pertain to aeronautical activity and the duties of pilots, the answer must be sought within the law of the sea, which governs the coordination of SAR operations and the relationship with MRCCs. Under SOLAS Regulation V/33 and Article 10 of the Salvage Convention, shipmasters are obligated to rescue persons in distress,[127] but international conventions do not explicitly require them to follow MRCC instructions.[128] SOLAS Regulation V/34.1 affirms shipmasters' discretion during rescue operations,[129] while the 2004 IMO/MSC (Maritime Safety Committee) Guidelines mandate that survivors must not be disembarked in places where their safety is at risk.[130] Consequently, shipmasters can lawfully refuse to follow instructions that would result in disembarkation in Libya. This interpretation has been confirmed by recent case law regarding the violation of Law Decree 1/2023,[131] which requires rescue vessels to comply with directives issued by the national authorities responsible for the SAR zone where

127. The duty to render assistance persists until the master of a ship is apprised of the fact that other ships have been requisitioned by the master of the ship in distress or the Search and Rescue service concerned and are complying with the requisition, or until he or she is informed that assistance is no longer necessary.

128. Article 98(2) UNCLOS requires costal states to "promote the establishment, operation and maintenance of an adequate and effective search and rescue service".

129. SOLAS Regulation V/34.1, "The owner, the charterer, the company operating the ship […], or any other person shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgment, is necessary for safety of life at sea […]".

130. IMO, Resolution MSC.167(78) (n 122) para 5.6.

131. Law Decree. 1/2023, *Disposizioni urgenti per la gestione dei flussi migratori*. Converted into Law 15/2023.

the rescue operations take place. The *SEA-EYE 4*[132] and *Humanity 1*[133] cases further emphasised that Libyan instructions lack legal validity, as the Libyan Coast Guard has been documented engaging in violent and

132. In the *SEA-EYE 4* case (June 2024), the Court of Reggio Calabria annulled a 60-day administrative detention imposed for alleged violation of Law Decree 1/2023. The detention was based on claims that the vessel disregarded the Libyan authorities' instructions, thus creating a dangerous situation. The court found no evidence of such instructions and noted that the Libyan Coast Guard's approach during the rescue of migrants from an unseaworthy inflatable boat heightened agitation. As a result, the detention order was deemed unlawful and annulled. Court of Reggio Calabria, 5 June 2024, Judgment n. 811/2024, available at <<https://www.asgi.it/allontamento-espulsione/caso-asso-29-arriva-a-sentenza-la-libia-non-e-un-luogo-sicuro-dove-condurre-i-migranti>>. In the *SEA-EYE 4* case (December 2024), the Court of Vibo Valentia annulled the vessel's 20-day detention from October 2023 for allegedly violating Law Decree 1/2023. The detention followed the crew's refusal to comply with Libyan Coast Guard orders. The Court found no evidence that the SEA-EYE 4's rescue operation was dangerous and dismissed the accusation that the NGO endangered shipwrecked individuals. It ruled that Libyan authorities' orders lacked legitimacy under national and international law, as they did not coordinate the rescue but merely instructed the NGO to leave. The Court reaffirmed that Libya is not a place of safety, noting that no safe port was designated for disembarkation. The Court further added that 'under international law, the Libyan authority's removal order cannot be justified, as it contradicts the absolute nature of the duty to rescue, which applies to all shipmasters. This duty is limited only by the condition that the rescue is feasible without endangering the ship, crew, or passengers, and that such an initiative can be reasonably expected'. In conclusion, the Court asserted that the *SEA-EYE 4* and its shipmaster did not create any danger but instead saved dozens of lives. Court of Vibo Valentia, 6 December 2024, Judgment n. 660/2024, available at <<https://www.asgi.it/asilo-e-protezione-internazionale/tribunale-di-vibo-valentia-le-sanzioni-alle-navi-della-flotta-civile-sono-illegittime/>>.

133. In the *Humanity 1* case (June 2024), the Court of Crotone annulled the detention of *Humanity 1* after it rescued 77 migrants. The Italian authorities alleged that the NGO obstructed the Libyan Coast Guard in the Libyan SAR zone, thereby creating danger and violating Law Decree 1/2023. The Court ruled that the Libyan Coast Guard is not a credible SAR actor, citing armed personnel firing shots, which disqualified their actions as rescue measures. It reaffirmed that Libya is not a safe port due to documented human rights violations against migrants. The Court also clarified that the Italy-Libya migration agreement does not override international obligations. It concluded that detaining *Humanity 1*, the only actor capable of conducting SAR at the time, was unlawful. Court of Crotone, 26 June 2024, Judgment n. 748/2024, available at <<https://www.asgi.it/allontamento-espulsione/tribunale-di-crotone-illegittimo-il-fermo-della-humanity1/#:~:text=Il%20tribunale%20civile%20di%20Crotone,4%20marzo%202024%2C%20%C3%A8%20illegittimo>>.

coercive tactics rather than genuine SAR operations. These cases have established that Libya is not a place of safety for rescued migrants. The courts have consistently affirmed that the duty to rescue is absolute, and that MRCC instructions cannot override international legal principles.[134] Therefore, the constitutionality of Law Decree 1/2023 is subject to legal scrutiny.[135]

On analogous grounds, pilots engaged in coordination with NGOs in SAR operations are likewise bound by a duty to ensure that their conduct does not contribute – directly or indirectly – to unlawful refoulement, particularly where such coordination entails prioritising instructions from the Libyan authorities over independent SAR initiatives. The obligation to comply with instructions issued by MRCCs must be interpreted not as an unqualified imperative, but within the broader normative framework prioritising the preservation of human life at sea. Such

134. The opposite opinion seems to be held by Stefan Talmon, 'Private Seenotrettung und das Völkerrecht' (2019) 74 Juristen Zeitung 802 803.

135. Judgment of the Court of Brindisi, 10 October 2024, available at <<https://www.asgi.it/wp-content/uploads/2024/10/sentenza_Tribunale-di-Brindisi_ottobre_2024.pdf>>, by which the Court raises a question of constitutional legitimacy concerning Decree-Law No. 1/2023. The case arose from the Libyan Coast Guard's claim that the Ocean Viking's captain disregarded its instructions, thus obstructing operations and creating danger. The Court of Brindisi found that requiring compliance with Libyan orders conflicted with international obligations prohibiting refoulement and collective expulsions, binding under Articles 10 and 117 of the Italian Constitution. It cited multiple legal instruments, including the Geneva Convention, SOLAS Convention, the EU Charter of Fundamental Rights, and the ECHR. The Court of Brindisi rejected the assumption that Libya is a safe port, already contradicted by case law. It also ruled that reliance on informal communications, such as an email from the Libyan Coast Guard, violated the legality principle under Article 25(2) of the Constitution. Based on these arguments, the Court referred the matter to the Constitutional Court. At the time of writing, the case is pending before the Court. The first public hearing took place on 21 May 2025. Information on the proceedings is available at <<https://www.cortecostituzionale.it/schedaOrdinanze.do?anno=2024&numero=205&numero_parte=>>. The Court of Brindisi's reasoning against Law Decree 1/2023 similarly applies to Law Decree 145/2024 and ENAC ordinances. In the *Seabird* and *HPI* cases, Libya's removal orders lacked formal coordination and contradicted the absolute duty to rescue, which applies to both ship captains and pilots.

an interpretive approach affirms that adherence to MRCC directives should reinforce, rather than undermine, the integrity and effectiveness of the SAR regime.

This interpretative approach is grounded in the principle of 'considerations of humanity', a normative standard consistently affirmed by international courts and tribunals, including the International Tribunal for the Law of the Sea (ITLOS),[136] since its early articulation in the *Corfu Channel* case (1947).[137] Notably, in the *MV Saiga (No 2)* case – and following decisions – ITLOS reaffirmed that "considerations of humanity must apply in the law of the sea, as they do in other areas of international law."[138]

This principle carries particular weight when assessing the balance between State sovereignty and the protection of fundamental human rights. In such contexts, international legal obligations must take precedence, especially where the core duty to render assistance at sea is concerned. The conduct of SAR operations must not only secure the survival of those in distress but must also be carried out in a manner that upholds their inherent dignity and safety.

136. See Pierandrea Leucci, 'Enforcing fishery legislation in the exclusive economic zone of non-parties to UNCLOS: A commentary to Article 73', in Pierandrea Leucci and Ilaria Vianello, *ASCOMARE Yearbook on the Law of the Sea. Volume 1 – Law of the Sea, Interpretation and Definitions* (Luglio Editore 2021) 343-344.

137. *Corfu Channel* case (n 40).

138. See, in particular, *M/V "SAIGA" (No.2)* case, (Saint Vincent and the Grenadines v. Guinea), Merits, ITLOS Case No 2, ICGJ 336 (ITLOS 1999), 1st July 1999, ITLOS, para 359, 102; *M/V "Virginia G"* case (Panama v. Guinea-Bissau), Merits, ICGJ 452, ITLOS Case No. 19, 14th April 2014, ITLOS, para 359, 102; *Enrica Lexie* case (Italy v. India), Order, Provisional Measures, ITLOS Case No 24, ICGJ 499 (ITLOS 2015), 24st August 2015, ITLOS, para 133, 24; and the *M/T "San Padre Pio"* case (Switzerland v. Nigeria), Order, Provisional Measures, 6st July 2019, ITLOS, paras 83-4, 21, and para 130, 32.

6. Conclusion

The analysis of the ENAC ordinances and Law Decree 145/2024 highlights significant legal and operational concerns regarding the restrictions imposed on NGO aircraft engaged in SAR activities. While States retain sovereign authority over their airspace and aviation regulation, this power must be exercised in compliance with international legal obligations, particularly those enshrined in the Chicago Convention, UNCLOS, and the Hamburg Convention. The measures adopted by ENAC, which effectively prohibit NGO aircraft from conducting aerial surveillance over the Central Mediterranean, risk undermining Italy's ability to fulfil its SAR obligations under international law.

A central justification for these restrictions is national security. However, this rationale appears both legally tenuous and factually unsupported. There is no substantial evidence indicating that NGO aircraft interfere with State-led SAR operations or pose any credible security threat. The conflation of SAR responsibilities with migration control challenges the functional and human rights framework established under the SAR regime. It is essential to maintain a clear distinction between the two; failure to do so may lead to tragic outcomes. One such example is the Italian authorities' classification of a SAR event as a law enforcement matter, which contributed to the Cutro shipwreck.[139] Alarmingly, this appears to reflect a broader institutional stance. In a parliamentary hearing on Law Decree 145/2024, the Deputy General Commander of the Port Authorities (*Capitaneria di Porto*) of the Italian Coast Guard referred to reports from private pilots and shipmasters primarily as tools for addressing "emerging threats", rather than for ensuring timely res-

139. Francesca de Vittor, 'Controllo dell'immigrazione irregolare o soccorso a naufraghi? Sulla compatibilità con gli obblighi in materia di soccorso della classificazione di eventi SAR come operazioni polizia' (2023) ADiM Blog <<https://www.adimblog.com/wp-content/uploads/2023/04/DE-VITTOR.pdf>>.

cue.[140] He concluded by emphasising the importance of border control over humanitarian rescue, stating: "The path taken at the national level of constant border control is important, and it is necessary to strengthen the capacity to support search and rescue operations." [141]

Such reasoning reflects a misunderstanding of the legal nature of SAR zones. Contrary to Italy's apparent interpretation, a SAR zone is not a maritime area where the coastal State exercises sovereignty or jurisdiction; rather, its designation entails obligations and responsibilities, not sovereign rights.

Restricting aerial surveillance may unintentionally hinder maritime rescue efforts, increasing the risk of avoidable loss of life. Available data indicate that NGO aircraft have played a critical role in detecting vessels in distress and enabling timely intervention by Italian authorities and Frontex assets. These restrictions also raise serious human rights concerns. The *de facto* criminalisation of NGO aerial surveillance undermines independent humanitarian action and erodes transparency and accountability in SAR operations. By limiting access to real-time information on maritime distress, these measures also obstruct documentation efforts that are essential for monitoring State compliance with international legal obligations, including the right to life and the prohibition of refoulement.

Furthermore, Law Decree 145/2024 requires pilots to comply with operational instructions issued by the relevant national MRCC. In practice, this mandates cooperation with Libyan authorities, which presents grave challenges. Effective SAR cooperation must be consistent with human rights obligations.[142] Accordingly, any domestic legislation compel-

140. Hearing of Admiral Inspector Sergio Liardo (n 100) 11.

141. Ibid.

142. ECHR parties cannot "enter into an agreement with another State which conflicts with [their] obligations under the Convention". See ECtHR, *Al-Saadoon v UK*, Appl. 61498/08, 2 March 2010, para 138.

ling compliance with MRCC instructions that result in disembarkation in an unsafe location, conflicts with international law.

For over a decade, European and Italian funding has supported the Libyan Coast Guard to prevent irregular migration and reduce arrivals to EU territory. Today, the Central Mediterranean remains both the most heavily used and the most dangerous migration route. Instead of penalising humanitarian actors, Italy should adopt a more constructive approach – one that enhances cooperation between State and non-State actors and recognises the complementary role of NGOs in SAR efforts. A regulatory framework that facilitates rather than hinders aerial monitoring would be more consistent with Italy's international legal obligations and better uphold the fundamental humanitarian imperative to save lives at sea.

The duty to assist persons and vessels in distress at sea is among the most deeply entrenched and fundamental obligations under international law.[143] The fulfilment of this duty, as one scholar has aptly noted, "determines whether or not migrant people will live or die; will have access to protection within a safe territory or will be denied this right."[144]

143. Thomas Gammeltoft-Hansen (n 122).

144. Luna Vives, Arnaud Banos, Camille Martel, Elizabeth Rose Hessek, and Kira Williams, 'Maritime Sar Systems in the EU: Convergence and Co-optation into the Anti-Immigration Border' (2024) Journal of Borderlands Studies, 1.