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International Evacuations of Refugees and Impact on Protection Spaces: Case Study of UNHCR Evacuation Programme in Libya

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Abstract

Cross-border mass evacuations of refugees are complex operations that require the support of the international community, which must agree to receive the evacuees. However, while they may be effective in evacuating a portion of the population at risk, they could leave behind non-evacuated refugees. In that case, a comprehensive analysis of how evacuations impact the protection spaces of the non-evacuated is to be carried out. Being highly visible and disruptive programmes, refugee mass evacuations also carry distinguishable political elements and can be instrumentalised for that. This essay researches the UNHCR evacuation programme from Libya. The programme has successfully evacuated circa 4,500 persons to safety, yet there are concerns regarding its scalability and impact on protection spaces. In Libya, UNHCR was forced to close a new dedicated facility after only 15 months, and reports emerged that damaged the agency's reputation and questioned its work. In Niger and Rwanda, where evacuees are hosted pending resettlement, the proceedings require time, which slows the whole process. On the other side of the Mediterranean, Italy and the EU use the evacuation programme as their 'humanitarian alibi' for restrictive policies, making it harder for the refugees in Libya to escape the cycle of detention, exploitation, and abuses in which they are trapped. The Libya operations' problems reveal many details of the complexity, inherent risks, and moral dilemmas of evacuating refugees.

Keywords

Contents

1.   Introduction

International evacuations of refugees are complex operations that involve multiple countries and stakeholders and impact multiple protection spaces, understood in the broadest sense. This paper researches how international evacuations may occur by relying on available policy documents on internal evacuations and introducing a case study. Since 2017, a mass evacuation of refugees has been taking place from Libya, led by the United Nations High Commissioner for Refugees (UNHCR).[1] This essay will seek to understand how international refugee evacuations may occur, what role UNHCR has in them, and what are the risks associated with such programmes. The Libya evacuation programme is of interest due to both its numerical relevance and as it sits at the centre of a route to Europe, making it at the forefront of much of the political debate regarding refugee onward movement and protection.

The paper will first introduce a review of existing literature on protection in conflict and protection of refugees, effective protection, and protection space. By defining those core concepts, the essay will establish which lenses will be used to analyse the topic. In the following section, the essay will review available materials on how UNHCR contemporarily engages in evacuations of refugees by using emergency resettlements through Emergency Transit Facilities (ETFs)[2] to decrease waiting times in the departure country.[3] The Libya case study will research a large-scale implementation of the ETF mechanism. With evacuations to ETFs in Niger and Rwanda, from where refugees are resettled, and direct evacuations to Italy.[4]

The last dimension that is discussed regards the risks of evacuations on the protection spaces of the non-evacuated, locally and regarding onward movement. The paper will propose a framework of analysis, in which relevance is given to the efforts regarding alternatives to detention in Libya and to barriers to onward movement. On the latter, the paper will research the risk of instrumentalisation, in particular regarding regional containment policies. It will conclude that evacuations may be used as political and moral justifications of State behaviours that contravene the spirit and possibly the provisions of refugee law. In the latest part, the conclusions will capitalise on the research by integrating the publicly available policy documents on internal evacuations with elements relevant to refugees' international evacuations.

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1   UNHCR, 'UNHCR Niger Factsheet: Emergency Transit Mechanism (ETM) - August 2020' (2020).

2   UNHCR, 'Information Note: Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities. Annual Tripartite Consultations on Resettlement Geneva, 6 – 8 July 2010' (2010) <https://www.refworld.org/docid/4bf3adfb2.html> accessed 10 June 2020.

3   UNHCR, 'Guidance Note on Emergency Transit Facilities: Timisoara, Romania / Manila, Philippines / Humenné, the Slovak Republic' (2011) <https://www.refworld.org/docid/4dddec3a2.html> accessed 10 June 2020.

4   UNHCR, 'Evacuation Factsheet - Libya' (2020) <https://data2.unhcr.org/en/dataviz/111?sv=0&geo=0> accessed 13 October 2020.

2.   Literature Review

Humanitarian evacuations may occur for several reasons. However, they are generally correlated to a space that is not conducive to protection and in which the affected populations are at risks of severe abuses and violations.[5] To set the stage for a refugee evacuations analysis, the paper will first discuss the foundational notions and establish some theoretical perspectives. It is useful to remember that while the term 'protection' is vastly used in the humanitarian sector, there is no universal definition. One, introduced by the ICRC in the late-1990s,[6] is the most widely accepted:

> The concept of protection encompasses all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law.[7]

However, some propose a different approach. For instance, Bonwick and Bradley suggest that protection should focus on physical safety and protection from violence.[8] Others criticise the ICRC definition as too broad and lacking prioritisation among the vast array of rights and objectives.[9] To operationalise it, IASC and the Global Protection Cluster suggest an approach based on reducing harm by diminishing exposure to threat and vulnerability among the affected population.[10]

To mitigate risks connected to lack of specificity, the ICRC introduced the 'protection egg' framework, which categorises protection activities in responsive (such as an evacuation), remedial (resettlement), or environment-building.[11] The model aims to list humanitarian actions in a non-hierarchical intertwined manner,[12] stressing that the different spheres do not happen in isolation but in combination.[13] This understanding of protection, which this essay will employ, assumes that no humanitarian action occurs in isolation. It should also be stressed that the primary responsibility for protection lies with the State.[14] When States are unable or unwilling to meet their international human rights obligations, humanitarian agencies engage in protection activities,[15] therefore in surrogacy. As surrogate agents of protection, the role of humanitarian agencies is inherently political,[16] and their participation in the delivery of protection has an impact on the humanitarian space in which they work.[17]

As protection is multidimensional, it encompasses a wide range of activities and objectives. That it is inherently political means it is no easy task to assess whether protection activities are carried out effectively. One angle for analysis is proposed by Matthews, who links the effectiveness of protection to the level at which international law instruments are best combined to produce the most protective effects.[18] Darci interprets effectiveness in the context of humanitarian action as the 'efficacy in achieving humanitarian objectives'.[19] On the other hand, Bradley disputes that there is a tendency toward under specificity of humanitarian

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5   International Committee of the Red Cross (ICRC) and InterAction Roundtable, 'Trapped in Conflict: Evaluating Scenarios to Assist At-Risk Civilians' (2015).

6   Pierre Gentile, 'Humanitarian Organizations Involved in Protection Activities: A Story of Soul-Searching and Professionalization' (2011) 93 International Review of the Red Cross 1165.

7   Sylvie Giossi Caverzasio, *Strengthening Protection in War: A Search for Professional Standards: Summary of Discussions among Human Rights and Humanitarian Organizations* (International Committee of the Red Cross, Central Tracing Agency and … 2001); Global Protection Cluster (GBP), 'Handbook for the Protection of Internally Displaced Persons' (Global Protection Cluster Working Group 2010).

8   Andrew Bonwick, 'Who *Really* Protects Civilians?' (2006) 16 Development in Practice 270; Miriam Bradley, *Protecting Civilians in War: The ICRC, UNHCR, and Their Limitations in Internal Armed Conflicts* (First edition, Oxford University Press 2016).

9   Bradley (n 8).

10   Inter-Agency Standing Committee, *Growing the Sheltering Tree: Protecting Rights through Humanitarian Action* (2002).

11   Hugo Slim and Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies* (Oxfam Publishing 2005) <https://www.developmentbookshelf.com/doi/book/10.3362/9780855988869> accessed 6 October 2019.

12   Anne Evans Barnes, 'Realizing Protection Space for Iraqi Refugees: UNHCR in Syria, Jordan and Lebanon' 36.

13   Caverzasio (n 7).

14   Caelin Briggs, 'Mass Evacuations: Learning from the Past' [2015] Forced Migration Review 3; Global Protection Cluster (GBP) (n 7).

15   Barnes (n 12).

16   Thomas G Weiss, 'Principles, Politics, and Humanitarian Action' (1999) 13 Ethics & International Affairs 1; Jeff L Holzgrefe and Robert O Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press 2003); Dorothea Hilhorst and Bram J Jansen, 'Humanitarian Space as Arena: A Perspective on the Everyday Politics of Aid' (2010) 41 Development and change 1117.

17   Hilhorst and Jansen (n 16).

18   Hannah Matthews, 'The Interaction between International Human Rights Law and International Humanitarian Law: Seeking the Most Effective Protection for Civilians in Non-International Armed Conflicts' (2013) 17 The International Journal of Human Rights 633.

19   James Darcy, 'Acts of Faith? Thoughts on the Effectiveness of Humanitarian Action', *Social Science Research Council seminar series "The Transformation of Humanitarian Action", New York* (2005) 1.

protection objectives, which hinders effective protection delivery.[20] After introducing some elements on refugee protection, this essay will understand the effectiveness of protection as related to its impact on multiple protection spaces.

2.1   Protecting refugees

The notion of refugee protection is related to the ICRC definition of humanitarian protection while adding some elements, mainly concerning the global and international scale of the refugee situation and the need for solutions. In describing refugee protection, UNHCR uses a definition similar to the ICRC's, amending it by specifying that refugee protection focuses on refugees and asylum seekers' rights, and refugee law is at its core.[21] Notably, UNHCR, when engaged in IDP situations, employs the ICRC definition to describe the rationale for its protection activities.[22] On the other hand, the objectives of protection activities for refugees, who may enjoy the protection of the Convention Relating to the Status of Refugees[23] and relevant regional treaties and directives, is not just 'ensuring full respect for the rights'.[24] Refugees need decreased risks of violations and abuses, but also solutions to their displacement.[25] Goodwin-Gill in 1989 defines refugee protection's effectiveness as the degree of realisation of the protection objective of re-establishing 'the refugee within a community'.[26]

Others instead focus on the objective and effectiveness of refugee protection as being mainly related to freedom of movement. Long suggests that refugee protection's broader objective should be to secure refugees the right to migrate, as cross-border movements are effective protection strategies implemented by refugees themselves.[27] The cross-border movement is indeed central to refugee law, and *non-refoulement* is its cornerstone.[28] Refugee protection, spatiality, and spaces of protection are deeply connected notions. Stevens points out that, as the responsibility for protection lies with the State, refugee protection correlates to the level of protection citizens of a country enjoys, and that 'refugees can expect differential treatment depending on where they are based and who provides the protection'.[29]

UNHCR defines the protection of refugees as effectively realised when:

> There is no likelihood of *persecution*, of *refoulement* or of *torture* or other cruel and degrading treatment; there is no other real *risk to the life* of the person concerned; there is a genuine prospect of an accessible *durable solution* in or from the asylum country, within a reasonable timeframe; pending a durable solution, stay is permitted under conditions which protect *against arbitrary expulsion* and *deprivation of liberty* and which provide for adequate and dignified means of subsistence; and, the unity and *integrity of the family* is ensured, and the specific protection needs of the affected persons, including those deriving from age and gender, are identified and respected.[30]

According to the agency's view, there are both elements of protection against risks alongside the availability of solutions. No mention of freedom of movement is present. Paradoxically, the notion of 'effective protection' is used to justify refugees' forced return and asylum-seekers to their first countries of asylum.[31]

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20   Bradley (n 8).

21   Barnes (n 12).

22   UNHCR, 'Policy on UNHCR's Engagement in Situations of Internal Displacement' (2019).

23   Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 1951 (189 UNTS 137).

24   Caverzasio (n 7).

25   Sara Pantuliano and others, *The 'Protection Crisis': A Review of Field-Based Strategies for Humanitarian Protection in Darfur* (ODI 2006).

26   Guy S Goodwin-Gill, 'The Language of Protection' (1989) 1 International Journal of Refugee Law 6, 17.

27   Katy Long, 'When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection' (2013) 1 Migration Studies 4.

28   Susan Kneebone, 'The Pacific Plan: The Provision of "Effective Protection"?' (2006) 18 International Journal of Refugee Law 696; Barnes (n 12).

29   Dallal Stevens, 'What Do We Mean by Protection?' (2013) 20 International Journal on Minority and Group Rights 233, 259.surprisingly, the meaning of protection is not without ambiguity. 'Domestic protection' can be distinguished from 'international protection'; the sense attributed to protection within the 1951 Refugee Convention contrasts with that of the 1950 United Nations High Commissioner for Refugees (UNHCR

30   UNHCR, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas* (UNHCR Geneva 2009) Para. 153 (emphasis added).

31   Stephen H Legomsky, 'Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection' 111; Stevens (n 29).surprisingly, the meaning of protection is not without ambiguity. 'Domestic protection' can be distinguished from 'international protection'; the sense attributed to protection within the 1951 Refugee Convention contrasts with that of the 1950 United Nations High Commissioner for Refugees (UNHCR

Regarding protection work, it is relevant to note that, traditionally, UNHCR is more inclined to approach protection from a legal perspective, promoting legal and policy changes. For comparison, ICRC focuses more on protection in practice.[32] Moreover, while UNHCR has acquired a role as Global Protection Cluster lead for the protection of IDPs, its core mandate and tradition is the protection of refugees. That usually happens to be in countries of asylum that are, to different degrees, stable. However, in some circumstances, the agency might have to protect refugees caught in humanitarian crises in third countries, in which the space for protection is severely curtailed. In those cases, refugees' protection needs may be heightened,[33] and the risk they will fall into protection gaps is exceptionally high.[34] Moreover, the natural counterpart for UNHCR, the State,[35] might be fragmented, ineffective and absent. As 'protection space' may be tough to construct in those cases, the effectiveness of protection actions diminishes, and protection solutions are harder to find.

2.2   Protection Space

Protection space is a multifaceted concept and not to be confused with the notion of humanitarian space or operational space. It vastly relies on an approach to spatiality, social and physical places of protection and movement. Spatiality is an area that has not yet been mainstreamed in refugee studies, although calls for it have been made.[36] Refugeehood and spatiality are intuitively connected, at least materially. For instance, some suggest that displacement is a protection strategy to some degree, although this is disputed.[37] Moreover, refugeehood is connected to many elements of spatiality and places, such as camps or urban spaces. Interestingly, UNHCR only began talking of a protection space when the agency recognised the need to protect refugees in urban spaces proactively. Its urban refugees' policy describes it as 'the extent to which a conducive environment exists for the internationally recognised rights of refugees to be respected and their needs to be met'.[38]

While it has a very material element, spatiality is to be understood as the relationship between physical and social spaces. After noting that the humanitarian sector traditionally employs a non-spatial analysis of protection, focusing on a legal understanding of rights, Boano suggests that a focus should be dedicated to 'matters of physical and social protection that may depend on spatial relations'.[39] The scholar stresses the many 'spaces' that characterise humanitarian action, like camps, other types of shelters, formal and not, and detention centres.[40] Accordingly, spaces should not be understood as separated from protection. Still, through its impact on creating social and political interaction, the former, positively or negatively, directly impact the latter. In her analysis of the notion of space in refugee studies, Brun notes that space is a social construct, 'a particular articulation of those relations, a particular moment in those networks of social relations and understandings'.[41]

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32   Bradley (n 8).

33   Sanjula Weerasinghe and others, 'On the Margins: Noncitizens Caught in Countries Experiencing Violence, Conflict and Disaster' (2015) 3 Journal on Migration and Human Security 26.

34   Khalid Koser, 'Non-Citizens Caught up in Situations of Conflict, Violence and Disaster' (2014) 45 Forced Migration Review 43–45.

35   Bradley (n 8).

36   Cathrine Brun, 'Reterritorilizing the Relationship between People and Place in Refugee Studies' (2001) 83 Geografiska Annaler: Series B, Human Geography 15.Human Geography 15.""plainCitation":"Cathrine Brun, 'Reterritorilizing the Relationship between People and Place in Refugee Studies' (2001

37   Camillo Boano, '"Violent Spaces": Production and Reproduction of Security and Vulnerabilities' (2011) 16 The Journal of Architecture 37.

38   UNHCR, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas* (n 32) Para: 20.

39   Boano (n 27) 37.

40   Boano (n 37).

41   Brun (n 36) 15.especially contributions from anthropology and geography. A main distinction is drawn between two understandings of space and place; an essentialist conception, stating a natural relationship between people and places and an alternative conception attempting to de-naturalize the relationship between people and places. The consequences of applying different conceptions of space and place for the development of refugee policies and representations of refugees and displaced persons are addressed. For many displaced persons, displacement is experienced as being physically present at one place, but at the same time having a feeling of belonging somewhere else. It is argued that though attempts to de-naturalize the relationship between people and places have been important for how the refugee experience is conceptualized, there has been too much focus on imagination accompanied by a neglect of the local perspective of migrants and displaced people. In the local perspective of forced migration, the present lives of displaced people are emphasized. Especially the attitudes from the host communities, the policy environment that displaced people are part of, and their livelihood opportunities are the focus of regard. 'Territoriality' and 'reterritorialization' of the relationship between people and places are discussed as tools to analyse the local perspective of forced migration in general and the strategies of internally displaced persons and their hosts in Sri Lanka in particular.","container-title":"Geografiska Annaler: Series B, Human Geography","DOI":"10.1111/j.0435-3684.2001.00087.x","ISSN":"0435-3684, 1468-0467","issue":"1","language":"en","page":"15-25","source":"Crossref","title":"Reterritorilizing the relationship between people and place in refugee studies","volume":"83","author":[{"family":"Brun","-

A different approach to protection space, and more in line with the UNCHR definition, is introduced by Barnes, who defines it as 'an environment conducive to the facilitation'[42] of protection. The scholar also suggests that protection space is composed of two elements, physical space and action space, with the latter being the social space of individuals. They can make decisions and move, which is, by nature, fluid and prone to changes over time.[43] Protection space is, therefore, in its essence, never fixed. It can sometimes deteriorate or be structurally inadequate to be a place of effective protection.[44] Zetter's understanding of protection space is similar, as the author suggests that it is 'both a physical and metaphorical term'.[45] Somehow complementary or linked[46] but different to the concept of protection space is the humanitarian space.[47] The notion has no defined meaning, while it is generally understood as humanitarian agencies' operating environment.[48] Barnes somehow mixes the two dimensions, stating that 'before UNHCR can engage in any protection activities […] an environment which enables such activities to be carried out – sometimes referred to as protection space – is required'.[49]

Accounting for the different approaches, it appears that there is a general recognition of a protection space's existence and social nature, in which refugees can enjoy their rights. The protection space should not be limited to the analysis of urban places, as per UNHCR policy. It is a powerful key to the study of humanitarian action and its impact. Moreover, as protection space is in constant change, protection actors should aim for protection activities to impact it positively. The notion is also instrumental when researching refugees' mass evacuations: evacuations are spatial, and they are rooted in the idea that there is not enough available protection space at the location of evacuation, so it should be searched elsewhere. However, as illustrated below, evacuations, while they attempt to construct a protection space through a transfer, also have an impact on the local social space from which persons are evacuated, and, as they are positively disruptive, they may affect protection spaces elsewhere.

2.3   Refugee Protection and Evacuations

Protecting refugees through evacuations is no novelty. An earlier proponent of a 'right to evacuation', Gibney proposed a more pro-active role for the refugee protection regime, suggesting a role for humanitarian agencies to facilitate civilians' outward movements when trapped in conflicts.[50] As Long suggests, 'international refugee protection depends, at a basic level, on freedom of movement'.[51] Therefore a reasonable objective of a mass evacuation is that this freedom of movement is enhanced due to a mass evacuation effort, and not shrunk. The most notorious mass evacuation of refugees in modern history is Kosovars' mass transfer from modern-day North Macedonia, then FYROM. Macedonia's humanitarian transfer, as it was labelled at the time of implementation, during the conflict in Kosovo in 1999, was aimed at promoting burden-sharing and at avoiding Macedonia closing its borders[52] to a mass influx of refugees – 344,500 in nine weeks.[53] The programme was successful in its purpose, with Macedonia leaving its borders open and averting worse humanitarian consequences for Kosovars refugees. It is considered an instance of an effective burden-sharing agreement.[54]

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42   Barnes (n 12) 1.

43   Barnes (n 12).

44   ibid.

45   Roger Zetter, 'Protection in Crisis' [2015] Forced Migration and Protection in a Global Era 5.

46   Barnes (n 12).

47   Hilhorst and Jansen (n 16); E Abild, 'Creating Humanitarian Space: A Case Study of Somalia' (2010) 29 Refugee Survey Quarterly 67.

48   Abild (n 47).

49   Barnes (n 12) 11.

50   Mark Gibney, 'Reconciling Refugee Relief and Humanitarian Intervention: The Need to Recognize a Right to Evacuation' (1993) 16 In Defense of the Alien 146.

51   Katy Long, 'In Search of Sanctuary: Border Closures, "Safe" Zones and Refugee Protection' (2013) 26 Journal of Refugee Studies 458, 458.

52   Michael Barutciski and Astri Suhrke, 'Lessons from the Kosovo Refugee Crisis: Innovatons in Protection and Burden-sharing' (2001) 14 Journal of Refugee Studies 95.

53   Donèo Donev, Silvana Onceva and I Cligorov, 'Refugee Crisis in Macedonia during the Kosovo Conflict in 1999' (2002) 43 Croatian Medical Journal 184.

54   Katy Long, 'No Entry! A Review of UNHCR" s Response to Border Closures in Situations of Mass Refugee Influx' [2010] Report for UNHCR Policy Development and Evaluation Service.

Macedonia's initial threat to close its borders was rooted in the State not wanting the mass influx to have a radical effect on the country's demography. Macedonia had an Albanian-ethnicity minority, and Kosovar were mainly ethnically Albanians. In the context of a humanitarian operation partly run by NATO,[55] UNHCR requested the international community to evacuate Kosovars refugees from Macedonia.[56] Many States agreed to resettle refugees, though some only offering 'temporary protection'. In this instance, action by the international community successfully created new protection and safe spaces through international evacuations' strategic use.[57]

However, the decision was criticised by human rights and refugee law scholars and activist, as it allegedly eroded the principle of asylum and the obligation of states under international law.[58] Instead, supporters stressed that the mass evacuations were a realisation of the principle of burden-sharing that underpins the Convention Relating to the Status of Refugees and that its successes are proof of solidarity.[59] Barutciski and Suhrke argue, positioning themselves between the two perspectives, that the evacuations and burden-sharing were a legitimate position due to the situation's exceptionality and that, when a country of first asylum risks importing the conflict or be seriously destabilised, evacuations should be considered.[60] The Kosovo-Macedonia experience of burden-sharing led to EXCOM Conclusion in 2004, which recommends that States develop and are prepared to use evacuations or humanitarian transfers in the case of mass influx to a third country,[61] therefore recognising their role in preventing refoulement.

Kosovars' mass evacuation was successful in temporarily enlarging protection space, preventing the *refoulement* of Kosovars at the border and guaranteeing the minimum freedom of movement required to seek asylum. However, it is helpful to note that generally, evacuations in the humanitarian sector are more often internal and lifesaving.[62] A review of publicly available policy documents indicates that evacuations carried out on humanitarian grounds are lifesaving tools that may be deployed when an individual or a group of individuals are at risk of deprivation of life or severe human rights violations.[63] Evacuations are performed in a diversity of situations, in peacetime and conflict, with a vast contribution to policy coming from humanitarian evacuations and relocations in natural disasters.[64] In the most material terms, humanitarian evacuations are the voluntary movement of people from one place to another, usually within the boundaries of the same State, although sometimes outside it, to remove people from usually imminent danger. Features of urgency and emergency characterise evacuations, which are usually carried out in a shortened timeframe.[65] In the humanitarian sector, moving people from one place to another for their protection is not limited to evacuations. Those are features shared by other notions, such as resettlements or planned relocations.[66]

There is consensus that evacuations are to be conceived as temporary and are not in any way solutions;[67] for instance, NRC, in its policy on internal humanitarian evacuations, assesses that 'evacuations are not a permanent solution,'[68] stressing the temporary nature of evacuations. McAdam and Ferris also draw the line

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55   Jef Huysmans, 'Shape-Shifting NATO: Humanitarian Action and the Kosovo Refugee Crisis' (2002) 28 Review of International Studies 599.

56   Istban Szilard and others, 'International Organization for Migration: Experience on the Need for Medical Evacuation of Refugees during the Kosovo Crisis in 1999' (2002) 43 Croatian medical journal 195.

57   Long, 'In Search of Sanctuary' (n 51).

58   Barutciski and Suhrke (n 52).

59   Szilard and others (n 56).

60   Barutciski and Suhrke (n 52).

61   Executive Committee of the High Commissioner's Programme, 'Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) - 2004' (2004) <https://www.refworld.org/docid/41751fd82.html> accessed 16 June 2020.

62   Global Protection Cluster (GPC), 'GPC Thematic Roundtable on Humanitarian Evacuations in Armed Conflict, 24 November 2014' (2014) <https://www.refworld.org/docid/554b13eb4.html> accessed 18 June 2020.

63   International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5).

64   Inter-Agency Standing Committee, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disasters* (Brookings-Bern Project on Internal Displacement 2008).

65   Elizabeth Ferris, 'Planned Relocations, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future (Background Document. San Remo Consultation, 12-14 March 2014): Brookings-LSE Project on Internal Displacement' [2014] Brookings and Georgetown University.

66   Jane McAdam and Elizabeth Ferris, 'Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues' (2015) 4 Cambridge International Law Journal 137.

67   Briggs (n 14).

68   Norwegian Refugee Council (NRC), 'Considerations for Planning Mass Evacuations of Civilians in Conflict Settings' (2017) 12 <https://www.nrc.no/globalassets/pdf/reports/considerations-for-planning-mass-evacuations-of-civilians-in-conflict-settings> accessed 18 June 2020.

between planned relocations and evacuations, suggesting that the latter are not to be considered permanent but transient.[69] Due to their temporary nature, evacuations are no substitute for political, state-centred solutions.[70] The MEND Guide suggests that evacuations need to be tailored to the context and situations, and there is no 'blueprint' plan.[71] Evacuations are considered very complex operations, with UNHCR suggesting that they 'almost always need to involve a range of actors; the risk and complexity of humanitarian evacuations are such that they often exceed the capacity of one organisation and thus demand a multi-sector approach'.[72]

Generally, policy documents on evacuations focus mainly on protecting the evacuees, and less on the effect of the broader protection space, although with some exceptions. While evacuation can be 'critical protection measure[s]',[73] they also are characterised by grave dilemmas on whether and how to be deployed.[74] Regarding the notion of evacuations as a last-resort tool,[75] some consider them to be an admission of failure to ensure protection and access by other means.[76] While not the case for refugee evacuations, civilians' evacuations in conflict may lead to displacement, with severe long-term consequences.[77] Moreover, some alerts of the risk of 'instrumentalisation', which is, primarily in conflict, the inadvertent facilitation of political and military objectives,[78] for instance, the facilitation of an ethnic cleansing process.[79] Furthermore, when evacuations cannot be carried out to include the totality of the affected population, some argue that priorities should be given to the most vulnerable.[80] Others point out that considerations should also be given to the impact of the lack of evacuations for those who will be forced to stay.[81]

In this regard, according to UNHCR, 'humanitarian evacuations must also always be a component of a broader protection strategy for communities-at-risk',[82] acknowledging the need for a comprehensive approach to the protection space in which the affected population is situated, in line with the ICRC 'protection egg' framework. Moreover, according to Global Protection Cluster's Handbook for the Protection of the Internally Displaced, 'planning humanitarian evacuations requires careful consideration of the potential negative impact on the human rights of evacuees and individuals in other affected communities',[83] effectively recognising that the focus should be placed on both groups. Moreover, the Handbook, regarding internal evacuations, suggests that a possible risk of internal evacuations is the erosion of the principle of asylum, with host states possibly denying asylum,[84] an instance similar to the negative consequences of the establishment of 'safe zones'.[85] In this regard, Long notes that while states sometimes close borders to mass influxes, that is truer for less-wealthy countries, while 'developed nations with the capacity to run functioning bureaucracies are less crude in the methods they employ to circumvent asylum seekers' rights because they are able to manipulate rather than close borders'.[86]

Therefore, an approach to evacuations must include an evaluation of their effect on the protection space, local and global, and relevantly on the protection of those who are not evacuated. What must be assessed is not just the number of evacuees or evaluation of the technical side of it. It is also about evaluating protection risks for the whole of a population: if and how those risks are lessened through the evacuation, and whether the evacuation generates new protection risks for the same population or other populations or communities. Attempting an evaluation of effectiveness in terms of protection of an international evacuation is, therefore, an effort to evaluate its impact on different protection spaces, not only for the evacuees but for the broader population and with due consideration to the whole protection environment.

69	McAdam and Ferris (n 66).
70	Briggs (n 14).
71	Global CCCM Cluster, *The MEND Guide Comprehensive Guide for Planning Mass Evacuations in Natural Disasters-Pilot Document* (2014).
72	UNHCR, 'Humanitarian Evacuations in Violence and Armed Conflict: Internal Note' (2018) 20.
73	Briggs (n 14) 48.
74	Briggs (n 14).
75	Norwegian Refugee Council (NRC) (n 68); International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5).
76	International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5).
77	ibid.
78	ibid; Briggs (n 14).
79	Global Protection Cluster (GBP) (n 7).
80	International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5).
81	ibid.
82	UNHCR, 'Humanitarian Evacuations in Violence and Armed Conflict' (n 72) 7.
83	Global Protection Cluster (GBP) (n 7) 434.
84	Global Protection Cluster (GBP) (n 7).
85	Long, 'In Search of Sanctuary' (n 51).
86	ibid 461.

3.   Evacuation of Refugees through Resettlement

UNHCR currently engages in cross-border evacuations of refugees mainly by relying on resettlement. However, resettlement entails lengthy procedures, and evacuations require a compressed timespan. To merge the two, UNHCR has introduced a hybrid system of evacuations to a third country, in which refugees wait for their resettlement cases to be assessed. The peculiarity of combining evacuations with resettlement is that while, as mentioned above, humanitarian evacuations are considered in policy as immediate protection responses to situations that require swift actions, and they are temporary and not solutions,[87] resettlement is one of three durable solutions of UNHCR. There is, therefore, an inherent tension between the fast, swift, lifesaving, temporary protection of humanitarian evacuations and the long-term protection and solution offered by resettlement,[88] which is not easy to reconcile. Moreover, while resettlement may play a strategic role in broadening protection spaces in the country of departure and UNHCR acknowledges it, this component is not, for the agency, a foundation factor of operational engagement.[89]

UNHCR recognises the nature of resettlement as a protection tool and a durable solution.[90] According to UNHCR in its Resettlement Handbook, resettlement serves three functions: (1) provide international protection and meet the specific needs of individual refugees, (2) it is one of the three 'durable solutions', the other two being voluntary repatriation and integration; (3) it can be a 'tangible expression of international solidarity and a responsibility-sharing mechanism'.[91] The three functions reflect the intertwined components of resettlement and how resettlement has a vital element of burden-sharing. However, while resettlement may partially be considered a burden-sharing tool, the proportion of refugees resettled each year is less than one per cent of the total number of refugees.[92] Indeed, one of the features of resettlement is the lack of match between resettlement needs and resettlement places available. For instance, UNHCR forecasts, for 2021, there will be 403,287 cases in need of resettlement, or 1,445,383 persons.[93] In contrast, in 2019, UNHCR submitted 81,671 cases for resettlement and departure amounted to 63,726.[94]

Considering those limitations, UNHCR claims that the 'strategic use of resettlement' may have positive effects not just on resettled refugees but the broader protection space.[95] EXCOM in 2003 defines strategic use of resettlement as 'the planned use of resettlement in a manner that maximises the benefits, directly or indirectly, other than those received by the refugee being resettled'.[96] However, UNHCR notes that those protection benefits are not the base of resettlement decisions and instead be perceived as additional and complementary positive externalities.[97]

On the other hand, UNHCR resettlement Handbook suggests that resettlement from a country may be used in negotiations with that country's government for fewer restrictions on refugees.[98] For instance, UNHCR has used resettlement to decrease the risk of *refoulement* or attempt to improve access to detained refugees,[99] as the case study on Libya will better show. The use of resettlement as an alternative to detention is not a novelty for UNHCR. In a 2006 UNHCR paper, Ophelia lists instances in which, to counteract a lack of legal protection against detention, UNHCR has employed resettlement and its promise to persuade state

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87   Briggs (n 14); Norwegian Refugee Council (NRC) (n 68).

88   Executive Committee of the High Commissioner's Programme, 'Resettlement: An Instrument of Protection and a Durable Solution' (UNHCR 1996) <https://www.refworld.org/docid/5215bdf34.html> accessed 10 June 2020.

89   UNHCR, 'Annual Tripartite Consultations on Resettlement, Geneva, 6-8 July 2010, UNHCR Position Paper on the Strategic Use of Resettlement' (2010) <https://www.unhcr.org/4fbcfd739.pdf> accessed 26 August 2020.

90   Executive Committee of the High Commissioner's Programme, 'Resettlement' (n 88).

91   UNHCR, 'UNHCR Resettlement Handbook, 2011' (2011) 3 <https://www.unhcr.org/46f7c0ee2.pdf> accessed 13 August 2019.

92   UNHCR, 'Resettlement' (*UNHCR*) <https://www.unhcr.org/resettlement.html> accessed 26 August 2020.

93   UNHCR, 'UNHCR Projected Global Resettlement Needs - 2021'.

94   UNHCR, 'Resettlement Data' (*UNHCR*) <https://www.unhcr.org/resettlement-data.html> accessed 19 July 2020.

95   UNHCR, 'Annual Tripartite Consultations on Resettlement, Geneva, 6-8 July 2010, UNHCR Position Paper on the Strategic Use of Resettlement' (n 89).

96   Executive Committee of the High Commissioner's Programme, 'The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)' (2003) <https://www.refworld.org/docid/41597a824.html> accessed 26 August 2020.

97   UNHCR, 'Annual Tripartite Consultations on Resettlement, Geneva, 6-8 July 2010, UNHCR Position Paper on the Strategic Use of Resettlement' (n 89).

98   UNHCR, 'UNHCR Resettlement Handbook, 2011' (n 91).

99   UNHCR, 'Annual Tripartite Consultations on Resettlement, Geneva, 6-8 July 2010, UNHCR Position Paper on the Strategic Use of Resettlement' (n 89).

authorities to release detained refugees.[100] That happened in Indonesia, Thailand, and Nepal, three states that are not a party to the Convention Relating to the Status of Refugees.[101]

3.1 Evacuations, Emergency Resettlement and Emergency Transit Facilities

UNHCR assigns three levels of priority to its resettlement submission: emergency, urgent, and normal.[102] Emergency submissions are made when 'the immediacy of security and/or medical condition necessitates removal from the threatening conditions within a few days, if not within hours'.[103] UNHCR's objective regarding emergency cases is for refugees to depart for the resettling country within seven days of UNHCR submission to the country's authorities.[104] Emergency resettlement may be deployed in large-scale emergencies[105] when there is a lack of other protection solutions. However, 'while [UNHCR] can undertake resettlement in emergencies, it cannot achieve emergency resettlement since it is inevitably a lengthy process'.[106] Further proof of that is the data on emergency resettlement and waiting time: in 2009, the average period between submission and departure was 140 days,[107] with only a few states providing prompt processing in a few days.[108]

Therefore, while time is crucial when severe risks of abuses and violations are imminent, resettlement alone may not allow for sufficient rapidity. To circumvent that, UNHCR introduced a hybrid system of emergency evacuations to a third country, where resettlement submissions may then be assessed by prospective countries of asylum.[109] UNHCR established in evacuation countries, through agreements with the countries' governments, the Emergency Transit Facilities (ETFs), facilities to which refugees may be evacuated to safety and where resettlement countries could assess submissions.[110] Usually, the agreements with the evacuation country might stipulate some requirements on: the maximum time of stay of the evacuees; the maximum number that is allowed at the same time; whether the evacuees will have freedom of movement; and whether and under which circumstances, usually exceptions, they will be able to apply for asylum in the country of evacuation.[111]

The ETFs bacme part of UNHCR policy after a set of ad-hoc interventions in which UNHCR evacuated refugees to third countries where they waited for resettlement. Those cases include: the evacuation in 1999 and 2000 - that subsequently led to resettlement - of 1,500 Tutsis from the Democratic Republic of Congo to Benin and Cameroon; the evacuations from Bosnia-Herzegovina and Croatia to Romania 4,500 refugees in 1999 to 2002; and of 450 Uzbek refugees from Kyrgyzstan to Romania in 2005 and 2006.[112] According to UNHCR, while those operations were successful, they also 'highlighted an acute lack of capacity to evacuate refugees at immediate risk as well as the limited options for emergency departures available with

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100   Field Ophelia, 'Alternatives to Detention of Asylum Seekers and Refugees' [2006] Legal and Protection Policy Research Series PO-LAS/2006/03 (UNHCR, 2006).

101   UNHCR, 'States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol'.

102   UNHCR, 'Information Note: Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities. Annual Tripartite Consultations on Resettlement Geneva, 6 – 8 July 2010' (n 2).

103   UNHCR, 'UNHCR Resettlement Handbook, 2011' (n 93) 246.

104   UNHCR, 'Frequently Asked Questions about Resettlement' (2013) <https://www.refworld.org/pdfid/4ac0d7e52.pdf> accessed 15 July 2020; UNHCR, 'UNHCR Resettlement Handbook, 2011' (n 91).\\uc0\\u8216{}UNHCR Resettlement Handbook, 2011\\uc0\\u8217{} (n 93

105   Executive Committee of the High Commissioner's Programme, 'Note on International Protection' (UNHCR 2012) <https://www.refworld.org/docid/520b3a6a4.html> accessed 10 June 2020.

106   Guido Ambroso, 'Bordering on a Crisis' [2012] Forced Migration Review 6, 7.

107   UNHCR, 'Information Note: Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities. Annual Tripartite Consultations on Resettlement Geneva, 6 – 8 July 2010' (n 2).

108   ibid.

109   UNHCR, 'Guidance Note on Emergency Transit Facilities: Timisoara, Romania / Manila, Philippines / Humenné, the Slovak Republic' (n 3).

110   UNHCR, 'Information Note: Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities. Annual Tripartite Consultations on Resettlement Geneva, 6 – 8 July 2010' (n 2).

111   UNHCR, 'Agreement between the Government of Romania and the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration Regarding Temporary Evacuation to Romania of Persons in Urgent Need of International Protection and Their Onward Resettlement' (2008) <https://www.refworld.org/docid/4a7c221c2.html> accessed 27 July 2020; Republique du Niger and UNHCR, 'Accord Entre Le Gouvernement de La Republique Du Niger et Le Haut Commissariat Des Nations Unies Pour Les Refugies Sur l'instauration d'un Mecanisme d'evacuation d'urgence et de Transit de La Libye Vers Le Niger'.

112   UNHCR, 'Guidance Note on Emergency Transit Facilities: Timisoara, Romania / Manila, Philippines / Humenné, the Slovak Republic' (n 3).

resettlement countries'.[113]

In their original conception, the ETFs are a central tool for a protection strategy[114] through which refugees who are at immediate risk of *refoulement* or life-threatening or severe physical damage[115] may be swiftly evacuated, therefore drastically reducing their exposure to threats. In material terms, the ETFs offer temporary accommodation and security to refugees whose cases are being submitted for resettlement.[116] While UNHCR may evacuate to ETFs refugees both individually and as a group,[117] UNHCR 2010 Information Note and Recommendations suggests that 'UNHCR does not have in mind the evacuation of large groups of refugees'[118] possibly due to the need of a pre-acceptance or broader commitments by resettlement countries. Indeed, before a refugee is evacuated to an ETF, according to the Resettlement Handbook, UNHCR must secure that the refugee will be interviewed by a resettlement country or their dossier reviewed.[119] That is to minimise the risk of having in the ETFs a high number of refugees who will not be resettled, limiting the slots available to other prospective evacuees.

Moreover, a vast number of evacuees who cannot be resettled could create frictions with the ETF country, which may have an agreement regarding the maximum time stay for each evacuee.[120] For instance, the agreement among UNHCR, the Government of Romania and IOM makes explicit reference to a maximum stay period of six months. [121] By design, ETFs are intended and required to host refugees for a short time-frame. Temporariness and transience are defining features of the facilities and are clear foundations of UNHCR agreements with governments. However, the agency acknowledged relatively soon, during the first phases of the ETFs programme, that the evacuations' timing was not as rapid as initially envisioned. In particular, in the 2010 Information Note, which focuses on emergency cases, UNHCR noted that the timespan was not sufficient, as the average period between the request for evacuation and the effective movement was 28 days for evacuations to the ETF in Romania in 2009, and in general longer than planned.[122]

To conclude, while the ETFs have allowed UNHCR to expand the protection space it may offer to refugees at the immediate risk of abuses, the programme's unrolling is not as swift as initially envisioned. Structural limitations inherited from resettlement are only partially overcome. However, the ETFs have brought UNHCR to having an established lifesaving mechanism of protection for refugees in immediate need and cut the times of wait between a place or situation of danger to the arrival to a place of safety. It successfully established a link between evacuations and emergency resettlement, allowing the latter to be used, through the mediation of an ETF, as a protection tool in emergencies, as the Libya case study will show.

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113   ibid Para. 3.

114   Tom de Boer and Marjoleine Zieck, 'The Legal Abyss of Discretion in the Resettlement of Refugees' (2020) 32 International Journal of Refugee Law 54.and more than ever before, the lack of an equitable burden-sharing mechanism is making itself felt: the world's poorest States are hosting most of the refugees. The durable solution of resettlement of refugees is, in theory, the principal means of securing responsibility sharing within the framework of international refugee law. In practice, this cannot be realized since fewer than 1 per cent of the world's refugees can be resettled annually due to the small number of available resettlement places. However, initiatives are being developed to increase the number of States that offer resettlement places to refugees and hence the number of available resettlement places.""container-title":"International Journal of Refugee Law""DOI":"10.1093/ijrl/eeaa005""ISSN":"0953-8186, 1464-3715""issue":"1""language":"en""page":"54-85""source":"Crossref""title":"The Legal Abyss of Discretion in the Resettlement of Refugees""volume":"32""author":[{"family":"Boer""given":"Tom""non-dropping-particle":"de"},{"family":"Zieck""given":"Marjoleine"}],"issued":{"date-parts":[["2020",5,21]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

115   UNHCR, 'UNHCR Resettlement Handbook, 2011' (n 91).

116   Elca Stigter and Helen Morris, 'Evaluation of Emergency Transit Centres in Romania and the Slovak Republic' 64.

117   UNHCR, 'Guidance Note on Emergency Transit Facilities: Timisoara, Romania / Manila, Philippines / Humenné, the Slovak Republic' (n 3).

118   UNHCR, 'Information Note: Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities. Annual Tripartite Consultations on Resettlement Geneva, 6 – 8 July 2010' (n 2) 3.

119   UNHCR, 'UNHCR Resettlement Handbook, 2011' (n 93).

120   ibid.

121   UNHCR, 'Agreement between the Government of Romania and the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration Regarding Temporary Evacuation to Romania of Persons in Urgent Need of International Protection and Their Onward Resettlement' (n 111).

122   UNHCR, 'Information Note: Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities. Annual Tripartite Consultations on Resettlement Geneva, 6 – 8 July 2010' (n 2).

4.   Evacuation and Resettlement Programme in Libya: Analysis and Outcomes

The first large scale use of evacuations and resettlement through ETFs, coupled with direct evacuations, has been carried out since 2017 by UNHCR in Libya, with circa 4,500 refugees evacuated to date.[123] Evacuations are motivated by a shrunk protection space, with refugees, asylum-seekers and migrants facing severe human rights abuses and multiple protection risks. Spontaneous onward movements are constrained by geographical and political factors, and the ability to access protection spaces for refugees and asylum-seekers in the country or outside of its borders are extremely limited. This chapter will first introduce some of the most relevant elements regarding the protection environment in Libya, the lack of a functioning State and the struggles that UNHCR encounters in attempting to deliver protection in place. Then, it will unpack the evacuation programme, the pivotal role that a facility built in Tripoli was supposed to have and failed to deliver fully, and the outcomes of the programme.

4.1   Libya - Context and Protection Space

Libyan political, governmental and power systems are fragmented[124] since the country entered a phase of instability with the dethroning of Gaddafi in 2011.[125] Currently, Libya finds itself divided, with no central authority capable of decisively and uniquely controlling the country.[126] Several armed groups operate in Libya, many affiliated with government institutions, mainly the ministries of Defence, the Interior and Justice.[127] The political instability, ongoing conflict, the proliferation of militias and lack of accountability are detrimental to the human rights of the local population and of refugees and other third nationals. Libya's human rights situation is dire, with multiple reports of severe human rights violations. The Libyan judiciary and the legal framework do not meet international standards, and all efforts to modify it are 'hampered by the unstable environment, the dysfunction of legislative institutions, and political fragmentation'.[128] That has led to 'widespread impunity'[129] regarding armed groups. Arbitrary detention, unlawful deprivation of liberty, torture and ill-treatment are widespread,[130] with armed groups being the main perpetrators, and both locals, for their political opinion, membership of a clan, tribe or family, and non-nationals being the targets.[131]

Refugees' protection space is degraded, and refugees are victims of severe abuses, whether detained or not.[132] A 2016 report by the Office of the UN High Commissioner for Human Rights (OHCHR) and the UN Support Mission in Libya (UNSMIL) defined the situation of refugees, asylum-seekers and migrants in Libya as a 'human rights crisis'.[133] The report summarises it by noting that 'migrants and refugees [during the reporting period] continued to be routinely subjected to a range of serious human rights abuses and

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123   UNHCR, 'Evacuation Factsheet - Libya' (n 4).

124   Wolfram Lacher, *Libya's Fragmentation: Structure and Process in Violent Conflict* (Bloomsbury Publishing 2020).

125   Peter Beaumont and Chris Stephen, 'Gaddafi's Last Words as He Begged for Mercy: "What Did I Do to You?"' *The Observer* (22 October 2011) <https://www.theguardian.com/world/2011/oct/23/gaddafi-last-words-begged-mercy> accessed 27 August 2020.

126   UNHCR, 'UNHCR Submission for the Universal Periodic Review – Libya – UPR 36th Session (2019)' (2019); Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Libya, Including on the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya' (2018) A/HRC/37/46; UN Human Rights Council, 'Compilation on Libya, Report of the Office of the United Nations High Commissioner for Human Rights' (United Nations General Assembly 2018) A/HRC/WG.6/36/LBY/2.

127   Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Libya, Including on the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya' (n 126).

128   Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Libya, Including on the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya' (n 126) para. 56.

129   ibid para. 57.

130   Office of the UN High Commissioner for Human Rights (OHCHR), 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: Detailed Findings' (2016) A/HRC/31/CRP.3.

131   Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Libya, Including on the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya' (n 126).

132   ibid; Office of the UN 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' (2016).

133   Ibid 1.

violations. Perpetrators continued to operate with impunity'.[134] Armed groups are involved in smuggling and human trafficking, side by side with criminal organisations and networks.[135] Refugees and migrants are frequently victims of exploitation and buying and selling of individuals.[136] Extortion is common, and even more so forced labour, in detention and not, at the hands of employers, smugglers, traffickers and detention centre guards.[137] Refugees have little legal protection, as Libya lacks asylum legislation. The country is not a party to the Convention Relating to the Status of Refugees nor the 1967 Protocol.[138] Moreover, municipal law does not include any provision relating to *non-refoulement*.[139] Instead, asylum-seekers and refugees are considered illegal immigrants.[140]

Regarding the number of refugees, as of the 1st of October 2020, UNHCR had registered 45,661 refugees and asylum-seekers,[141] and the most represented nationalities are Sudanese (34%), Syrian (32%), Eritrean (13%), Palestinian (9%), and Somali (6%)[142]. Regarding age, 33% are minors.[143] Women account for 36% of registrations.[144] However, registration data is inherently and structurally not representative of actual refugees. UNHCR follows the Libyan authorities determination that only persons of nine nationalities (Ethiopia, Eritrea, Sudan, Syria, Palestine, Somalia, Iraq, South Sudan and Yemen) have the right to claim international protection.[145] According to IOM, the number of persons from one of the nine nationalities in Libya amounts to 20% of its total third-country nationals' population.[146] Conversely, the five leading countries of origin of migrants in Libya are Niger, Chad, Egypt, Sudan and Nigeria, which amounts to 72% of the migrant population in the country.[147] It may be supposed that the figure UNHCR can officially gather does not represent the total number of refugees in the country and, only partially, it might be used to understand the order of magnitude.

Some of the worst protection risks for refugees and asylum-seekers are found in detention and the cycle of exploitation, abuses, and violations connected. Even though Libyan law criminalises irregular migration,[148] refugees and migrants are detained arbitrarily,[149] with no legal proceeding supporting their incarceration, no registration,[150] no possibility to challenge it in a court of law,[151] and more notably, indefinitely, usually for days or months.[152] In detention centres, refugees and migrants 'are routinely subjected to serious human rights violations and abuses, including prolonged arbitrary detention in inhuman conditions, enforced disappearance, trafficking, sexual violence, torture and ill-treatment'.[153] They are also victims of

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134   Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Situation of Human Rights in Libya, and the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya; Report of the United Nations High Commissioner for Human Rights' (UN 2020) A/HRC/37/46 para. 81.

135   Office of the UN 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' (n 132).

136   ibid.

137   ibid.

138   UNHCR, 'States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol' (n 101).

139   UNHCR, 'UNHCR Submission for the Universal Periodic Review – Libya – UPR 36th Session (2019)' (n 126).

140   ibid.

141   UNHCR, 'Statistical Dashboard - Libya' <https://data2.unhcr.org/en/dataviz/105?sv=0&geo=666> accessed 15 October 2020.

142   ibid.

143   ibid.

144   ibid.

145   UNHCR, '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' (2020).

146   International Organization for Migration (IOM), 'Libya's Migrant Report - Round 30, March-April 2020' (2020) <https://reliefweb.int/sites/reliefweb.int/files/resources/DTM_R30_Migrant_Report.pdf> accessed 18 October 2020.

147   ibid.

148   Office of the UN 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' (n 132).

149   Global Detention Project, 'Immigration Detention in Libya'.

150   Office of the UN 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' (n 132).

151   UNHCR, 'UNHCR Submission for the Universal Periodic Review – Libya – UPR 36th Session (2019)' (n 126).

152   Office of the UN 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' (n 132).

153   Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Situation of Human Rights in Libya, and the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya; Report of the United Nations High Commissioner for Human Rights' (n 126) para. 41.

the ongoing conflict.[154] Often detainees are forced to perform labour outside of the centres to buy their release, with conditions described as unbearable, which leads to their health deteriorating rapidly.[155] Extortion in detention is often reported and accompanied by torture.[156] Rape and sexual violence are common, and refugee and migrant women are at heightened risk.[157]

Detention is strictly connected to barriers to onward movements. Often, refugees and migrants are detained following interception at sea by the Libyan Coast Guard (LCG)[158] or are brought into detention centres by armed groups, smugglers, traffickers and private employers.[159] The LCG, upon disembarkation, often hands over the returned persons to the Department for Combating Illegal Migrations (DCIM), which escorts them to detention centres, official and unofficial.[160] In other instances, the intercepted are brought to private houses or farms, where they must perform forced labour and are victims of rape or other sexual violence.[161] Detention may also occur at the hands of smugglers and traffickers, in warehouses, apartments and the 'connection houses', smugglers run facilities where migrants are held during transit.[162]

The LCG plays a central role in perpetuating the cycle of exploitation and abuses and is, through interception at sea, one of the main barriers to onward movement and access to other protection spaces. In 2019, the LCG intercepted circa 9,000 refugees and migrants,[163] many of whom were subsequently detained by the DCIM or other entities. One of the most widely used words to depict refugees' and migrants' situation in Libya is 'trapped'.[164] There is a system structured around their exploitation, and their onward movement is blocked. Human Rights Watch (HRW) reports 'significant evidence' that smugglers directly collude with the State.[165] UNSMIL confirms it and reports that, according to credible sources, state institutions and local officers are involved in smuggling and trafficking.[166] There are also further reports of strong links between smuggling, detention and armed groups due to financial incentives.[167] It is evident that refugees face multiple and severe abuses and violations, that they are in a system of exploitation, and that their onward movement is constrained.

4.2   UNHCR Evacuation Programme

UNHCR's work in Libya is subject to limitations, many of which are ascribed to the lack of a functional state and the relatively scarce cooperation of the formally existent institutions. UNHCR has a *modus operandi* and an operation habit of engaging primarily and mostly with State institutions,[168] and much less

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154   ibid.

155   Office of the UN 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' (n 132).

156   ibid.

157   ibid.

158   Office of the UN High Commissioner for Human Rights (OHCHR), 'Press Briefing Note on Migrant Rescues in the Mediterranean' (8 May 2020) <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25875&LangID=E> accessed 18 October 2020.

159   Office of the UN 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' (n 132).

160   Office of the UN High Commissioner for Human Rights (OHCHR) and UN Support Mission in Libya (UNSMIL), 'Situation of Human Rights in Libya, and the Effectiveness of Technical Assistance and Capacity-Building Measures Received by the Government of Libya; Report of the United Nations High Commissioner for Human Rights' (n 126) para. 41.

161   Office of the UN 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' (n 132).

162   ibid.

163   UNHCR, 'UNHCR Libya Activities in 2019' (2020) <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Libya%20Activities%20in%202019.pdf> accessed 17 October 2020.

164   Amnesty International, 'Refugees and Migrants Trapped in Libya with No Way Out' (2018) <https://www.amnesty.org/en/latest/news/2018/11/cruel-european-migration-policies-leave-refugees-trapped-in-libya-with-no-way-out/> accessed 14 March 2019; Médecins Sans Frontières (MSF) International, 'Mediterranean Escape Route for Migrants and Refugees Trapped in Libya' (*Médecins Sans Frontières (MSF) International*, 2020) <https://www.msf.org/mediterranean-escape-route-migrants-and-refugees-trapped-libya> accessed 29 September 2020; Human Rights Watch (HRW), 'No Escape from Hell' (2019) <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya> accessed 18 October 2020.

165   Human Rights Watch (HRW) (n 164).

166   Office of the UN 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' (n 132).

167   Arezo Malakooti, 'The Political Economy of Migrant Detention in Libya' 111.

168   Bradley (n 8).

tradition, experience, and capacity to engage with armed groups to deliver protection.[169] As the preferred natural counterpart is weak, corrupted, and fragmented, the agency struggles in delivering protection in place. Moreover, security conditions negatively affect the capacity of the agency to access refugees and asylum-seekers.[170] As mentioned above, Libya is not a party to the Convention Relating to the Status of Refugees nor the 1967 Protocol. UNHCR has worked since 1991 in the country, but it has not signed a Memorandum of Understanding with the government, an exception compared to usual practice.[171]

UNHCR run since late-2017 the evacuation and resettlement programme, mainly through ETFs.[172] Until October 2020, UNHCR had evacuated to safety circa 4,500 people to ETFs in Niger, Rwanda, Romania, and directly to Italy and other countries,[173] many of whom were resettled to a third country or had access to a decent protection space in the country of evacuation. According to the UNHCR data portal, updated to the 15th of October 2020, UNHCR evacuated 4,432 persons in 35 evacuations since the beginning of the programme.[174] Of those, 3,165 were evacuated to Niger, 808 to Italy and 306 to Rwanda.[175] It should be noted that the publishing is not consistent with other UNHCR factsheets, as the 2019 Libya factsheet notes that during the year, on top of the three above mentioned countries, 452 individuals were evacuated to Romania, where UNHCR runs with IOM an ETC, and 382 to other countries.[176]

Regarding the place of departure, 2,306 (54%) persons were evacuated directly from detention centres, 1,605 (37.5%) were hosted in the Gathering and Departure Facility (GDF) before the evacuation and 368 (8.5%) were in urban settings.[177] 2,885 were males (67%), 1,424 females (33%); 1,324 were children (31%).[178] Regarding nationalities, 84% of the evacuees were Eritrean, 8% Somali, circa 5% Sudanese and circa 3% Ethiopians. The year with the highest number of evacuees was 2018 (2,228), followed by 2019 (1,534).[179] In those two years, UNHCR evacuated 85% of the total for the programme so far, although the COVID-19 pandemic has enormously restricted the agency's capacity for carrying out evacuations in 2020. The pandemic halted the evacuation programme from March for several months, with the programme resuming in October.[180]

Initially, the programme focused solely on refugees in detention as an alternative to it, yet UNHCR shifted its evacuation policy and begun evacuating refugees 'mostly from urban settings with a history of being in a detention centre before being released'.[181] Before the policy shift, according to UNHCR, persons bribed the guards of detention centres to be detained and then be able to access the UNHCR programme of evacuation and resettlement.[182] In 2019, two-thirds of the evacuees were persons released from detention and one-third urban refugees, with UNHCR planning, before the pandemic and the closing of the GDF (discussed below), to shift this proportion to fifty-fifty.[183] Due to difficulty accessing refugees and asylum-seekers, it is not easy for UNHCR to determine whom they are evacuating in terms of the need for international protection, with some priorities being given to children and women.[184] Moreover, due to the Libyan authorities' decision on only nine nationalities being allowed to register with the agency (albeit

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169   ibid.

170   UN High Commissioner for Refugees (UNHCR), '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' (n 145).

171   Human Rights Watch (HRW) (n 164).

172   UNHCR, 'UNHCR Niger Factsheet: Emergency Transit Mechanism (ETM) - December 2019' (2019).

173   UNHCR, 'Evacuation Factsheet - Libya' (n 4).

174   ibid.

175   ibid.

176   UNHCR, 'UNHCR Libya Activities in 2019' (n 205).

177   UNHCR, 'Evacuation Factsheet - Libya' (n 4).

178   ibid.

179   ibid.

180   UNHCR, 'UNHCR's Life-Saving Flights from Libya Resume after Seven-Month Suspension' (*UNHCR*, 2020) <https://www.unhcr.org/news/briefing/2020/10/5f894f954/unhcrs-life-saving-flights-libya-resume-seven-month-suspension.html> accessed 20 November 2020.

181   UNHCR, 'UNHCR Niger Factsheet: Emergency Transit Mechanism (ETM) - August 2020' (n 1) 1.

182   Jean Paul Cavalieri, 'Indagine conoscitiva sulla politica estera dell'Italia per la pace e la stabilità nel Mediterraneo. Audizione di Jean Paul Cavalieri, Capo della missione in Libia dello United Nations High Commissioner for Refugees (Investigation on Italy foreign policy for peace and stability in the Mediterranean. Hearing of Jean Paul Cavalieri, UNHCR Chief o Mission in Libya)' (8 January 2020) <http://www.camera.it/leg18/browse/1132?shadow_primapagina=10109> accessed 4 October 2020.

183   ibid.

184   ibid.

with minor exceptions),[185] UNHCR may not be able to evacuate persons who, while they may be in need of international protection, do not fall into one of the nine nationalities.[186]

4.2.1   The Gathering and Departure Facility

Due to the operation's complexity, barriers to access and in supporting evacuation procedures, UNHCR opened in late 2018 in Tripoli the Gathering and Departure Facility (GDF), a centre with a capacity for hosting circa 600 people[187] and with the scope of easing and streamlining evacuations, and through which 1,605 evacuees transited. [188] UNHCR introduced the facility as an alternative to detention for the many trapped in Libyan detention centres.[189] The first evacuation from the GDF occurred in December 2018.[190] The agency considers the reception centre to be serving to support the evacuation of refugees by guaranteeing and offering a space in which refugees awaiting evacuation may be physically located and protected. The GDF was in operation particularly in 2019, when most evacuees transited through there before their flights out of the country,[191] before the facility's shutdown in early 2020.

In total, the facility was opened for circa 15 months, of which many were characterised by overcrowding due to spontaneous arrivals and loss of original purpose. UNHCR closed the GDF at the end of January 2020, citing fears 'for the safety and protection of people at the facility, its staff and partners amid worsening conflict in Tripoli, Libya'.[192] According to Jean-Paul Cavalieri, Chief of Mission in Libya, the decision was taken as the Libyan government established a training place for military and police personnel in land adjacent to the GDF.[193] Moreover, the decision came after, on the 2nd of January 2020, shelling landed close to the facility.[194] Libyan authorities' choice to position a training camp very closely to the GDF may be interpreted as an implicit decision to close the centre, as Libyan authorities reject the establishment of internationally run shelters for refugees and migrants.[195]

Independence in the running of the GDF was severely undermined by the Libyan authorities, who exercised vast *de facto* control over the facility.[196] AP described the centre as effectively run by local militias, with armed guards controlling it as a prison.[197] The news agency also reports severely unsanitary conditions.[198] Similarly, MSF described the GDF in late 2019 as run primarily by Libyan authorities, 'without unhindered access to international agencies nor freedom of movement for those held there'.[199] By January 2020, the GDF had already stopped working as a transit centre for evacuations.[200]

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185   UNHCR, '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' (n 145)."plainCitation":"UN High Commissioner for Refugees (UNHCR

186   Human Rights Watch (HRW) (n 164).

187   UNHCR, 'UNHCR Expands Help to Refugees in Urban Areas in Libya, Reassesses Role of Gathering and Departure Facility' (*UNHCR*, 2019) <https://www.unhcr.org/news/press/2019/11/5ddffe994/unhcr-expands-help-refugees-urban-areas-libya-reassesses-role-gathering.html> accessed 14 October 2020.

188   UNHCR, 'Evacuation Factsheet - Libya' (n 4).

189   Médecins Sans Frontières (MSF) International, 'Trading in Suffering: Detention, Exploitation and Abuse in Libya' (*Médecins Sans Frontières (MSF) International*, 23 December 2019) <https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees> accessed 29 September 2020.

190   UNHCR, 'First Group of Refugees Evacuated from New Departure Facility in Libya' (*UNHCR*) <https://www.unhcr.org/news/press/2018/12/5c09033a4/first-group-refugees-evacuated-new-departure-facility-libya.html> accessed 12 March 2019.

191   UN High Commissioner for Refugees (UNHCR), 'Evacuation Factsheet - Libya' (n 4).

192   UNHCR, 'UNHCR to Suspend Operations at GDF in Tripoli amid Safety Concerns' (*UNHCR*, 2020) <https://www.unhcr.org/news/press/2020/1/5e32c2c04/unhcr-suspend-operations-gdf-tripoli-amid-safety-concerns.html> accessed 14 October 2020.

193   ibid.

194   UN News, 'Libya: UN Refugee Agency Deeply Concerned by Shelling near Tripoli Facility' (*UN News*, 3 January 2020) <https://news.un.org/en/story/2020/01/1054681> accessed 14 October 2020.

195   Médecins Sans Frontières (MSF) International (n 164).

196   Sara Creta and Annie Slemrod, 'UN Tells Migrants to Leave Libya Transit Centre as $6m Project Flounders' *The New Humanitarian* (10 December 2019) <https://www.thenewhumanitarian.org/investigation/2019/12/10/UN-migrants-Libya-transit-centre-project> accessed 20 November 2020.

197   Associated Press, 'UN Agency Halts Operations at Troubled Libya Migrant Center' <https://apnews.com/article/bf340a41ea7f9945f-7f0251a8bbcd3ea> accessed 15 October 2020.

198   ibid.

199   Médecins Sans Frontières (MSF) International (n 164).

200   UNHCR, 'News Comment by UNHCR's Chief of Mission for Libya, Jean-Paul Cavalieri, about Shelling Close to Gathering and Departure Facility in Tripoli' (n 182).

4.2.2   ETFs and Direct Evacuations

Regarding the options for hosting evacuees, UNHCR has mainly worked with ETFs in Niger, Romania and more recently Rwanda, and arranged direct evacuations to Italy. Regarding the ETFs, while the Romanian centre has been operating since 2008,[201] for the Libya situation, UNHCR established two ETFs, one in Niger and one in Rwanda. The establishment of the two facilities may be considered an accomplishment and evidence of the agency being able to negotiate extra protection space through this mechanism successfully. The agreements between UNHCR and the two countries guarantees a maximum capacity of 1,100 evacuees in the two countries.[202] The ETFs are central to the evacuation and resettlement programme, as they allow for resettlement procedures to be completed in a place of safety and, with no other country except for Italy having agreed to direct evacuations, they are necessary for the unrolling of the programme.

The ETF in Niger opened in November 2017, with UNHCR signing an MoU with the Government of Niger shortly after.[203] The agreement between UNHCR and Niger provides that evacuees may stay in the country for up to six months, and renewal may be granted on exceptional individual bases.[204] Moreover, if no other solution is available, Niger does not exclude, exceptionally and for a limited number of persons, granting asylum in the country to individual evacuees.[205] Niger agreed to accept refugees, asylum-seekers registered with UNHCR, stateless persons and unaccompanied minors.[206] Asylum-seekers' claim to international protection will be assessed by UNHCR.[207] In general, no more than 600 evacuees may simultaneously be on the territory of Niger at the same time.[208] As of July 2020, UNHCR had evacuated 3,208 refugees and asylum-seekers,[209]of which 2,454 had been resettled to third countries,[210] with no evacuations or resettlements carried out since the beginning of the pandemic.[211] There is notably a difference of little less than eight hundred between evacuees and resettled.

Regarding the ETF in Rwanda, the facility has been operational since 2019, with the signing of an MoU between UNHCR, the Government of Rwanda and the African Union. The agreement provides for a maximum of 500 persons hosted in the ETF at any given time.[212] The ETF is in Bugesera District, 60 kilometres from Kigali, the capital.[213] The Rwanda ETF has to date been used less than the Niger ETF, also due to the pandemic, which has halted operations. However, the two coupled are offering 1,100 places of safety for evacuees, whose evacuation may be carried out swiftly. Both the Niger and Rwanda ETFs are funded by the EU Emergency Trust for Africa (EUTF).[214]

Due to the agreements in place with Niger and Rwanda, UNHCR is not able to evacuate as many refugees as needed, as there is a maximum number of refugees who may be hosted simultaneously in each ETF, and for places to become available, the resettlement of refugees to a third country is required.[215] Resettlement is a slow process,[216] even when the submissions are categorised as emergency or urgent, as in the case of refugees evacuated from Libya. Therefore, the turnover in the ETFs is not swift enough to allow for

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201   UNHCR, 'Agreement between the Government of Romania and the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration Regarding Temporary Evacuation to Romania of Persons in Urgent Need of International Protection and Their Onward Resettlement' (n 111).

202   Republique du Niger and UNHCR (n 122); Rwanda Ministry in Charge of Emergency Management, 'Frequently Asked Questions on ETM.'"author":[{"literal":"Republique du Niger"},{"literal":"UN High Commissioner for Refugees (UNHCR

203   UNHCR, 'UNHCR Niger Factsheet: Emergency Transit Mechanism (ETM) - December 2019' (n 245).

204   Republique du Niger and UNHCR (n 122) art. 2(8).

205   ibid.

206   ibid.

207   ibid.

208   ibid art. 2(2).

209   UNHCR, 'UNHCR Niger Factsheet: Emergency Transit Mechanism (ETM) - July 2020' (2020).

210   ibid.

211   UNHCR, 'UNHCR Niger Factsheet: Emergency Transit Mechanism (ETM) - April 2020' (2020).

212   Rwanda Ministry in Charge of Emergency Management (n 252).

213   ibid.

214   UNHCR, 'UNHCR Niger Factsheet' (n 299); European Commission, 'Rwanda: EU Provides €10.3 Million in Refugee Support' (*European Commission - European Commission*, 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6301> accessed 18 November 2020.

215   European Council on Refugees and Exiles (ECRE), 'Detainees Evacuated out of Libya but Resettlement Capacity Remains Inadequate' (2018) <https://www.ecre.org/detainees-evacuated-out-of-libya-but-resettlement-capacity-remains-inadequate/> accessed 12 March 2019."plainCitation":"European Council on Refugees and Exiles (ECRE

216   UNHCR, 'Frequently Asked Questions about Resettlement' (n 111)."author":[{"literal":"UN High Commissioner for Refugees (UNHCR

an increased number of refugees evacuated from Libya.[217]

The third main channel for evacuations is Italy, which has received 808 direct evacuees from Libya[218] and several other evacuees from the ETFs,[219] of which 105 from Niger,[220] since the beginning of the programme. As noted above, Italy is the only country that has directly received a sizeable number of evacuees not for being resettled to a third country. Evacuations from Libya are ad-hoc arrangements between the Italian Government and UNHCR. They might be conceived as lighter resettlements: evacuees upon arrival are treated as asylum-seekers, with no automatic recognition of any status, and their asylum claims are standardly processed.[221] In comparison, Italy also has a standard resettlement programme through which it resettled 75 refugees from Libya in 2019.[222]

To conclude, while resettlement faltered globally, in 2019 UNHCR in Libya resettled through evacuations one refugee every 20, which is more than the global average.[223] Although the numbers are comparatively good, the dire conditions in Libya do not allow for much celebration and instead require further analysis of the impact of evacuations on the non-evacuated, which is introduced in the next chapter. Interestingly, to supply for the lack of resettlement slots and as a systematic alternative to detention for Libya, UNHCR is also investigating the option of supporting voluntary returns to the country of origin and return to the first country of asylum.[224] However, UNHCR is encountering resistance in at least some refugees and asylum-seekers who have a preference for continuing seeking asylum autonomously.[225]

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217   European Council on Refugees and Exiles (ECRE) (n 215)."URL":"https://www.ecre.org/detainees-evacuated-out-of-libya-but-resettlement-capacity-remains-inadequate/","author":[{"literal":"European Council on Refugees and Exiles (ECRE

218   UNHCR, 'Evacuation Factsheet - Libya' (n 6).

219   UNHCR, 'Seconda evacuazione salvavita di rifugiati vulnerabili dalla Libia in Rwanda' (*UNHCR Italia*, 2019) <https://www.unhcr.org/it/notizie-storie/notizie/seconda-evacuazione-salvavita-di-rifugiati-vulnerabili-dalla-libia-in-rwanda/> accessed 18 November 2020; UNHCR, 'L'UNHCR evacua 54 rifugiati vulnerabili dal Niger all'Italia' (*UNHCR Italia*, 2019) <https://www.unhcr.org/it/notizie-storie/notizie/lunhcr-evacua-54-rifugiati-vulnerabili-dal-niger-allitalia/> accessed 18 November 2020.

220   Italy Ministry of Interior, 'Speech of Michele Di Bari, Head of "Libertà Civili e l'Immigrazione" Department, for UNHCR Global Trends 2020' (June 2020) <https://www.interno.gov.it/sites/default/files/2020-06/intervento_capo_dipartimento_di_bari.pdf> accessed 18 November 2020.

221   ibid.

222   Caritas Italiana, 'Oltre Il Mare' (2020) <https://www.caritas.it/caritasitaliana/allegati/8149/Oltre_il_Mare.pdf> accessed 18 November 2020.

223   Cavalieri (n182).

224   ibid.

225   ibid.

5.   Evacuations' Impact on Protection Spaces of the Non-Evacuated

As researched in the previous chapter, the protection space in Libya is shrunk, and the evacuations carried out by UNHCR have proven effective in creating new protection spaces in other countries, having evacuated, to October 2020, circa 4,500 refugees. However, as evidenced above, the correspondence between needs and protection solutions is insufficient, with a high proportion of refugees not being evacuated. Therefore, an analysis of the programme must also assess whether the evacuation programme had an impact on the protection spaces of the non-evacuated, in particular regarding the protection space within Libya, with a focus on alternatives to detention and researched in the following section, and regionally regarding refugee's onward movement, researched in the second section of this chapter.

It is also helpful to note that evacuations are usually conceived as a last resort and often a one-off tool,[226] while the UNHCR programme in Libya is increasingly acquiring, after more than three years at the centre of the migration route, a structural character. Moreover, the evacuation programme in Libya touches upon many debates in the refugee protection world: a country in conflict, through which transits one of the main routes to Europe, the externalisation of borders and the tools that the EU is developing and testing to curb irregular migration,[227] which includes a significant number of refugees and asylum-seekers, and the role of refugees' own protection choices.

5.1   Local Protection Space

Whether the evacuation programme has had a positive or negative effect on the protection space available to non-evacuated refugees and asylum-seekers is hard to assess. There is an underlying moral dilemma, as old as humanitarian action: better save a few, or work for a structural change which will benefit a more significant number, but not in the short-term? Evacuations in Libya's context may have been an attempt to reconcile the two: according to the ICRC 'protection egg' framework,[228] humanitarian protection is multidimensional, with responsive actions needing the complementarity of the environment changing actions.[229] UNHCR has used evacuations to propose an alternative to detention to the Libyan authorities, in line with the strategic dimension of resettlement researched in chapter three. Moreover, through the strategic use of the GDF, although the project proved unsustainable and Libyan authorities undermined it, UNHCR partially showed that the UN and other international humanitarian actors might support state institutions and offer protection to refugees in the country.

In a January 2020 hearing before the Italian Chamber of Deputies' External Affairs Commission, UNHCR Chief of Mission in Libya, Jean-Paul Cavalieri, acknowledged that the Libya government was showing a fair amount of goodwill, but that clashed with structural constraints, partly due to the ongoing conflict.[230] Cavalieri also suggested that civil servants have a double loyalty, one to the government and its hierarchies and one to the tribe they come from, therefore rendering the system of government less vertical than its formal structure would suggest.[231] The fragmented government structure means that UNHCR needs to engage in parallel negotiations throughout multiple chains of command,[232] many of which are unofficial. It is unclear whether evacuations are facilitating or complicating the long list of humanitarian negotiations needed to decrease the risks and threats of abuses to which refugees are subject.[233]

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226   International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5).

227   Anja Palm, 'Leading the Way? Italy's External Migration Policies and the 2018 Elections: An Uncertain Future' [2018] Leading the Way 6; Antonio M Morone, 'Policies, Practices, and Representations Regarding Sub-Saharan Migrants in Libya: From the Partnership with Italy to the Post-Qadhafi Era', *EurAfrican Borders and Migration Management* (Springer 2017); Zakariya El Zaidy, 'EU Migration Policy towards Libya' 23.

228   International Committee of the Red Cross (ICRC), 'ICRC Protection Policy' (2008) 90 25.

229   Slim and Bonwick (n 11).

230   Cavalieri (n 182).

231   ibid.

232   ibid.

233   Caroline Wanjiku Kihato and Loren B Landau, 'Stealth Humanitarianism: Negotiating Politics, Precarity and Performance Management in Protecting the Urban Displaced' [2016] Journal of Refugee Studies ."plainCitation":"Caroline Wanjiku Kihato and Loren B Landau, 'Stealth Humanitarianism: Negotiating Politics, Precarity and Performance Management in Protecting the Urban Displaced' [2016] Journal of Refugee Studies few031.","noteIndex":298},"citationItems":[{"id":301,"uris":["http://zotero.org/users/2563060/items/58WZ8QWH"],"uri":["http://zotero.org/users/2563060/items/58WZ8QWH"],"itemData":{"id":301,"type":"article-journal","abstract":"Post-cold-war-era conflicts and the humanitarian political economy have driven two disparate yet concurrent shifts within the humanitarian field. On one hand, new public management-style reforms have increasingly focused organizations on efficiency, deliverables and technical proficiency. On the other, an international rights regime has demanded that humanitarian interventions and actions become more explicitly political. Nowhere are the tensions between neutral humanitarian

Regarding alternatives to detention, according to Cavalieri, there is a certain degree of willingness in the Ministry of Interior to close all detention centres.[234] The Ministry, however, requires UN agencies to step in supporting refugees directly with cash grants and allowances, which UNHCR cannot do extensively.[235] Moreover, UNHCR signals some signs of progress in its advocacy concerning the government looking at alternatives to arbitrary detention[236] and, at the very least, introducing regular legal proceedings and legal guarantees for detainees and judicial control over detention centres.[237] UNHCR reports the government's goodwill on curbing the severe human rights violations in detention, which clashes with the reality on the ground,[238] where armed groups act independently and with impunity.

Regarding the number of refugees in detention, in August 2020, UNHCR estimates 2,500 non-nationals were held in detention, of which 1,212 of concern to the agency.[239] To offer a numerical comparison, UNSMIL in 2016 put the figure of detained refugees and migrants at between 4,000 and 7,000 individuals.[240] However, it is not clear whether the figures had been collected similarly enough to make them effectively comparable. According to UNHCR, the number of non-nationals in detention decreased in 2019 and early 2020, before rising again in mid-2020.[241] Cavalieri explained the steady decrease in that period was due to two factors: the exacerbation of the conflict, with militias and state authorities being unable or unwilling to access the basic resources required to run centres, in particular food and in particular for those detention centres closer to front lines; and to UNHCR evacuations – circa 30% of detainees had been evacuated to third countries in 2019.[242]

UNHCR, elsewhere, offers other possible explanations for this decrease, stating a reduced number of attempted crossings, increased release upon disembarkation, effective advocacy on release to the urban community, and severe lack of funding at the DCIM.[243] A report by The New Humanitarian suggests a severe issue with food provision in the detention centres, structural but that profoundly worsened during 2019 and 2020.[244] Moreover, the conflict worsened the coordination between the Ministry of Interior and the LCG. That has led to a lesser percentage of persons returned to Libya by the LCG being arrested and transported to detention centres, with UNHCR in January 2020 estimating that circa 30-35% of those returned are not detained.[245]

Therefore, while through evacuations, UNHCR may have attempted to show the Libyan government an exceptional commitment to providing alternatives to detention, there is no evidence that the programme has produced any positive effect on detention policies and practices. On the other hand, as researched in the second chapter, some aid professionals consider, in general, evacuations as an admission of failure to

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expertise and the need for overt political engagement more visible than for organizations promoting refugee protection in fluid, politically pluralistic urban sites. Building on fieldwork in Johannesburg, Kampala and Nairobi, we argue that neutrality, technical fixes and demands for direct and targeted service delivery can undermine long-term urban protection. Rather, protection requires enhanced local literacy and pursuing back routes to rights through engagement with municipal authorities, local actors and policy sectors. In other words, humanitarian organizations must work smarter, smaller and stealthier. But, to do this, the sector requires substantial shifts in its funding regime—including reconsidering demands for measurable outputs, strictly targeted services and rapid direct service delivery.","container-title":"Journal of Refugee Studies","DOI":"10.1093/jrs/few031","ISSN":"0951-6328, 1471-6925","language":"en","page":"few031","source":"Crossref","title":"Stealth Humanitarianism: Negotiating Politics, Precarity and Performance Management in Protecting the Urban Displaced","title-short":"Stealth Humanitarianism","author":[{"family":"Kihato","given":"Caroline Wanjiku"},{"family":"Landau","given":"Loren B."}],"issued":{"date-parts":[["2016",10,25]]}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

234 Cavalieri (n 182).

235 ibid.

236 ibid.

237 ibid.

238 ibid.

239 UNHCR, 'UNHCR Libya Update - 7 August 2020' (n 125).

240 Office of the UN 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' (n 148).

241 UNHCR, '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' (n 145).

242 Cavalieri (n 182).

243 UNHCR, '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' (n 145).

244 Sara Creta, 'As War Drags on, Troubles Mount for Libya's Coast Guard and Migrant Detention Centres' *The New Humanitarian* (26 February 2020) <https://www.thenewhumanitarian.org/news/2020/02/26/Libya-migrants-refugees-Italy-EU-Europe-detention> accessed 18 October 2020.

245 Cavalieri (n 182).

ensure protection by other means.[246] It cannot be disregarded the possibility that the evacuation engagement decision is, inadvertently, a statement of failure and an admission that a protection space with minimum protection standards in Libya is unattainable, therefore discouraging the search for alternative solutions.

5.2   Regional Protection Spaces and Onward Movement

The second component of an analysis of the impact of evacuations on non-evacuees entails, as Libya is notoriously a transit country, the onward movement of refugees and a broader notion of protection space that include regional dynamics, mainly focused on the relationship between Libya and the EU on migration containment policies. The onward movement of refugees is indeed central to the assessment. Refugees, asylum-seekers, and migrants are willing to take enormous risks to arrive in Europe. The rate of fatalities in the attempted crossing to Europe in the central Mediterranean route is very high, with IOM estimating the figure at 4.8% in 2019, the highest in the period 2015-2019.[247] Moreover, the interception rate has increased to 41% of all attempts in 2019, up from 16% in 2017.[248] That pushes up the fatalities rate when calculated on the number of successful attempts: 7.8% in 2019.[249] Roughly, in 2019 for every 12 who reached the coasts of Europe, one has died. As stated earlier, while the risk is exceptionally high, people are willing to undertake it to reach Europe.

As reported above, UNHCR, when suggesting the opportunity to be evacuated to the first country of asylum to refugees in detention centres in Libya, received some negative answers from refugees already committed to smugglers or ready to.[250] If persons are willing to first remain inside Libyan detention centres and then undertake an activity in which one participant will die for every 12 successful, there is space for reflection on what refugees themselves conceive as effective protection and what they are willing to risk to achieve it. Moreover, as UNHCR reports, evacuations for detainees are at least at the micro-level a partial pull factor, with the agency reporting refugees and asylum-seekers entering detention centres on purpose, in the hope of being evacuated.[251] Whether evacuations are a pull factor for refugees who are out of Libya is less clear.

In an apparent paradox, the EU is a major donor of the evacuations and ETFs programme, and Italy is the only country with a sizeable number of direct evacuations, while the two actors are also directly supporting the LCG since 2017.[252] The entity, as researched above, bears much direct responsibility in blocking onward movement and in the detention of refugees and migrants that underpins systemic torture, ill-treatment, and other abuse patterns. Italy has taken the lead in the EU effort to outsource the implementation of its migration control policy to non-EU countries,[253] with the former delivering capacity-building, vessels and vehicles to the LCG.[254] Due to the clear and widely known relation between interception at sea, detention, and conditions of detention characterised as inhumane and degrading, HRW and Amnesty suggest that the EU and Italy may be considered effectively complicit in those human rights abuses, having actively supported and enlarged the capacity of the LCG to intercept refugees, asylum-seekers and migrants at sea.[255] The support for the LCG seems to be an effective externalisation of

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246   International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 7).

247   International Organization for Migration (IOM), 'Calculating "Death Rates" In The Context Of Migration Journeys: Focus On The Central Mediterranean' 12.

248   ibid.

249   ibid.

250   Cavalieri (n 182).

251   ibid.

252   Human Rights Watch (HRW), 'Libya: Nightmarish Detention for Migrants, Asylum Seekers' (2019) <https://www.hrw.org/news/2019/01/21/libya-nightmarish-detention-migrants-asylum-seekers> accessed 18 October 2020; UNHCR, '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' (n 179); European Commission, 'EU Delivers Support to Border Management in Libya' (*European Neighbourhood Policy And Enlargement Negotiations - European Commission*, 16 July 2020) <https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/eu-delivers-support-border-management-libya_en> accessed 20 November 2020; ibid.\\uc0\\u8216{}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\\uc0\\u8217{} (n 179

253   Zaidy (n 227).

254   European Commission (n 214); Human Rights Watch (HRW) (n 164).

255   Human Rights Watch (HRW) (n 194); Amnesty International, 'Libya: Renewal of Migration Deal Confirms Italy's Complicity in Torture of Migrants and Refugees' (2020) <https://www.amnesty.org/en/latest/news/2020/01/libya-renewal-of-migration-deal-confirms-italys-complicity-in-torture-of-migrants-and-refugees/> accessed 14 October 2020.

border control, [256] as the number of people who managed to reach an EU country by boat from Libya has decreased steadily between 2017 and May 2020.[257]

The paradox is indeed apparent. The evacuation programme recalls some of the features of a project touted by some EU member states of establishing asylum-processing centres in North Africa, on the lines of the Australian model.[258] The fact that Italy is the only wealthy country that has an evacuation programme from Libya, and at the same is at the forefront of the support for the LCG and has over the years taken stances in favour of returns to Libya,[259] is a clear statement of intentions, that echoes the EU position: refugees are welcomed only in the way and in the numbers the Union agrees to receive them.[260] Spontaneous initiatives are not appreciated and instead repressed.[261] The stance is not new, and it has been observed in many wealthy countries around the globe over the years, in particular when arguments are made that generosity through resettlement, the 'humanitarian alibi',[262] allows the country to engage in border control practices that are against the spirit of refugee law, if not in direct violation of it.[263] A recent example of that is the UK's 'New Plan for Immigration',[264] which, according to UNHCR, introduces 'a discriminatory two-tiered approach to asylum'[265] by differentiating between resettled refugees and refugees that arrive irregularly, and make for the latter 'access to asylum and protection in the UK […] infinitely more challenging'.[266]

Due to this apparent paradox, it can be agued that evacuations are instrumentalised for justifying containment and externalisation policies that restrict spontaneous access to safe protection spaces through the curtailing of spontaneous onward movement. It is not surprising to note that one of the most notorious European proponents of containment policies, Mr Salvini, when serving as the Italian Minister of Interior, welcomed a photo-op of himself greeting a group of refugees evacuated to Italy through Niger at the bottom of the stairs of the plane, playing with a child and contextually declaring that evacuations were 'the only safe route'.[267] There is a very clear risk that evacuations might negatively affect non-evacuated, as they both provide a 'humanitarian alibi' to wealthier countries to curtail refugees' search for protection spaces and create an incentive for wealthier countries to not look for structural protection solutions to the mass movement of refugees and asylum-seekers.

256   Palm (n 290); Morone (n 290); Zaidy (n 227).

257   International Organization for Migration (IOM), 'Calculating "Death Rates" In The Context Of Migration Journeys: Focus On The Central Mediterranean' (n 247).

258   Delphine Nakache and Jessica Losier, 'The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?' (*E-International Relations*, 25 July 2017) <https://www.e-ir.info/2017/07/25/the-european-union-immigration-agreement-with-libya-out-of-sight-out-of-mind/> accessed 29 September 2020.\\uc0\\u8216{}The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?\\uc0\\u8217{} ({\\i{}E-International Relations}, 25 July 2017

259   la Repubblica, 'Lamorgese, impegno a accelerare la cooperazione con la Libia' *la Repubblica* (16 July 2020) <https://www.repubblica.it/cronaca/2020/07/16/news/lamorgese_impegno_accelerare_la_cooperazione_con_la_libia-262137648/> accessed 9 November 2020; Avvenire, 'Covid-19. "L'Italia non è più porto sicuro per l'approdo di migranti'" (8 April 2020) <https://www.avvenire.it/attualita/pagine/italia-porto-non-sicuro-approdo-migranti> accessed 9 November 2020; Avvenire, 'Migranti. Il Viminale: «Libia porto sicuro anche per l'Ue». Bruxelles e Onu smentiscono' (29 March 2019) <https://www.avvenire.it/attualita/pagine/il-viminale-libia-porto-sicuro-anche-per-l-ue-l-onu-contro> accessed 9 November 2020.\\uc0\\u8216{}Covid-19. \\uc0\\u8220{}L\\uc0\\u8217{}Italia non \\uc0\\u232{} pi\\uc0\\u249{} porto sicuro per l\\uc0\\u8217{}approdo di migranti\\uc0\\u8221{}\\uc0\\u8217{} (8 April 2020

260   Pierre d'Argent and Melinda Kuritzky, 'Refoulement by Proxy? The Mediterranean Migrant Crisis and the Training of Libyan Coast Guards by EUNAVFOR MED Operation Sophia' [2017] Israel Yearbook on Human Rights, Volume 47 (2017) 233.

261   de Boer and Zieck (n 114).and more than ever before, the lack of an equitable burden-sharing mechanism is making itself felt: the world's poorest States are hosting most of the refugees. The durable solution of resettlement of refugees is, in theory, the principal means of securing responsibility sharing within the framework of international refugee law. In practice, this cannot be realized since fewer than 1 per cent of the world's refugees can be resettled annually due to the small number of available resettlement places. However, initiatives are being developed to increase the number of States that offer resettlement places to refugees and hence the number of available resettlement places.'","container-title":"International Journal of Refugee Law","DOI":"10.1093/ijrl/eeaa005","ISSN":"0953-8186, 1464-3715","issue":"1","language":"en","page":"54-85","source":"Crossref","title":"The Legal Abyss of Discretion in the Resettlement of Refugees","volume":"32","author":[{"family":"Boer","given":"Tom","non-dropping-particle":"de"},{"family":"Zieck","given":"Marjoleine"}],"issued":{"date-parts":[["2020",5,21]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

262   Joanne Van Selm, 'The Strategic Use of Resettlement: Changing the Face of Protection?' [2004] Refuge: Canada's Journal on Refugees 39, 40.

263   Matthew J Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004); Van Selm (n 262).

264   UK Home Office, 'The New Plan for Immigration Policy Statement' (2021) <https://www.gov.uk/government/consultations/new-plan-for-immigration>.

265   UNHCR, 'Observations on the New Plan for Immigration UK' (2021) 1.

266   ibid.

267   Corriere della Sera, 'Salvini accoglie 51 migranti del Niger arrivati con i corridoi umanitari' *Corriere della Sera* (14 November 2018) <https://roma.corriere.it/notizie/cronaca/18_novembre_14/roma-salvini-accoglie-51-migranti-niger-arrivati-corridoi-umanitari-448ad8e8-e801-11e8-b8c4-2c4605eeaada.shtml> accessed 20 November 2020.

6.   Conclusions

This paper examined evacuations of refugees, which are international in character and features. It did so by vastly building, through a case study, on publicly available policy documents on evacuations whose majority, if not all, cover internal evacuations of civilians.[268] The essay introduced notions of refugee protection concerning evacuations and movement and how and when evacuations are deployed, by humanitarian agencies, mainly internally in conflict or disasters, and seldom internationally for refugees.[269] In recent years, UNHCR has developed a new tool for performing mass evacuations of refugees. That is the combination of evacuations with resettlement, through using dedicated facilities in third countries, the ETFs, in which evacuees wait for their resettlement submissions to be processed. The most prominent use of this mechanism has been taking place since 2017 for evacuations from Libya, a country in which refugee protection in place is made especially difficult by widespread severe violations and abuses, civil war, and lack of stable institutions. The UNHCR refugee evacuation and resettlement programme had to October 2020 brought to safety 4,500 persons[270] and has suggested that evacuation with resettlement might be more than a last resort protection tool and a solution in its own right for evacuees.

However, besides the operational successes, there are more dimensions to an analysis of evacuations, for which this essay has used the notion of protection space. As shown in the second chapter, the available policy and literature point out the need to consider the impact of evacuations on all communities at risk,[271] including the non-evacuated.[272] Evacuations are positively disruptive, and they have consequences on multiple protection spaces, including in the country from which evacuations are carried out, and, more so in the case of refugees, internationally. In particular, policy and literature suggest a list of risks that need to be considered before planning or engaging in an evacuation.

Two of the commonly cited risks in internal evacuation policies are the instrumentalisation for military or political purposes[273] and that 'evacuations can provide an excuse for people to avoid seeking a more sustainable solution to the crisis'.[274] According to this research, international refugee evacuations carry the same risks, with a stronger focus on the political than on the military. As investigated in the case study, the Libya programme clashes with EU policies and practices that contravene the spirit and possibly the provisions of refugee law,[275] and it may, inadvertently, legitimise them by functioning as a fig leafInternational refugee evacuations are highly political, and they may become the 'humanitarian alibi' for restrictive policies, which, as shown in the case study, increases the non-evacuated refugees' exposure to risks.

Besides the instrumentalisation, there is a possibly more nefarious risk: the political inaction regarding solutions. As mentioned above, the risk is that evacuations may provide an excuse and hide under humanitarian action the political responsibility for searching for a solution. NRC guidelines clearly state that 'evacuations […] should never be seen as a substitute for a political solution to a crisis'.[276] When reviewing the case study, the evacuation programme is in its third year, and, while it started as an emergency programme to evacuate detained refugees, it is becoming structural. It sits at the centre of one migration route to Europe, and it does not provide a comprehensive protection solution for refugees in search of spaces that may give them effective protection. Nor should it, as the responsibility for protection lies ultimately with states, and in this case, the international community.[277] As observed, apart from some efforts by UNHCR to decrease risks in Libya, there is no concrete prospect of a comprehensive political solution in the country or structurally for the migration route that goes through it.

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268   Global Protection Cluster (GBP) (n 7); Norwegian Refugee Council (NRC) (n 68); Global Protection Cluster (GPC), 'Ukraine, Note on the Evacuation of Civilians from Conflict Affected Areas' (2015); International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5); International Organization for Migration (IOM), 'IOM Key Principles for Internal Humanitarian Evacuations/Relocations of Civilian Populations in Armed Conflict' (2014); UNHCR, 'Humanitarian Evacuations in Violence and Armed Conflict' (n 72); Global Protection Cluster (GPC) (n); Global CCCM Cluster (n 71).

269   Global Protection Cluster (GBP) (n 7).

270   UNHCR, 'Evacuation Factsheet - Li7bya' (n 4).

271   UNHCR, 'Humanitarian Evacuations in Violence and Armed Conflict' (n 72).

272   Briggs (n 12).

273   International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5).

274   Norwegian Refugee Council (NRC) (n 69) 14.

275   d'Argent and Kuritzky (n).

276   Norwegian Refugee Council (NRC) (n 68) 46.

277   Hugh Breakey, 'The Responsibility to Protect and the Protection of Civilians in Armed Conflict: Overlap and Contrast' [2013] (:unav) <https://www.un-ilibrary.org/human-rights-and-refugees/norms-of-protection_a35383ff-en> accessed 22 September 2019; Nicolò Cantini and Dmitry Zavialov, 'Fixing Responsibility to Protect: Lessons from and Proposals for the Case of Libya' (2018) 2 Peace Human Rights Governance 75.

In the meantime, refugees continue to search for protection solutions autonomously. The global protection of refugees is very much based on freedom of movement, *non-refoulement*[278] and the possibility of accessing an environment conducive to protection.[279] As demonstrated in the second chapter, while approaches to protection in conflict are rooted in protection from violence,[280] the protection of refugees requires one further dimension: the realisation of a new durable space where the effects of displacement are mitigated, therefore fulfilling protection.[281] As Stevens suggests, this has much to do with the country in which the refugee may end up being.[282] That is relevant in assessing risks connected to refugees' international evacuations, which should not hamper the autonomous research of protection spaces of the non-evacuated.

A last risk mentioned in internal evacuations policies is that 'an evacuation can raise expectations for evacuations elsewhere or at a later stage'[283] and that they may raise 'unrealistic expectations about the capacities and roles of humanitarian actors'.[284] That could also apply to evacuations of refugees, more so when they are not ad-hoc one-time interventions and instead become structural features of a protection environment, and even more so when they are coupled with resettlement, therefore offering a comprehensive solution to displacement. On the one hand, the case study shows reports of refugees who had paid to be detained, in inhumane conditions, to attempt to access evacuations and resettlements.[285] While anecdotal, it signals that evacuations may have consequences on individuals' spontaneous self-protection choices[286] and strategies.[287]

To conclude, this research focuses on establishing a framework of analysis and extracting from the case study some protection considerations that could be useful in future research and assessment. Policy on internal evacuations in conflict often agrees that, while assessing risks is central, there might exist situations in which the affected populations' protection needs could be that severe to require accepting those risks.[288] The same reasoning could be applied to the case study, while it is beyond this essay's scope to establish it. In all cases, negative externalities of evacuations need to be recognised, assessed, and necessary measures put in place to mitigate them so that protection spaces of the non-evacuated are minimally affected.

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278   Long, 'In Search of Sanctuary' (n 51).

279   Long, 'When Refugees Stopped Being Migrants' (n 27).

280   Bradley (n 8).

281   Long, 'When Refugees Stopped Being Migrants' (n 27).

282   Stevens (n 29).surprisingly, the meaning of protection is not without ambiguity. 'Domestic protection' can be distinguished from 'international protection'; the sense attributed to protection within the 1951 Refugee Convention contrasts with that of the 1950 United Nations High Commissioner for Refugees (UNHCR

283   Norwegian Refugee Council (NRC) (n 68).

284   ibid 47.

285   Cavalieri (n 182).

286   Betcy Jose and Peace A Medie, 'Understanding Why and How Civilians Resort to Self-Protection in Armed Conflict' (2015) 17 International Studies Review 515.

287   Ċetta Mainwaring, 'Migrant Agency: Negotiating Borders and Migration Controls' (2016) 4 Migration Studies 289.

288   International Committee of the Red Cross (ICRC) and InterAction Roundtable (n 5); Norwegian Refugee Council (NRC) (n 68).