

Liquid Traces: Investigating the Deaths of Migrants at the EU's Maritime Frontier

Charles Heller and Lorenzo Pezzani



Fig. 1. The waters of the Central Mediterranean, as seen from the coast of the Italian island of Lampedusa, July 2013. Photo: Charles Heller.

If geography expresses in its very etymology the possibility to write and therefore read the surface of the earth, the liquid territory of the sea seems to stand as the absolute challenge to spatial analysis. The waters that cover over 70 % of the surface area of our planet are constantly stirred by currents and waves that seem to erase any trace of the past, maintaining the sea in a kind of permanent present. In Roland Barthes' words, the sea is a "non-signifying field" that "bears no message."¹ Furthermore, its vast expanse and the lack of stable habitation on its surface lead events at sea to occur mostly outside of the public gaze and thus remain unaccounted for. The deaths of migrants at sea and the violation of their rights are no exception. While between 1988 and November 2012 the press and NGOs reported more than 14,000 deaths at the maritime frontier of the EU—including more than 7,000 in the Sicily Channel alone—the conditions in which these occur have rarely been established with precision and the responsibility for them has seldom been determined. Many

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Collaborating Organizations
The Aire Centre, Agenzia Habeshia, Associazione Ricreativa e Culturale Italiana (ARCI), Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Boats4People, Canadian Centre for International Justice, Coordination et initiatives pour réfugiés et immigrés (Ciri), Fédération internationale des ligues des droits de l'Homme (FIDH), Groupe d'information et de soutien des immigrés (GISTI), Ligue belge des droits de l'Homme (LDH), Ligue française des droits de l'Homme (LDH), Migreurop, Progress Lawyers Network, Réseau euro-méditerranéen des droits de l'Homme (REMDH), and Unione Forense per la Tutela dei Diritti Umani (UFTDU)

more lives have been lost without being recorded other than in the haunting absence experienced by their families.²

It is in relation to the challenges posed across this liquid frontier that we started the *Forensic Oceanography* project in summer 2011 in an attempt to document the deaths of migrants at sea and violations of their rights.³ This endeavour was spurred by the new demands for accountability that emerged in the aftermath of the Arab Spring, which represented a moment of paroxysm and rupture in a number of respects. The revolution in Tunisia and the civil war in Libya led to the sudden reopening of the central Mediterranean's clandestine migration routes. While this context saw an intense movement of people, the precarious conditions in which the crossings occurred led to a record number of deaths. However, as we will see, these deaths occurred while this very maritime space was being monitored with unprecedented scrutiny due to the NATO-led military intervention in Libya. The crossings and deaths were occurring in a space populated by a large number of Western states' military ships and patrol aircraft, and there were strong indications that military forces were failing in their obligation to rescue migrants in distress, despite possessing the requisite means of surveillance to witness their plight.

This was particularly apparent in the incident now known as the “left-to-die boat” case, in which sixty-three migrants lost their lives while drifting for fourteen days in the NATO maritime surveillance area, despite several distress signals relaying their location as well as repeated interactions, including at least one military helicopter visit and an encounter with a military ship.⁴ By precisely reconstructing these events and the involvement of different actors within them, we demonstrated that traces are indeed left in water, and that by reading them carefully the sea itself can be turned into a witness for interrogation. The contemporary ocean is in fact not only traversed by the energy that forms its waves and currents, but by the different electromagnetic waves sent and received by multiple sensing devices that create a new sea altogether. Buoys measuring currents, optical and radar satellite imagery, transponders emitting signals used for vessel tracking and migrants' mobile phones are among the many devices that record and read the sea's depth and surface as well as the objects and living organisms that navigate it. By repurposing this technological apparatus of sensing, we have tried to bring the sea to bear witness to how it has been made to kill.

Migrants do not only die at sea but through a strategic use of the sea. As this particular incident exemplifies, even when they drown following a shipwreck or starve while drifting in its currents, there is nothing “natural” about their deaths. Following Elisabeth Grosz, the sea, like any geographic environment, can be considered to be endowed with a “geopower” that “refers to forces that precede, enable, facilitate, provoke and restrict ‘life’,” but conversely political practices shape the way this geopower operates, and affect the ways some are empowered and others restricted by that power.⁵ Our project thus could not limit itself to reading the sea in order to document specific incidents, but demanded that we attempt to understand the conditions that have led the sea

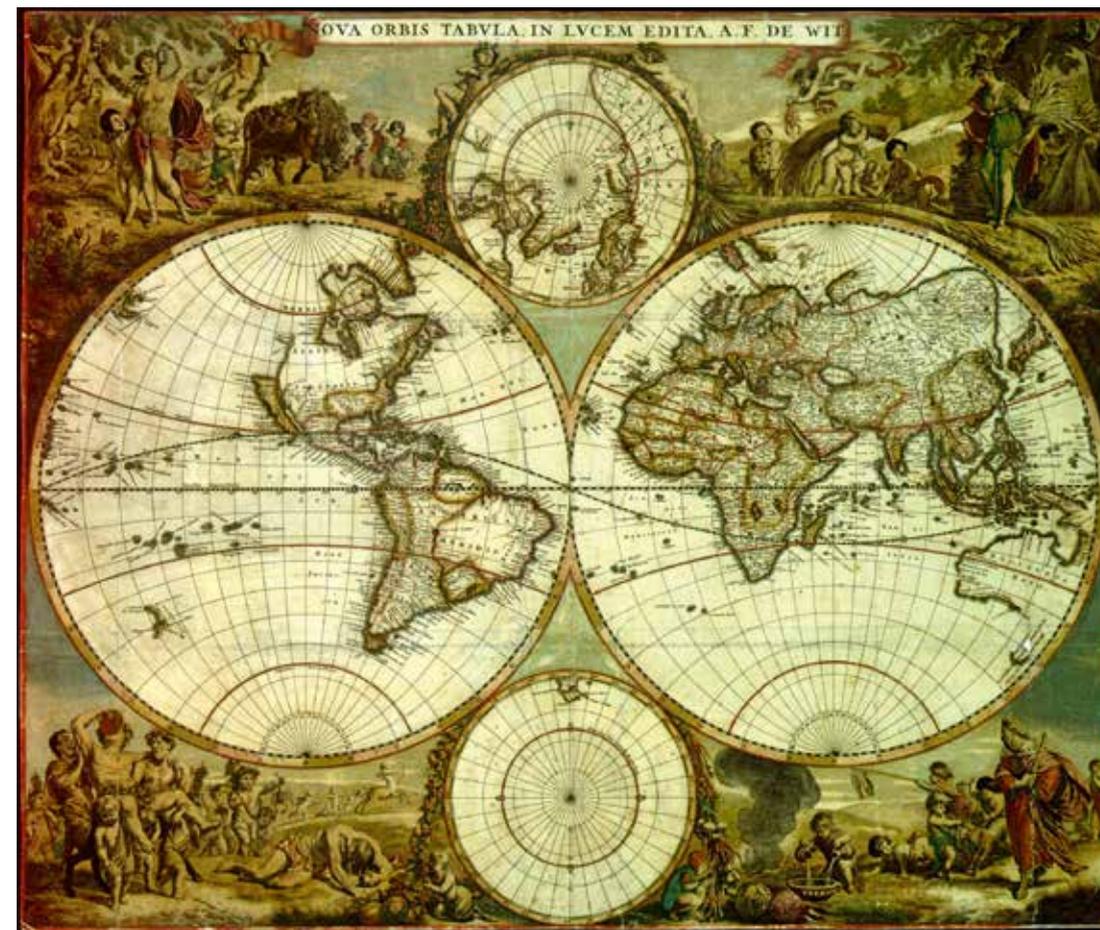


Fig. 2. *Nova Orbis Tabula in Lucem Edita*, Map of the world by Frederik de Wit, 1662, Bibliothèque royale de Belgique. Source: Wikimedia Commons.

to become so deadly. As we will demonstrate, the Mediterranean has been made to kill through contemporary forms of militarized governmentality of mobility which inflict deaths by first creating dangerous conditions of crossing, and then abstaining from assisting those in peril. This governmentality is shaped by the complex legal structure and mode of governance of the sea that enables state actors to selectively expand or retract their rights and obligations. What emerges from these conditions is a form of violence that is diffused and dispersed among many actors and which often, as in the case we have investigated, operates less through the direct action of a singular actor than through the inaction of many. As a consequence of this form of systemic violence, the specific responsibility for deaths and violations at sea is difficult to detect and prove. Before describing the strategies and methodologies we applied to collect the testimony of the sea so as to reconstruct the “left-to-die boat” case and others, it is first necessary to chart the broader political, juridical, and technological conditions through which the sea was made to kill—conditions that we have mobilized against the grain in the task of breaching the impunity of the actors involved.

Maritime Governance: Beyond the "Freedom v. Enclosure" Divide

In "The Nomos of the Earth" the German jurist and political theorist Carl Schmitt epitomized a vision of the sea as an anarchic space in which the impossibility of drawing long-standing and identifiable boundaries made it equally difficult for European states to establish a durable legal order or found claims of sovereignty.⁶ "The sea," he wrote, "has no character, in the original sense of the word, which comes from the Greek *charassein*, meaning to engrave, to scratch, to imprint."⁷ On this note, Schmitt based the fundamental distinction on which geopolitics has been predicated for many years: the binary division between a solid land, where territories can be clearly demarcated and where order may be imposed, and a sea where borders can be neither traced nor held and where freedom reigns absolute. This opposition found its expression in the evolution of maps of the world which, from the early seventeenth century onwards, tended to represent (European) land in great detail in terms of geographic morphology, human built environment and political boundaries, but signified the territory of the surrounding sea as an abstract and frictionless geometric space open to navigation (see fig. 2).⁸

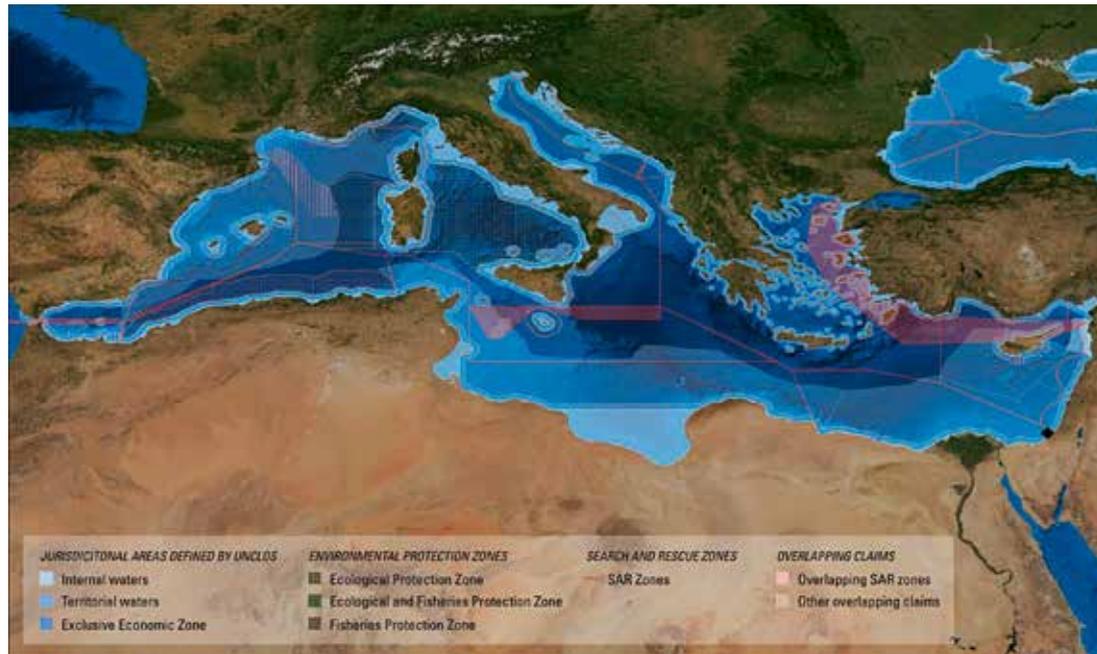
While idealizations of the sea as empty and lawless still persist today,⁹ recent scholarship on maritime governance tells us a different story, in which the oceans have long been crisscrossed by multiple regimes of appropriation and juridical differentiation.¹⁰ Geographer Philip Steinberg in particular has shown how maritime governance imposed by (Western) states and capital has oscillated throughout modernity between two poles: on the one hand, the desire to divide up the waters of the earth in a way that would mirror the carving up of territorial boundaries on land; on the other, the vision of the oceans as commons, open to free navigation—the "free seas." However, rather than an either/or application of these seemingly opposed tendencies, what we observe throughout this period is rather their productive entanglement.¹¹

This productive tension is at work in one of the founding moments of maritime law, commonly referred to as the "Battle of the Books" (1580—1650), which centred around the opposition between the vision of a free sea expressed by the Dutch jurist Hugo Grotius in his 1609 text *Mare liberum* ("the free sea") and the defense of maritime division and control formulated by the English scholar John Selden in *Mare clausum* ("the closed sea") in 1635.¹² But this apparent contrast conceals a deeper convergence. While Selden, by noting that "mare clausum can go only so far as one can assert effective control," endorsed negatively the idea of freedom for the high seas,¹³ the concept of the "freedom of the seas" coined by Grotius routinely led to the use of coercion to ensure the smoothness and security of trade routes or block those of competitors.¹⁴ As Philip Steinberg writes, "freedom requires policing and mobility requires fixity, and both of these activities require continual efforts to striate the ideally smooth ocean."¹⁵

For both poles in the governance of the seas, the ability to map, measure, and exercise surveillance over the maritime space was fundamental. This knowledge did not precede its application in the service of power, but was inextricably bound to war, trade, and imperialism in its very production. It was the coupling of scientific epistemologies and Western commercial and military networks spanning the globe that enabled systematic measurements to be sampled across vast distances, and generated increasingly detailed knowledge of the winds, currents, tides, depths, landmasses, and living organisms that constitute the ocean's global system.¹⁶ This understanding of the seas was essential to secure and fast navigation, as well as to charting maritime territory and life in a way that would eventually enable its division, exploitation and regulation.

While Carl Schmitt was indeed right to state that the sea itself cannot be carved up and possessed as land, the same is not true of the resources located within the water and in the soil under it, or the traffic that floats on its surface. By going beyond his land—sea binary and by being attuned to the vertical dimension of maritime spaces, we are able to decipher a much more complex form of governance than the simple opposition between territorial control and deterritorialized flow.

The tension between and coexistence of the tendencies of enclosure and freedom in the governance of maritime space have resulted in, on the one hand, a form of unbundled and spatially variegated sovereignty, and on the other a governance in motion that seeks to compensate for the impossibility of controlling the entire liquid expanse by focusing on the control of maritime routes and the mobile people and objects that ply them. Whereas in 1702 the extension of the territorial waters could be defined by Cornelius Bynkershoek as the area covered by coastal states' cannon-shot range, with the governance of routes largely dependent on the presence of ships along key corridors, today a far more complex jurisdictional regime and mode of governance has been enabled by the contemporary technological apparatus discussed below, which transforms the maritime space into a dense and extensive "sensorium."¹⁷ In this situation, as we will see with reference to the Mediterranean, multiple lines of enclosure that run parallel to the coastline and dissect the surface and volume of the ocean into partial sovereignty regimes intersect with diagonal and ever shifting lines of control that attempt to follow routes of maritime traffic. These sets of lines do not simply coexist for, as we will see, the carving up of partial sovereignty regimes is the very legal basis for governance in motion to expand and retract selectively in policing the "free seas."



Lines of Enclosure: Unbundled Sovereignty at Sea

The successive stripes of jurisdiction, which, by dissecting both surface and volume of the sea determine the current legal architecture of maritime territories, are mainly codified by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹⁸ After establishing the criteria for determining the position of the so-called “baseline”—the ideal line that usually corresponds to the low-water line along the coast—the convention further defines several jurisdictional zones, over which states exercise decreasing degrees of control and exclusive privilege. These include, among others, “territorial waters” that extend up to twelve nautical miles from the baseline within which states have full sovereignty; the “contiguous zone,” covering up to twenty-four nautical miles and within which states may further exercise certain border police functions; the “exclusive economic zone” (EEZ), which may delimit a zone up to two hundred nautical miles from the baseline, within which coastal states have exclusivity over natural resources both in the water (such as fish) and under the soil (such as gas or oil). Beyond this zone lie the “high seas,” where no state can exercise its full sovereignty nor subject any part of them to its jurisdiction. While the high seas are “free for all states and reserved for peaceful purposes,” they do not become as a result a legal vacuum, since the rights and obligations of each actor and state are framed by international law. The jurisdiction of states applies to boats flying their respective flags,

Fig. 3. Map of maritime jurisdictions in the Mediterranean. Based on data compiled by www.marineplan.es and the International Maritime Organization. Design: Lorenzo Pezzani.

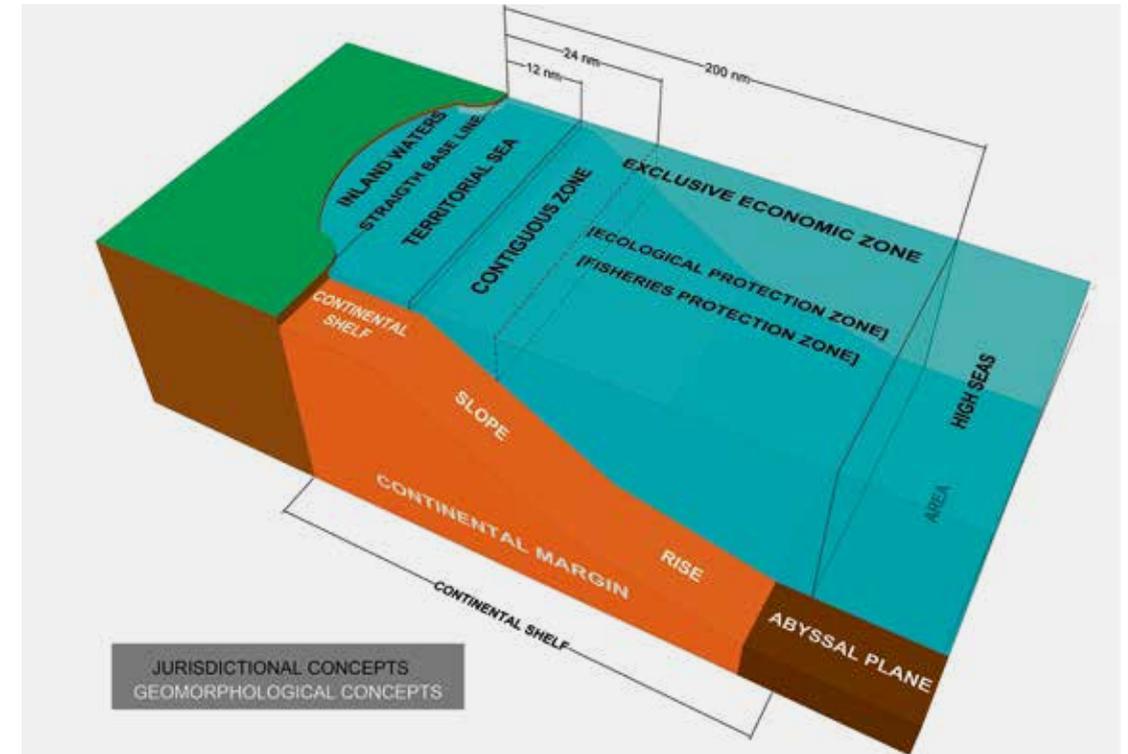


Fig. 4. Maritime jurisdictional concepts. Source: Juan Luis Suárez de Vivero, “Jurisdictional Waters in The Mediterranean and Black Seas” (European Parliament, 2010), p. 27.

and each boat thus becomes a small piece of floating state jurisdiction, transforming the high seas into an international space in the strongest sense, since all states are potentially in contact with each other.¹⁹ Finally, vessels and coastal states also have particular obligations: among these, of central relevance for our investigation into the “left-to-die boat” case, are the duty of vessels to provide assistance to people in distress, and the obligation of coastal states to coordinate rescue operations. For this purpose, Search and Rescue (SAR) zones have been established across the high seas, delimiting the geographic areas within which particular states have a legal responsibility to coordinate rescue operations.²⁰

What emerges from this process of enclosure of the high seas by various and sometimes competing jurisdictional regimes, is the image of a space of unbundled sovereignty, in which the rights and obligations that compose modern state sovereignty on the land are decoupled from each other and applied to varying degrees depending on the spatial extent and the specific issue in question.²¹ As a result, a patchy legal space constituted by overlapping and often conflicting fragments has emerged. The Mediterranean is a paradigmatic example of this phenomenon, which is therein reproduced at a smaller scale but with increased rapidity and intensity. Until recently, most Mediterranean states had refrained from extending exclusive claims beyond their territorial waters, for fear of getting entangled in thorny legal conflicts and of reducing the navigational advantages guaranteed by the high seas. Since

the beginning of the 1990s however, under changed geopolitical conditions, the Mediterranean has entered a phase of accelerated juridicalization, and zones of exclusive maritime use have proliferated, extending national jurisdiction into what used to be high seas.²² These are zones of environmental protection and resource conservation which are often not even provided for by the UNCLOS, but which further subdivide the high seas according to specific functions such as fishing, ecological and archaeological protection. The complexity of these maritime jurisdictions has in turn created numerous disputes which involve states as well as fishing, oil, and shipping companies and which are often fought through scientific campaigns to map and measure the size of fisheries, the morphology of the seabed, and the presence of minerals located under it.²³

These overlaps, conflicts of delimitation, and differing interpretations that have been the by-product of the recent carving up of the sea are less malfunctions than an exacerbated expression of the structural condition of global law, which, as Gunther Teubner and Andreas Fischer-Lescano have argued, results from deep contradictions between colliding sectors of a global society.²⁴ Furthermore, as we will see in relation to the policing of illegalized migrants at sea, this condition has become an integral part of the capacity of states and other actors to apply rights and abide by obligations at sea selectively according to their interests, expanding and retracting their jurisdictional claims at will—for example to intercept migrants or to evade the obligation to rescue people in distress. This unbundled and elastic sovereignty is key to the operations of the mobile governance exercised to police the so called “freedom of the seas.”

Lines of Control: Governance in Motion through Scopic Systems

In addition to the lines of enclosure running parallel to the coastline discussed above, the Mediterranean is crisscrossed by diagonal and ever shifting lines of control that emerge as maritime governance attempts to follow routes of maritime traffic and police the “freedom” of the high seas. As Michel Foucault had already noted in the late 1970s, this inextricable articulation between freedom and control is characteristic of forms of mobility governance in (neo)liberal societies, which operate by “maximizing the positive elements,

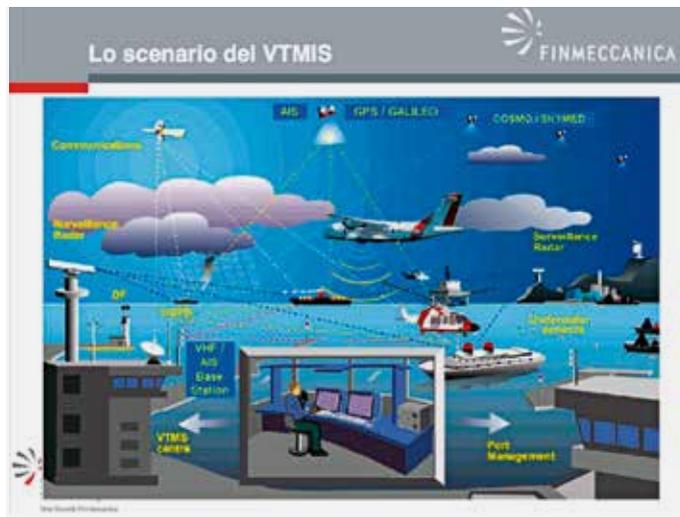


Fig. 6. (opposite) This map, produced by the European Commission Joint Research Centre, shows the density of Synthetic Aperture Radar images available in 2001 across the Mediterranean Basin. Source: D. Tarchi, oil spills statistics in the Mediterranean, PowerPoint presentation at the specialized training course on oil pollution monitoring, November 2006.

Fig. 5. (below) Finmeccanica PowerPoint slide from “Dal VTS al VT-MIS,” 2007. The graphic presents the “Vessel Traffic Management and Information System” (VTMIS).

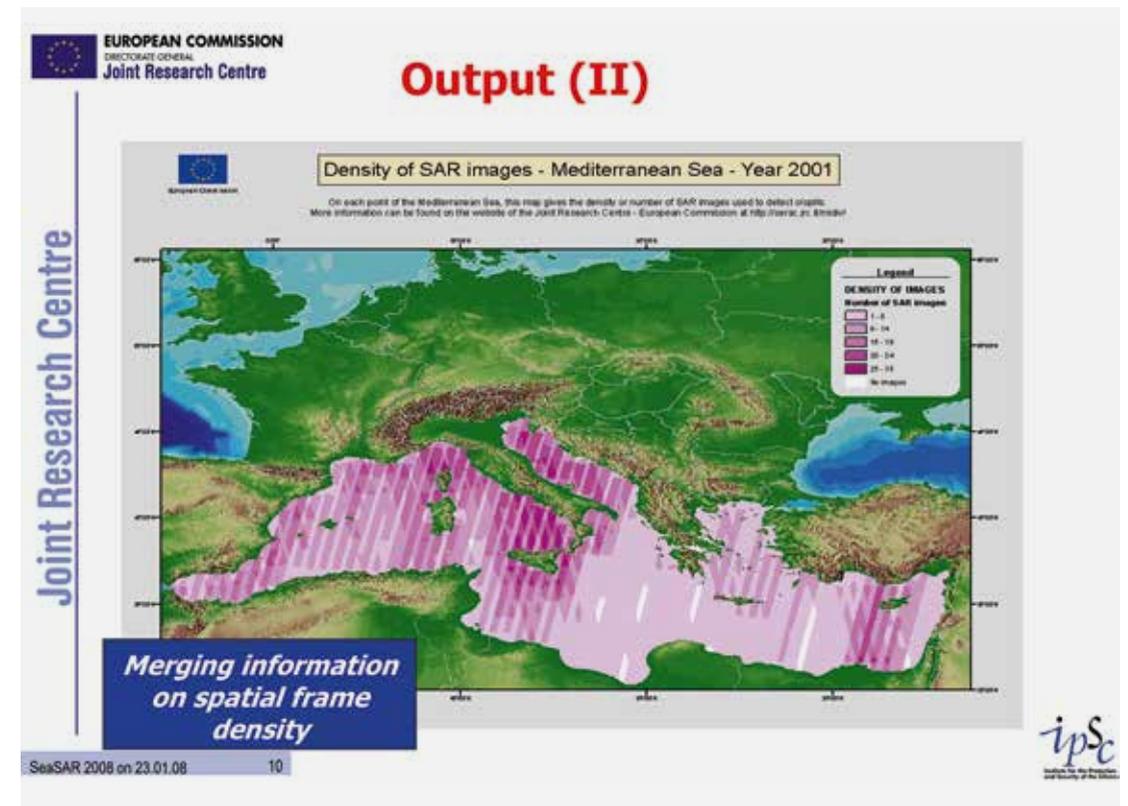


Fig. 7. (opposite) Screenshot of one of the live online vessel tracking portals, which gathers and presents live AIS data. Source: www.marinetraffic.com.

for which one provides the best possible circulation, and [by] minimizing what is risky and inconvenient, like theft and disease, while knowing that they will never be completely suppressed.”²⁵ While the Mediterranean’s waters are central to global trade—with an estimated total of 200,000 commercial ships crossing it annually²⁶—this dense traffic and the maritime space itself are perceived through the lens of security as being constantly under threat: from international terrorism, criminality, illegal fishing, pollution, and, of course, illegalized migration. To detect threats amidst the productive flow of vessels and goods, states deploy means of surveillance, military and border patrols, and rescue agencies. In addition to national initiatives, NATO’s Operation Active Endeavour was launched in the wake of 9/11 to act as a deterrent and protect civilian traffic in the Mediterranean. Policing has thus become an increasingly structural part of the supposed freedom of the high seas. The exercising of the “right of visit” is an indication of this. While according to the UNCLOS this right allows officials to board a vessel in the high seas in “exceptional circumstances,” it has come to be used to justify an increasing number and array of interventions, including the routine interception of migrants.²⁷ Nevertheless, the deployment of aerial and naval forces remains insufficient to police the vast waters of the Mediterranean. The sorting out of “bad” traffic from large quantities of “good” mobilities within an extremely vast space necessitates the assemblage of a sophisticated and increasingly automated technological apparatus of surveillance.

For the purposes of surveillance, the coasts of the Mediterranean, as well as state-operated vessels, are equipped with radars that scan the horizon around them by sending out high-frequency radio waves that are bounced back to the source wherever they encounter an object, indicating these “re-turns” as an illuminated point on a monitor. Automated vessel-tracking data for large commercial ships (AIS) or for fishing boats (VMS) is sent out by a transponder on board via the VHF radio frequency and captured either by coastal or satellite receivers, providing a live view of all registered vessels.²⁸ Optical satellites generate imagery by capturing reflected energy of different frequencies such as visible and infrared light, while satellites equipped with synthetic—aperture radar (SAR) emit a radio signal and create an image based on the variations in the returns. Both “snap” the surface of the sea according to the trajectory of orbiting satellites and are used to detect unidentified vessels or track pollution. The constant emission and capture of different electromagnetic waves these technologies utilize confers a new material meaning on Fernand Braudel’s metaphor of the Mediterranean as an “electromagnetic field” in terms of its relation to the wider world.²⁹ These technologies do not simply create a new representation of the sea, but rather constitute



Fig. 8. Aerial video of a migrants’ boat recorded and published online by the Italian border police. Source: “Lampedusa: Immagini inerenti l’attività della Guardia di Finanza a contrasto dell’immigrazione clandestina,” September 17, 2011, <http://youtu.be/E1eB--bK6w4>.

a new sea altogether, one which is simultaneously composed by matter and media. The current aim of different agencies striving to govern the sea is to assemble these different technologies so as to achieve the most complete possible “integrated maritime picture.” This is both a technological and institutional challenge, since it requires the interoperability of agencies from different countries (both within and outside the EU) across different fields of activity. Through this assemblage emerges what Karin Knorr Cetina has called, with reference to financial markets, a “scopic system”: “When combined with a prefix, a scope (derived from the Greek *scopein*, “to see”) is an instrument for seeing or observing, as in periscope. [...] A scopic system is an arrangement of hardware, software, and human feeds that together function like a scope: like a mechanism of observation and projection [...]”³⁰

While the assemblage of technologies and institutions that constitute the Mediterranean’s scopic system enable a “vision” of the sea that far exceeds that of its ancestor the telescope, it is still far from producing the totalizing panoptic view that state agencies and surveillance companies regularly call for. For a start, agencies come up against their limits when faced with the huge quantity of data generated by the dense maritime traffic and the increasing deployment of remote-sensing technologies. To deal with the ensuing information overload, surveillance agencies are increasingly resorting to the use of algorithms that allow the automatic detection of “anomalies” so as to distinguish “threats” from the “normal” maritime traffic.³¹ An even bigger challenge is posed by the task of detecting the kinds of small boats used for clandestine migration—such as ten-meter rubber boats or fifteen-meter wooden boats—within such a vast area. In this respect, all solutions to date have run up against the conflict between resolution and swath: while the detection of small boats necessitates high-resolution means of sensing (such as SAR satellite imagery), this can only be achieved for small geographic areas, thus leaving much of the maritime area unattended.³² As such, the Mediterranean’s scopic system operates a form of incomplete and patchy surveillance that runs up against the frontiers of information quantity and resolution.

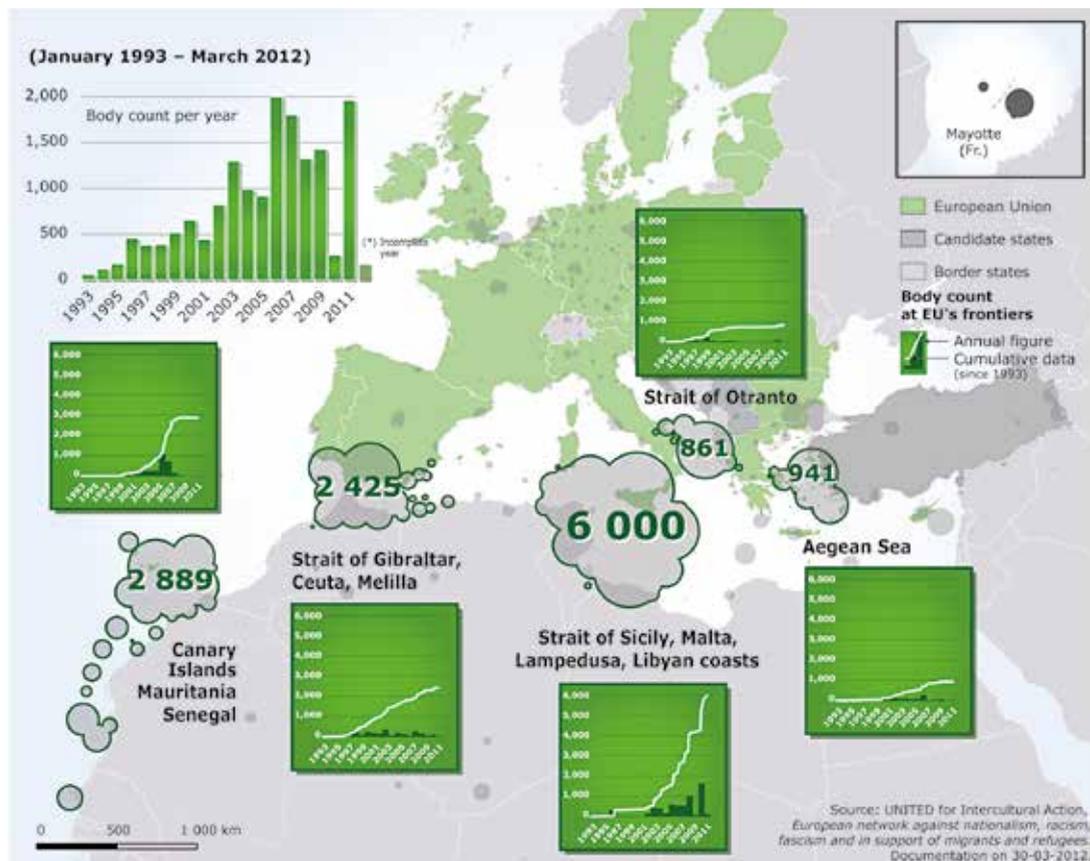
Recognizing the impossibility of monitoring the entire space of the sea and the totality of traffic that populates it, state agencies focus the attention of their mobile governmentality on the main vectors and lines of sea crossing. At work then is a form of “viapolitics,” a concept coined by William Walters to describe a politics that takes as its object routes and vehicles.³³ For Walters, “vehicles and their infrastructures are nodes, relays, surfaces, volumes in a dispersed and uneven governance of population and territory.”³⁴ The modality of governance of the maritime frontier is thus deeply shaped by and to a certain extent consubstantial of the surveillance apparatus that enables it. For if the border exists only in its violation, the latter must first be detected either by human perception or its various technological extensions. Conversely, the strategies of invisibility enacted by clandestine migrants so as to slip through the cracks and gaps in this surveillance apparatus are essential to subverting the violent border regime that operates at sea.

The Contested Frontier: Mobile Knowledges, Elastic Borderings, and the Politics of Irresponsibility

Like the ocean, the mobility of people has proven particularly difficult to govern throughout history. In the past twenty years, severe restrictions have been imposed on the movement of people across the Mediterranean with the introduction of Schengen visas and the progressive externalization of border controls into the maritime frontier and onto North African states. This brought to an end to the phase following World War II in which “guest-worker” programs and postcolonial relations promoted the influx of migrant laborers into European countries—who frequently crossed the sea by ferry.³⁵ The recent restrictions to the movement of non-European migrants have however proven unsuccessful in curbing “unwanted” migration flows.³⁶ Migration from the southern shores of the Mediterranean has continued, but in a clandestine and precaritized form, employing, amongst other methods, the crossing by sea on unseaworthy vessels.

Those wanting to cross the Mediterranean despite being denied access to formal and legal modes of doing so had to create a new transport infrastructure, constituted as much by actual vessels as by interpersonal relations

Fig. 9. Deaths at the Borders of Europe. Source: Migreurop, *Atlas of Migration in Europe: A Critical Geography of Migration Policies* (London: New Internationalist Publications, 2013).



and knowledge of borders. Faced with governmental agencies’ interlinking of their means of surveillance to form an “integrated maritime picture” so as to control mobility, illegalized migrants developed their own social network through which information and services are exchanged.³⁷ As the work of the sociologist Mehdi Alioua has shown, contrary to common perception, resorting to smugglers is usually limited to particularly difficult stages in the crossing of borders, whereas the majority of migrants’ trajectories are organized autonomously and collectively. Through their mobility, migrants progressively generate a shared knowledge, which allows them to orient themselves in new environments and know where and how to cross borders undetected.³⁸ This collective knowledge and practice of border crossing has a deep and ambivalent aesthetic dimension, in that it hinges on the conditions of appearance of migrants.³⁹ The very term “clandestine,” from the Latin *clandestinus* meaning “secret” or “hidden,” points to their aim to circulate undetected—literally, under the radar; this is also why most crossings begin at night. However this desire to go undetected is always weighed against the risk of dying unnoticed at sea, as in the “left-to-die boat” case when, in distress, the migrants did everything they possibly could to be noticed and rescued.⁴⁰

In response to the continued capacity of illegalized migrants to reach the southern shores of Europe, through a series of policies and practices the Mediterranean was progressively militarized and transformed into a frontier area that allows border operations to both expand and retract far beyond the legal perimeter of the EU, thus adding further friction to the mobility of migrants.

In an important report submitted in 2003 to the EU Commission by CIVIPOL—a semi-public consulting company to the French Ministry of the Interior—the authors explain that in order to “hold a maritime border which exists by accident of geography,” it is necessary to go well beyond an understanding of the maritime border as delimited by EU states’ territorial waters.⁴¹ To exploit the geopower of the sea and use its physical characteristics to reinforce the border, surveillance has to cover “not just an entry point, as in an airport, nor a line, such as a land border, but a variable-depth surface.”⁴² The unbundled sovereignty at work in the high seas enabled European and non-European coastal states—assisted since 2001 by NATO as part of its “Operation Active Endeavour” and since 2006 by Frontex (the European border management agency)—to deploy maritime border patrols using boats, helicopters, airplanes, and the aforementioned surveillance technologies to intercept incoming migrants.

Through these means of governance in motion, the line of the border has become elastic, expanding and retracting with the movement of patrols. However, the increasing militarization of the maritime frontier of the EU has not succeeded in terms of the stated aim of stopping the inflow of illegalized migrants, but rather has resulted in the splintering of migration routes towards longer and more perilous areas of crossing.⁴³

It is thus the strategic use of the maritime environment as a frontier zone that has turned the sea into an unwilling killer. The fact that such policies remain active despite policy makers' knowledge of their "failure" is a reminder of the productive dimension of illegalized migration. It makes it possible for governments to engage in a never ending "war on migration" whose benefits include attracting the populist vote, keeping the surveillance and military industries buoyant, and, last but not least, providing the labor market with a ready supply of de-qualified and precaritized laborers. This is the obscene supplement of the spectacular scene of border enforcement to which Nicholas De Genova rightly draws our attention.⁴⁴

As a result of these policies and militarized practices, once travelling at sea, migrants frequently find themselves in difficult situations of distress, due to a variety of factors such as failing motors, vessel overload, or loss of direction. However, as soon as they enter the Mediterranean Sea, they enter a space of international responsibility. We have already noted the obligation of vessels at sea to provide assistance to those in distress, and for coastal states to coordinate rescues within their respective Search and Rescue (SAR) zones. The strategic mobilization of the notion of "rescue" has at times allowed coastal states to justify police operations in the high seas or even within foreign territorial waters for which they would otherwise have little legal ground, thus blurring the line between policing and humanitarian activities.⁴⁵ But along with rescue comes the burden of disembarkment, which in turn entails responsibility for processing possible asylum requests or deporting migrants in accordance with the so-called Dublin Regulation.⁴⁶ To avoid engaging in rescue missions, states have strategically exploited the partial and overlapping sovereignty at sea and the elastic nature of international law.⁴⁷ The delimitation of SAR zones has been the first battlefield. In the central Mediterranean, Tunisia and Libya have refrained from defining the boundaries of their SAR zones, while Italy and Malta have overlapping SAR zones and are signatories to different versions of the SAR convention, a situation which has led to repeated standoffs.⁴⁸ The latter have been exacerbated by the lack of clear definitions of concepts such as "distress" and "assistance" within international maritime law, enabling divergent interpretations.⁴⁹ Moreover, coastal states' unwillingness to accept the disembarkment of migrants has led to an increased reluctance on the part of seafarers to allow those in distress on board their vessels, "in some cases fearing criminal liability for being accused of facilitating illegal immigration." In such ways, the international legal norms established to determine responsibility for assisting those in distress at sea have been used precisely for the purpose of evading and deferring this responsibility. As a result, many migrants have been left unassisted, leading to human tragedies. It was precisely this politics of irresponsibility that was at work in the unfolding of the "left-to-die boat" case.

While Italy and Malta had been informed of the location and distress of the passengers, with the vessel still outside of their SAR zones (but soon to enter their zone of overlapping and conflicting responsibility), they limited themselves to sending out distress signals to vessels transiting the area and informing NATO command, which was monitoring the "Maritime Surveillance Area" within which the passengers were located.⁵⁰ However during the time of the international military intervention in Libya, NATO operated a practice of minimal assistance, the aim of which was to ensure that the migrants could continue their journey until they entered the Italian or Maltese Search and Rescue (SAR) zone so that they would become a concern for those states. While this did occur in several instances, in the case of the "left-to-die boat" the evaluation of the distress of the migrants and the minimal assistance provided to them (a helicopter visited them twice and dropped a few bottles of water and biscuits) were clearly insufficient as they soon started to drift back to the Libyan coast, left to merciless winds and currents that inflicted on the passengers a slow death.

If migrants thus die at sea from a range of direct causes such as dehydration, lack of food, the ingestion of salty water and drowning, all of which are related to the geopolitics of the sea, it should be clear from the above that it is through the enforcing of migration policies imposed by the EU and their articulation within a particular maritime legal and governance regime that the sea has been turned into a deadly liquid, the site and means of a rising number of deaths and structural violations of migrants' rights. What has emerged is a form of violence that is exercised less by effecting a destructive force onto a given actor, than by creating *the conditions* in which the sea becomes a liquid trap and refraining to help those who are caught in it. In this, the governmentality of migration at sea constitutes an example of a form of biopolitical power described by Foucault, which is exercised not only by actively sustaining and protecting the life of certain populations, but also by causing death of others by simply abstaining from any form of action. To paraphrase his famous summary of this form of power, one could say that the maritime border regime "makes flow and lets drown."⁵¹ The migration regime thus produces a form of systemic violence that kills without touching and is exercised by several actors simultaneously. As a consequence, the responsibility for the deaths and violations that are its structural product is shared, diffuse, and thus difficult to address. While migrants' rights organizations have been documenting the deaths of migrants for a number of years and have denounced the deadly policy of the maritime border regime, it was not until 2011, with the radical geopolitical shifts brought about by the "Arab Spring" and the military intervention in Libya, that new possibilities for addressing this form of violence arose.

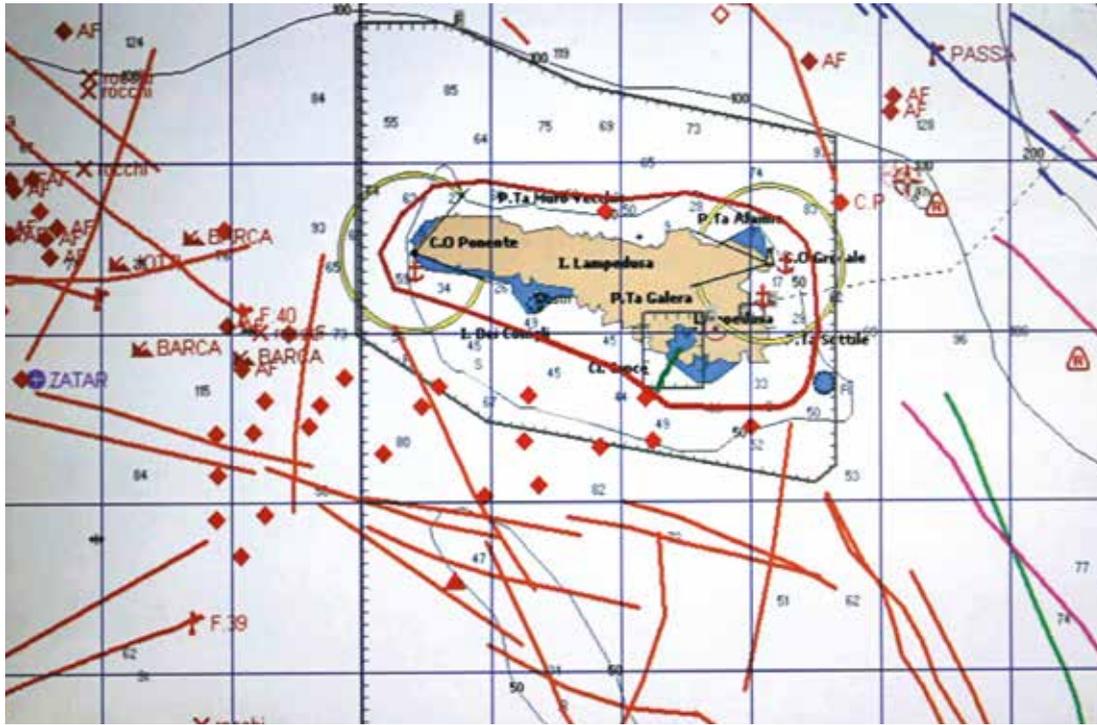


Fig. 10. Still from a video depicting the digital navigation system onboard one of the trawlers of the Mazara del Vallo fleet (Southern Sicily). The map shows the various trawling paths and the presence of obstacles (rocks and shipwrecks) around the island of Lampedusa, Mazara del Vallo, July 2012. Video: Charles Heller and Lorenzo Pezzani.

2011: Ruptures in the Migration Regime and Renewed Opportunities for Accountability

In relation to the context outlined above, 2011 represented a moment of paroxysm and rupture in a number of respects. The so-called Arab Spring led to a temporary power vacuum in Tunisia that enabled over 28,000 people to cross the sea to Italy during that year. This intense mobility in the immediate aftermath of a revolution is a clear indication that the aspiration to freedom and justice of the Tunisian people was directed not only

towards the way their country was governed, but also extended towards the imposition by the EU—with the active participation of the Ben Ali regime—of a violent and discriminatory migration

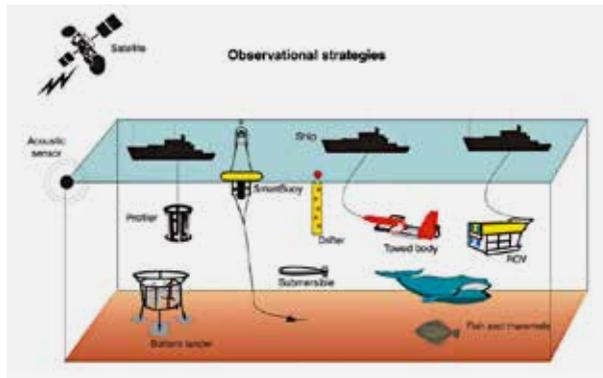


Fig. 11. Schematic overview of marine observational strategies (drawing by Irene Gooch). Source: Silke Kröger and Robin J. Law, "Biosensors for Marine Applications," *Biosensors and Bioelectronics*, vol. 20, no. 10 (April 2005): 1905.

regime within and beyond Tunisia's borders.⁵² The uprising in Libya led less to the seizing of a new freedom than to forced displacement. The entrenched civil war and the ensuing NATO-led military intervention forced almost 26,000 people to cross the sea to reach the southern shores of Italy, with Gaddafi's regime playing an active role in forcing migrants onto boats with the aim of using them as weapons of war.⁵³ With boats loaded to the point of collapse and without regard for even the minimal safety measures usually provided by smugglers, over 1,822 recorded deaths occurred in the Central Mediterranean during 2011, one of the all-time highs.⁵⁴ However, these deaths occurred at a time when the militarization of the EU's maritime frontier had taken on entirely new dimension, with the usual agents of the low intensity "war on migration" joined by a large number of additional military ships and patrol aircraft deployed by Western states off the Libyan coast in support of the international military intervention. Their mission included the surveillance of a wide maritime space off the coast of Libya in order to enforce an arms embargo.⁵⁵

In this context, a coalition of NGOs was formed with the aim of identifying direct responsibility for these deaths. Their claim was that, given the means deployed, it would have been impossible for military and border control personnel to have failed to witness the distress of migrants at sea.⁵⁶ The "left-to-die boat" incident provided a case in point and the coalition decided to focus on this paradigmatic incident to launch a legal case claiming liability for nonassistance of people in distress at sea. In support of this endeavor, together with the architectural practice SITU Research, we produced a seventy-three-page report which, by mobilizing a wide range of digital mapping and modeling technologies and by relying on an unorthodox assemblage of human and nonhuman testimony, reconstructed and mapped as accurately as possible what happened to this vessel.⁵⁷ Having outlined above the conditions that have turned the sea into a deadly liquid, we are now in a position to explain how we brought the sea to bear witness to the conditions that have led it to kill.

As should now be clear from our discussion of the scopic system assembled to monitor maritime traffic, it is no longer true that the sea entirely resists being written. The maritime space is constantly registered in optical and thermal cameras, sea-, air-, and land-borne radars, vessel tracking technologies, and satellites that turn certain physical conditions into digital data according to specific sets of protocols, determining the conditions of visibility of certain events, objects, or people. While many of these remote sensing means remain in the exclusive hands of states and their agencies, certain types of automated vessel tracking data ("automatic identification system," or AIS), meteorological data, as well as satellite imagery are available to the public. Moreover, parallel civilian networks also supplement these sensors: migrants frequently film their crossings with mobile phones, while networks of ship- and plane-spotters post photographs of naval activities, thereby contributing to documenting, transmitting and archiving events at sea.⁵⁸

Through this vast process of imaging and dataization of the maritime space, the sea has become a vast and extended sensorium, a sort of digital archive that can be interrogated and cross-examined as a witness. This is precisely what we did in order to produce our report: in the absence of external witnesses, we corroborated survivors' testimonies by interrogating the very environment where these events took place, the sea itself.

But in a context in which remote sensing is so central to the process of policing illegalized migration and the success of clandestine border crossings hinges on not being detected, how to avoid becoming complicit with the governmental attempt to manage migration by shedding light on the transgression of borders? The use of these technologies and other sources of information demanded that we position ourselves strategically in relation to their usual application by border agencies. While the latter perform an ambiguous act of unveiling practices of clandestine migration while concealing the violent political and legal exclusion that produce this clandestine status in the first place, as well as the numerous legal violations the migration regime generates in turn, our approach needed to invert this strategy.⁵⁹ We aimed not to replicate the technological eye of policing, but to exercise a "disobedient gaze," one which refuses to disclose clandestine migration but seeks to unveil instead the violence of the border regime. Applying this strategy to the "left-to-die boat" investigation entailed redirecting the light shed by the surveillance apparatus away from clandestine migrants and towards the act of policing the sea, and spatializing the practices of different actors so as to reinscribe responsibility within the space of the unbundled sovereignty at sea.⁶⁰

As described in more detail earlier in this volume, we mobilized different remote sensing technologies to reconstruct the events and determine the degree of involvement of different parties in several ways.⁶¹ In this endeavor, it has been crucial to couple a robust understanding of the technical characteristics of these technologies with a thorough analysis of the web of economic, scientific and political relations in which they are embedded and which shape both their potential usage and the epistemological frame they impose on the world.⁶² Only then was it possible to insert ourselves within the complex chain of production that their use involves, in order to locate specific nodes from where information could be extracted and repurposed towards the spatio-temporal reconstruction of the events and actors involved in the incident.

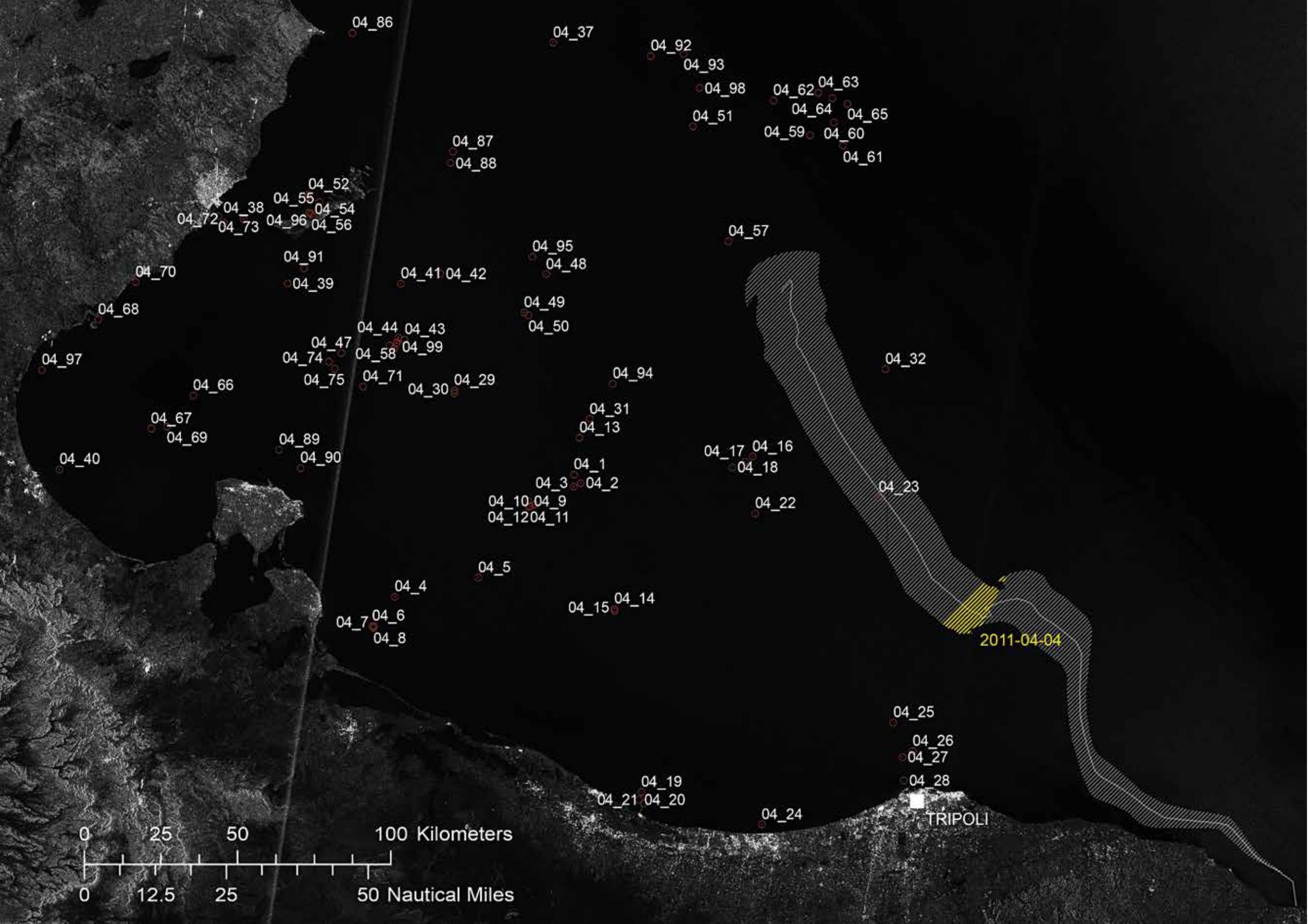
First, we reconstructed the trajectory of the migrants' boat up to its point of drift, by georeferencing the position of the migrants' distress calls using a satellite phone and by reconstructing the boat's speed and route based on detailed interviews with the survivors. But to determine the entire trajectory of the boat during its fourteen days of deadly drift, we also had to bring the winds and the currents to bear witness. An oceanographer reconstructed a model of the drifting vessel by analyzing data on winds and currents collected by buoys in the Sicily Channel.⁶³ In this way, we determined that the migrants' vessel remained for the majority of its trajectory within the NATO maritime surveillance area.

With the migrants' boat's trajectory determined and the knowledge of its distress by other vessels operating in the area at the time established by tracing the different distress signals that were sent out, the key question became "which ships were in its vicinity and failed to respond?" To answer this, we relied on synthetic aperture radar (SAR) satellite imagery, which, analyzed by a remote sensing specialist, allowed us to establish the presence of a number of ships in the immediate vicinity of the migrants' boat. However, the relatively low resolution of the images (1 pixel represents 50 m² or 75 m²) did not allow us to locate migrants' boats (usually small wooden and plastic vessels), but only the bigger military and commercial vessels. The *resolution* of the image thus became a highly political issue, in that it determined the frontier between the visible and invisible, and separated the practice of a disobedient gaze from an uncritical act of revealing that risks complicity. In the process, not only were we using against the grain a technology usually used for surveillance, but repurposing the very images surveillance produces: the availability of those SAR images was probably due in the first place to the military operations in Libya, since there was a sharp increase in the number of available images coinciding with the days of the conflict.

In a third strategic use of surveillance technology, this time in line with the claim made by the coalition of NGOs, we turned the knowledge generated through surveillance means into evidence of responsibility. While the military had deployed exceptional means of surveillance to impose the embargo and detect any threat at sea, the knowledge they generated also made them aware of the distress of migrants—and therefore responsible for assisting them. After collecting several official statements by military officials celebrating the technical capability of the means of surveillance deployed in the Mediterranean, we carried out a detailed analysis of the range and precision of their sensing technologies in order to prove that the naval assets in operation at the time of the "left-to-die boat" case had the means to detect the drifting migrants' boat. While, as Bruno Latour reminds us, with the capacity to sense events should come "sensitivity"—the capacity to respond to them—the lack of response despite the knowledge generated by surveillance became in this case evidence of guilt.⁶⁴ In this way, we attempted to close the gap which the politics of irresponsibility tries to leave open, between the possibility of sensing a certain event (of distress) and the obligation to intervene.

While many questions remain open in terms of the identities of the different actors involved—crucially the two helicopters and the military ship that entered into direct contact with the migrants have not yet been identified—we were able to provide a precise reconstruction and to point to the implication and failures of several actors, including NATO and the coalition of national militaries, the Italian and Maltese Coast Guards, the fishing and commercial vessels present in the area and Gaddafi's troops. Because of this multiplicity of actors and the partial and overlapping juridical regimes with which the migrants' boat intersected, the question of who

Fig. 12. (overleaf)
Analysis of April 4, 2011
Radarsat-1 Synthetic
Aperture Radar (SAR)
by Rossana Padeletti,
GIS and Remote Sensing
specialist. Addendum
to the Report by Forensic
Oceanography on the
"left-to-die boat," June
2013. By overlaying
the drift model of the
"left-to-die boat" and
underlining in yellow the
position of the vessel
on the day the image was
taken, Padeletti's analysis
demonstrated that there
were 78 probable vessels
of over 50 m surrounding
the drifting migrants'
vessel at the time
in which, according to the
survivors' testimony,
they encountered a mil-
itary vessel. There may
have been further vessels
present in the Eastern
side of the image, which
however presented too
much scattering and
background noise to
detect possible targets.



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should be held responsible for the systemic violence perpetrated onto the passengers emerged. While the fragmentation of juridical regimes at sea so often allows for the evasion of responsibility, in this case it was mobilized strategically towards the *multiplication* of potentially liable actors and of forums where they could be judged and debated. Not only were several legal complaints lodged in the courts of France, Italy, Spain, and Belgium against unknown parties for nonassistance to people in danger at sea—each time generating press attention—but several other initiatives took place in parallel: two documentary investigations were screened on television as well as at festivals;⁶⁵ a report was published by the Council of Europe, leading to several hearings with representatives from different states; and finally, the case was presented in many venues to activist and academic audiences across Europe and North Africa. Each of the forums, with their respective languages, rules and technologies, became a space of judgment. But even managing to address the responsibility of the numerous actors involved would have been insufficient if the multifarious policies of exclusion, militarization, and evasion of responsibility that shaped the incident in the first place were not themselves put on trial. While demanding accountability for *all* the deaths of migrants at the maritime frontier of the EU has not been possible so far within the forum of the law and its particular language, the different actors investigating this case had to go beyond the realm of the law and venture into that of politics. In this way, they denounced the violence of the denial of freedom of movement and the deaths it generates, which no amount of compliance with legal obligations will be able to undo.

Conclusion: Liquid Lands

Following the meandering route of the history of the governance of the seas and its intersection with the policing of the mobility of people was necessary to understand the conditions under which the sea was made to kill, and which have led to the structural violations of the rights of migrants. Only through a “hand-to-hand” struggle with this network of geographic, aesthetic, technological, legal, social, and political conditions were we able to reinscribe history and responsibility into a sea of impunity.

Understood in these terms, incidents such as the “left-to-die boat” shed a new and crude light on contemporary forms of maritime governance and migration management. The image of the Mediterranean that emerges is that of an environment crisscrossed by “a thick fabric of complex relations, associations, and chains of actions between people, environments, and artifices.”⁶⁷ It is the totality of this field of forces that constitutes the particular form of governance that operates at sea. With regard to the policing of illegalized migrants, we have seen that the selective expansion and retraction of sovereignty that this space enables has led to a form of governmentality

Fig. 13. I-Map, 2012. Dialogue on Mediterranean Transit Migration (MTM) map of Irregular and Mixed Migration Flows. Source: International Centre for Migration Policy Development (ICMPD). The I-Map project developed by the ICMPD in collaboration with states and international organizations is an interactive cartography that traces out migration routes, initially on the borders of Europe, but increasingly expanding to the wider region of Africa, The Middle East, and Eurasia. I-Map was designed to develop a new sensibility among border and migration management agencies to the complexities of migrant routes across a wide geographic area.⁶⁶



that, although highly militarized, diverts and modulates movement rather than blocking it, blurs the line between humanitarian and policing functions, and inflicts deaths on a large scale by creating conditions of precarious crossing and by refraining from acting to save those caught in this liquid trap. The fantasy of a soft governance that would make the movement of people and things simultaneously orderly and productive is a mere chimera, since there will always be subjects that refuse this order, and attempts to tame them can only lead to deaths and legal violations on a structural basis. The deaths at the maritime frontiers of the EU are, in this sense, the necropolitical ghost that haunts this vision of neoliberal governmentality.⁶⁸ They will continue unabated as long as the current migration regime and governance of the seas prevails. While European publics seem to have come to accept these deaths as a necessary lesser evil, documenting violations, filing multiple contentious legal cases, and supporting the mobilization of the relatives of the migrants lost at sea in their struggles to shed light on what has happened to their family members, may be seen as inserting “grains of sand” into the migration regime’s mechanisms, blocking them temporarily, forcing them to change

slightly.⁶⁹ In this process, an important shift has occurred: states, the military, and other actors at sea no longer have the monopoly over watching. Civil society demands that the increased capacity to monitor the sea be accompanied by an increased level of responsibility, and uses the same sensing technologies against the grain to follow the (in)actions of the different actors who operate in the frontier space of the sea, reinscribing responsibility where they attempt to evade it. But if the change that may be affected through such a practice is only in its infancy, we already observe the tendency of maritime-like forms of governance being exported onto land, in a striking inversion of Carl Schmitt's land—sea binary. While, as we saw, the challenge for Schmitt was to impose onto the ocean a form of power characteristic of the land, the sea has become a laboratory in which new forms of contemporary governance have been devised and experimented with and are now being brought to bear on the land. As at sea, border functions on the land have been decoupled from the limits of the territorial border and are becoming increasingly dispersed and mobile, able to follow ever-shifting routes. From the notion of "Routes Management," which revolves around the charting of clandestine migrants' routes (see fig. 7), to that of "Integrated Border Management," which seeks to control migration "before, at and after the border," practices of border control seem to have increasingly done away with fixed territorial thinking.⁷⁰ In a move that echoes the practice of maritime governance over several centuries, their focus seems instead to be on following the routes of migrants as they move across different geographical and political spaces. Rather than the "solidification of the sea"—a term that was suggested by the collective Multiplicity to describe the progressive invasion of the terrestrial logics of bordering into the sea—what we observe here is rather a "liquefaction of the land."⁷¹

There would be another, more desirable way to draw inspiration from the sea, one that is still out of sight of the hegemonic public view and policy circles. Viewing the world "from the sea," from the perspective of the constant movement of the liquid element that defies the appropriation of the ocean, one might be able to perceive the unruly freedom of human mobility which, far from being an anomaly, has been a constant throughout history, and that persists in excess of the multifarious practices that try to tame it.

- 1 Roland Barthes, *Mythologies*, ed. and trans. Annette Lavers (New York: Hill and Wang, 1972), 112.
- 2 For more information, see <http://fortresseurope.blogspot.com/p/la-fortezza.html> and <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>, last accessed December 2013.
- 3 The terminology used to describe "migrants"—understood as people who cross political boundaries to live in another country for a more or less durable time and who, at some point in their trajectory or stay, evade the control and authorisation of the state—is highly politicised and contested. Within European media and policy uses, the terms "illegal migration" and "clandestine migration" are frequently used to point to the evasion or violation of the law, and both terms have negative connotations. In our research we alternate between using the terms "illegalized migrants" (to point to the policies that make migration illegal in the first place) and "clandestine migrants." This latter term may seem problematic in that it is marked to such an extent by the language of power; yet in its etymological connotations of hiddenness and secrecy, "clandestine" accurately describes the strategies of migrants who, having been denied access to legal means of entry into a state, must cross borders undetected. We will thus use the term "illegalized" when wishing to underline the effect of migration policies and "clandestine" when pointing to the strategies of migrants and when wishing to emphasize the "aesthetic" dimension of borders, as will be discussed further on. For the politics of the language of migration, see Franck Düvell, "Clandestine migration in Europe," *Social Science Information*, vol. 47, no. 4 (2008): 479–97, and Harald Bauder, "Why We Should Use the Term Illegalized Immigrant," *RCIS Research Brief*, no. 2013/1 (August 2013): 1–7, http://www.ryerson.ca/content/dam/rcis/documents/RCIS_RB_Bauder_No_2013_1.pdf.
- 4 See "Case: 'Left-to-Die Boat'" in this volume.
- 5 Duncan Depledge, "Geopolitical material: Assemblages of geopower and the constitution of the geopolitical stage," *Political Geography* (June 2013): 1–2; see also Kathryn Yusoff, Elizabeth Grosz, Nigel Clark, Arun Saldanha, and Catherine Nash, "Geopower: a panel on Elizabeth Grosz's *Chaos, Territory, Art: Deleuze and the Framing of the Earth*," *Environment and Planning D: Society and Space*, vol. 30 (2012): 971–88, at 973–75.
- 6 Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York: Telos Press, 2003). For a broader commentary on this text see Philip E. Steinberg, "Free sea," in *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos*, ed. Stephen Legg (London: Routledge, 2011), 268–75.
- 7 Schmitt, *The Nomos of the Earth*, 42–43.
- 8 For an important historical review of the shifting practices of cartography of oceans in relation to changing forms of governance and ideologies, see Philip E. Steinberg, "Sovereignty, Territory, and the Mapping of Mobility: A View from the Outside," *Annals of the Association of American Geographers*, 99(3) (2009): 467–95; see also Philip E. Steinberg, *The Social Construction of the Ocean* (Cambridge: Cambridge University Press, 2001), 99–109.
- 9 See Stefan Helmreich, "Nature/Culture/Seawater," *American Anthropologist*, vol. 113, no. 1 (2011): 132–44; and Allan Sekula and Noël Burch, dirs., *The Forgotten Space* (Amsterdam: Doc.Eye, 2010), 112 min.
- 10 Lauren Benton traces back this process to the early modern period in *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 105.
- 11 Philip Steinberg traces this period back to the 1493 Papal bull. The bull was formalized and amended the following year by the Treaty of Tordesillas. Philip E. Steinberg, "Lines of Division, Lines of Connection: Stewardship in the World Ocean," *Geographical Review*, vol. 89, no. 2, Oceans Connect (April 1999): 254–64.
- 12 English translations of these Latin texts have been published as Hugo Grotius, *The Freedom of the Seas, or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, trans. Ralph Van Deman Magoffin (New York: Oxford University Press, 1916) and John Selden, *Of the Dominion, or Ownership of the Sea: Two Books* (New York: Arno, 1972).
- 13 Steinberg, *The Social Construction of the Ocean*, 97 and 105. It should also be remembered that both thinkers were writing from the perspective and in the service of mercantilist states which were challenging Iberian maritime supremacy. See China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (London: Haymarket Books, 2006), 211.
- 14 Benton, *A Search for Sovereignty*, 106.
- 15 Steinberg, "Free sea," 271.
- 16 Before the emergence of relatively independent scientific institutions, oceanographic knowledge was produced by sailors involved in military and commercial activities. Even at the turn of the nineteenth century, scientists frequently operated within naval institutions and relied on their infrastructure; the fact that the ships associated with the pioneers of oceanography were exclusively military is a striking expression of this. For a general overview of the emergence of oceanography, see Tom Garrison, *Essentials of Oceanography*, 5th ed. (Belmont, CA: Brooks/Cole Cengage Learning, 2009), 22–44. For more specific and theorized examples, see Michael S. Reidy, "The Royal Navy and the Rise of Modern Geophysics," *Trafalgar Chronicle* no. 18 (2008), 222–37; and Graham Burnett, "Hydrographic Discipline Among the Navigators," in *The Imperial Map: Cartography and the Mastery of Empire*, ed. James Ackerman (Chicago: University of Chicago Press, 2009), 185–255.
- 17 For the use of the concept of the sensorium in relation to assemblages of technologies extending the human senses, see Mark Cote, "Technics and the Human Sensorium: Rethinking Media Theory through the Body," *Theory & Event*, vol. 13, no. 4 (2010); and Bruno Latour, "Air," in *Sensorium*, ed. Caroline A. Jones (Cambridge, MA: MIT Press, 2006), 104–07.
- 18 For a useful summary, see Juan Luis Suárez de Vivero, *Jurisdictional Waters in The Mediterranean and Black Seas* (Brussels: European Parliament, 2010).
- 19 Paolo Cuttitta, "Le monde-frontière. Le contrôle de l'immigration dans l'espace globalisé," *Cultures & Conflits*, 68 (2007): 61–84.

- 20 1979 International Convention on Maritime Search and Rescue (SAR).
- 21 Steinberg, "Free sea," 270. For the unbundling of sovereignty considered within a historical perspective and in other fields, see Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2006).
- 22 Gemma Andreone, "Observations Sur La 'Juridictionnalisation' de La Méditerranée," *Annuaire Du Droit de La Mer*, vol. 9 (2004): 7–25.
- 23 For an overview of these disputes, see Suárez de Vivero, *Jurisdictional Waters in the Mediterranean*.
- 24 Andreas Fischer-Lescano and Gunther Teubner, "Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law," *Michigan Journal of International Law*, vol. 25:999 (2004): 999–1046, at 1004. We are grateful to Sandro Mezzadra for this reference.
- 25 Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977–78* (New York: Palgrave Macmillan, 2007), 34.
- 26 Ameer Abdulla and Olof Linden, eds., *Maritime traffic effects on biodiversity in the Mediterranean Sea*, IUCN Centre for Mediterranean Cooperation (Malaga, Spain: 2008): 1–184, at 8. This report further notes that approximately 30% of international sea-borne volume originates from or is directed towards the 300 ports in the Mediterranean Sea.
- 27 Efthymios Papastavridis, "The Right of Visit on the High Seas in a Theoretical Perspective: *Mare Liberum versus Mare Clausum Revisited*," *Leiden Journal of International Law*, vol. 24, issue 1 (March 2011): 45–69. For the UN's specification of those practices that should be covered by the term "interception," see U.N. Office of the High Commissioner for Refugees (Exec. Comm.), *Conclusion on Protection Safeguards in Interception Measures*, no. 97, 10 October, 2003, <http://www.unhcr.org/3f93b2894.html>. For the use of the "right to visit" as the basis for interception, see Eur. Parl. Ass., *The interception and rescue at sea of asylum seekers, refugees and irregular migrants*, 22nd Sitting, Doc. No. 12628 (2011), <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18008&lang=en>, last accessed September 2013.
- 28 AIS (Automatic Identification System) is a ship-borne transponder system designed for maritime safety and in particular collision avoidance. It provides information as to identification, position, speed, course. This live data is made publicly accessible on different websites such as marinetraffic.com. While mandatory for large commercial ships, the carriage of AIS is not required for certain categories of ships such as warships. VMS (Vessel Monitoring System) data is mandatory for fishing vessels longer than 15 m and is used to monitor fishing activities. While VMS operates in very much the same way as AIS data, it remains tightly controlled by state agencies. See "Integrated Maritime Policy for the EU, Working Document III, On Maritime Surveillance Systems," *European Commission / Joint Research Centre*, Ispra, Italy, June 14, 2008, http://ec.europa.eu/maritimeaffairs/policy/integrated_maritime_surveillance/documents/maritime_surveillance_en.pdf.
- 29 Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, 2nd ed., 2 vols., trans. Sian Reynolds (New York: Harper and Row, 1976), 168.
- 30 Karin Knorr Cetina, "The Synthetic Situation: Interactionism for a Global World," in *Symbolic Interaction*, vol. 32, no. 1 (2009): 61–87, at 64.
- 31 Such techniques are already being implemented by NATO, for example: see Commander Brian Finman, "Keeping the Med safe—how it's done", *NATO Review*, May 19, 2010, http://www.nato.int/docu/review/2010/Maritime_Security/EN/index.htm. EU agencies are still developing this practice, with the "Blue Hub" project of the EU's Joint Research Council (JRC) leading the way. See <http://ipsc.jrc.ec.europa.eu/index.php/Projects/318/o/> and <https://bluehub.jrc.ec.europa.eu/>, last accessed September 2013.
- 32 Eur. Comm'n Joint Research Council, *JRC-Frontex Space-borne SAR Small Boat Detection Campaign—Italy & Spain* (2011) (by Victor M.G. Silva and Harm Greidanus), <http://publications.jrc.ec.europa.eu/repository/bitstream/11111111/24183/1/lbn25065enn.pdf>, last accessed September 2013.
- 33 William Walters, "Where Are the Missing Vehicles? Critical Reflections on Viapolitics" (paper presented at the Summer School on "Border Crossing Selves") Hanyang University, Seoul, June 25–29, 2011.
- 34 Ibid.
- 35 For an overview of the historical emergence of the European Union's migration regime and the apparatus that is used to implement it, see Migreurop, *Atlas of Migration in Europe: a Critical Geography of Migration Policies* (London: New Internationalist Publications, 2013).
- 36 There are several more specific reasons for this, including the need for un- or de-qualified migrant labor in EU economies, the constraints imposed on liberal democracies by the human rights regime, and because once established, migratory networks tend to become self-sustaining and relatively autonomous from policies. See Paul De Guchteneire and Antoine Pécoud, "International Migration, Border Controls and Human Rights: Assessing the Relevance of a Right to Mobility," *Journal of Borderlands Studies*, vol. 21, no. 1 (2006): 69–86.
- 37 On this, see also Lorenzo Pezzani, "The Two Lives of the Cap Anamur: Humanitarianism at Sea" in this volume.
- 38 Mehdi Alioua and Charles Heller, "Transnational Migration, Clandestinity and Globalization—Sub Saharan Transmigrants in Morocco," in *New Mobilities Regimes in Art and Social Sciences*, eds. S. Kesselring and G. Vogl (London: Ashgate Publishing, 2013): 175–84.
- 39 Our understanding of aesthetics is influenced by the work of Jacques Rancière, for whom politics hinges first and foremost on "the partition of the sensible," which he defines as the distribution and redistribution of times and spaces, places and identities, that way of framing and reframing the visible and the invisible, of telling speech from noise. See Jacques Rancière, *The Politics of Aesthetics*, trans. Gabriel Rockhill (London: Continuum, 2006).
- 40 Here too social networks proved central: like many hundreds of people before and after them, the passengers in distress used a satellite phone to contact Father Mussie Zerai, an Eritrean priest living in Rome who has defended migrants crossing through Libya for several years, and whose phone number has circulated by word of mouth.
- 41 CIVIPOL, *Feasibility study on the control of the European Union's maritime borders*, at 8 and 71, transmitted July 4, 2003 to the European Commission (JHA), document 11490/1/03 (2003), http://www.ifmer.org/assets/documents/files/documents_ifm/st11490-re01en03.pdf.
- 42 Ibid., 8.
- 43 This effect is explicitly recognized in the report, which notes that while the majority of clandestine migration by sea uses "focal routes" of which "geography dictates the locations—straits or narrow passages where Schengen countries lie close to countries of transit or migration," they observe that "when a standard destination is shut off by surveillance and interception measures, attempts to enter tend to shift to another, generally more difficult, destination on a broader and therefore riskier stretch of water" (Ibid., 9). The effect has also been widely observed in academic literature—see for example Hein De Haas, "The myth of invasion: The inconvenient realities of migration from Africa to the European Union," *Third World Quarterly*, vol. 29, no. 17 (2008): 1305–22.
- 44 Nicholas De Genova, "Spectacles of migrant 'illegality': The scene of exclusion, the obscene of inclusion," in *Ethnic and Racial Studies*, vol. 36, no. 7 (2013): 1180–98. See also Claire Rodier, *Xénophobie business: À quoi servent les contrôles migratoires?* (Paris: La découverte, 2012).
- 45 This was the case, for instance, of Spain. Ruben Andersson, "A Game of Risk: Boat migration and the business of bordering Europe," *Anthropology Today*, vol. 28, no. 6 (December 2012): 7–11, at 8. This was also the argument mobilized by the Italian government in the trial against Hirsi et al. at the ECHR, as discussed in Matteo Tondini Tondini, "Fishers of Men? The Interception of Migrants in the Mediterranean Sea And Their Return to Libya," paper published as part of the INEX Research Project, October 2010, <http://www.inexproject.eu/>.
- 46 The Guidelines on the Treatment of Persons Rescued at Sea (adopted in May 2004 by the Maritime Safety Committee together with the SAR and SOLAS amendments) contain the following provisions:
"The government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided." MSC Res. 167(78), ¶ 2.5, Doc. MSC 78/26/Add.2 (May 20, 2004).
- 47 See Thomas Gammeltoft-Hansen and Tanja E. Aalberts, "Sovereignty at Sea: The law and politics of saving lives in the *Mare Liberum*," *DIIS Working Paper* (2010): 1–31, at 18; and Juan Luis Suárez de Vivero, *Jurisdictional Waters in The Mediterranean and Black Seas*.
- 48 This dispute is well summarized by Thomas Gammeltoft-Hansen and Tanja E. Aalberts, "Sovereignty at Sea," 21: "Italy has signed the 2004 amendments to the SAR and SOLAS conventions that stipulate that the migrants should be disembarked on the territory of the state within which's [*sic*] SAR zone its vessel is identified or intercepted. Malta however, due to the size of its SAR zone, has refused to ratify these amendments for fears that it would impose unrealistic obligations to disembark migrants rescued by other states and private vessels.
- Malta consequently maintains the interpretation that the coordinating country's obligation is to disembark rescued persons at the nearest safe port of call. This has led to tensions between Malta and Italy following a series of incidents where migrants were rescued in Malta's SAR zone yet closer to the Italian islands Lampedusa and Pantelleria. The result has been lengthy stand-off during which migrants have died, and a number of confrontations between Italian and Maltese naval vessels literally trying to block each other from entering its territorial waters and disembark rescued migrants."
- 49 Efthymios Papastavridis, "Rescuing 'Boat People' in the Mediterranean Sea: The Responsibility of States under the Law of the Sea," blog of the *European Journal of International Law*, May 31, 2011, <http://www.ejiltalk.org/rescuing-boat-people-in-the-mediterranean-sea-the-responsibility-of-states-under-the-law-of-the-sea/>.
- 50 See fig. 2 showing the chain of events in "Case: 'Left-to-Die Boat'" in this volume.
- 51 In his March 17, 1976 lecture, Foucault addressed the form of power over life—biopower—which emerged in the nineteenth century. Foucault argues that in the classical theory of sovereignty, the right of life and death was one of sovereignty's basic attributes, but was mainly exercised negatively, in the taking of subjects' lives. The new power over life that emerges in the nineteenth century is much more productive in that it revolves around the care for life and death, and is inflicted less through direct action than through the lack of care. In the process, the right over life and death was radically transformed: "sovereignty's old right—to take live or let live—wasn't replaced, but it came to be complemented by a new right which does not erase the old right but which does penetrate it. [...] It is the power to 'make' live and 'let' die." Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976*, trans. David Macey (New York: Picador, 2003), 240–41.
- 52 The recent work of Jean-Pierre Cassarino is an important reminder that these policies were not only imposed by the EU on Tunisia within highly unequal relations, but that the Ben Ali regime instrumentalized externalization policies to forward its own goals of political and social control. Jean-Pierre Cassarino, "Tunisia's New Drivers in Migration Governance" (presented at the International Studies Association Conference, San Francisco, CA, April 3–6, 2013).
- 53 It should be noted that, contrary to the alarmist discourse of EU politicians, those fleeing Libya mostly remained within North Africa, with over 700,000 people fleeing to neighboring countries and only 25,935 people arriving in Italy and 1,530 in Malta. See Office of the UN High Comm'r for Refugees, *Update no 13: Humanitarian Situation in Libya and the Neighbouring Countries*, March 24, 2011, <http://www.unhcr.org/>.
- 54 Office of the UN High Comm'r for Refugees, *Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011*, briefing notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html>.
- 55 Vice Admiral Rinaldo Veri, Commander of the NATO Maritime Command in Naples responsible for the embargo

enforcement, stated on April 4, 2011 that “anyone who believes they can sail through NATO’s layers of surveillance and interdiction needs to think again.” NATO, “VADM Veri holds Press Conference aboard ITS Etna,” April 4, 2011, <http://www.jfcnaples.nato.int/page167503642.aspx>.

- 56 For the initial press release by the French NGO GISTI (Groupe d’information et de soutien des immigrés), which made the explicit connection between surveillance and responsibility, see GISTI, “Le Gisti va déposer plainte contre l’OTAN, l’Union européenne et les pays de la coalition en opération en Libye,” June 9, 2011, <http://www.gisti.org/spip.php?article2304>.
- 57 The report can be found at <http://www.forensic-architecture.org/publications/report-on-the-left-to-die-boat/>. See also the “Case: ‘Left-to-Die Boat’” investigation text in this volume.
- 58 See Lorenzo Pezzani, “The Two Lives of the *Cap Anamur*: Humanitarianism at Sea,” in the present volume.
- 59 See Nicholas De Genova, “Spectacles of migrant ‘illegality.’”
- 60 We further elaborate this strategy of the “disobedient gaze” in Charles Heller and Lorenzo Pezzani, “A disobedient gaze: strategic interventions in the knowledge(s) of maritime borders,” *Postcolonial Studies*, vol. 16, issue 3, special issue on “Migrations and Militant Research,” eds. Martina Tazzioli and Glenda Garelli (2013): 289–98.
- 61 See the “Case: ‘Left-to-Die Boat’” investigation summary in the present volume.
- 62 For an exploration of this web of relations, see Laura Kurgan, *Close Up at a Distance: Mapping, Technology*

and *Politics* (Zone Books, New York, 2013).

- 63 For further details, see the “Case: ‘Left-to-Die Boat’” investigation summary in the present volume.
- 64 Bruno Latour, “Anthropocene and the Globe Theatre,” lecture 4 of the 2013 Gifford Lectures, University of Edinburgh, February 18–28, 2013.
- 65 Emiliano Bos and Paul Nicol, dirs., *Mare Deserto* (Switzerland, RSI, January 24, 2012.), 52 min., <http://1a1.rsi.ch/falo/welcome.cfm?idg=0&ids=0&idc=42593>; and Stefano Liberti and Andrea Segre, dirs., *Mare Chiuso* (Italy, Zalab, 2012), 60 min.
- 66 Maribel Casas-Cortes, Sebastian Cobarrubias and John Pickles, “Re-bordering the neighbourhood: Europe’s emerging geographies of non-accession integration,” *European Urban and Regional Studies*, vol. 20, no. 1 (2013): 37–58.
- 67 Eyal Weizman, *Forensic Architecture: Notes from Fields and Forums* (Ostfildern: Hatje Cantz, 2012), 6.
- 68 Sandro Mezzadra and Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Durham: Duke University Press, 2013), 174.
- 69 Following the “left-to-die boat” case, we have continued to collaborate with the migrants’ rights movement through different investigations and by developing a new online and participatory mapping platform, “WatchTheMed,” www.watchthemed.net.
- 70 Casas-Cortes, Cobarrubias, and Pickles, “Re-bordering the neighbourhood.”
- 71 Multiplicity/Stefano Boeri and John Palmesino, “Materials for a research programme on contemporary flows through the Mediterranean,” *Archis* (September 2002).

The Two Lives of the *Cap Anamur*: Humanitarianism at Sea

Lorenzo Pezzani

Since the end of the 1970s the sea has emerged as a fundamental terrain for humanitarian intervention. It was in the second half of that decade, in the South China Sea, that a new category of migrants defined by the vehicle on which they travelled came to the fore—the so-called “boat people.” At the same time, ships became spaces of humanitarian intervention in their own right, modifying not only the way in which humanitarian operations have been carried out but also the way in which migration at sea has become a matter of public concern.

One particular ship, together with one of its later namesakes, stands out as a symbol of this new phase: the *Cap Anamur*. Each of these two vessels, as well as the organization that was named after them, became the protagonists in two episodes that have profoundly marked the history of humanitarianism and its conjunction with the practice of bearing witness to underreported catastrophes around the world. The first ship to be named *Cap Anamur* began its operations in the midst of the Vietnamese exodus of 1979 when, so the organization claimed, it helped to rescue “9,057 people from death” and, together with other similar humanitarian vessels, became a fundamental forum for the collection and transmission of images of the boat people’s plight.¹ In 2004, this time in the Mediterranean, a second ship belonging to the same organization, once again named *Cap Anamur*, rescued thirty-seven sub-Saharan migrants on their way to the southern shores of Europe and found itself in the midst of another affair in which not only the possibility of conducting rescue operations at sea but also that of raising awareness of the thousands of migrants who have been dying in recent years in the Mediterranean came under threat.

In this sense, both these events have been crucial to the transformation of the “media aesthetics” of humanitarianism, i.e. all the visual and aural protocols involved in the becoming-public of events of distant suffering. Retracing the historical trajectory of these two *Cap Anamurs*, as I will do in this short essay, allows us to understand the shifts that have occurred in the twenty-five years separating the first intervention in the South China Sea from the events of the Mediterranean. It allows us, more specifically, to explore how the idea of bringing images of distant suffering to a large public has been transformed under conditions of increased border surveillance