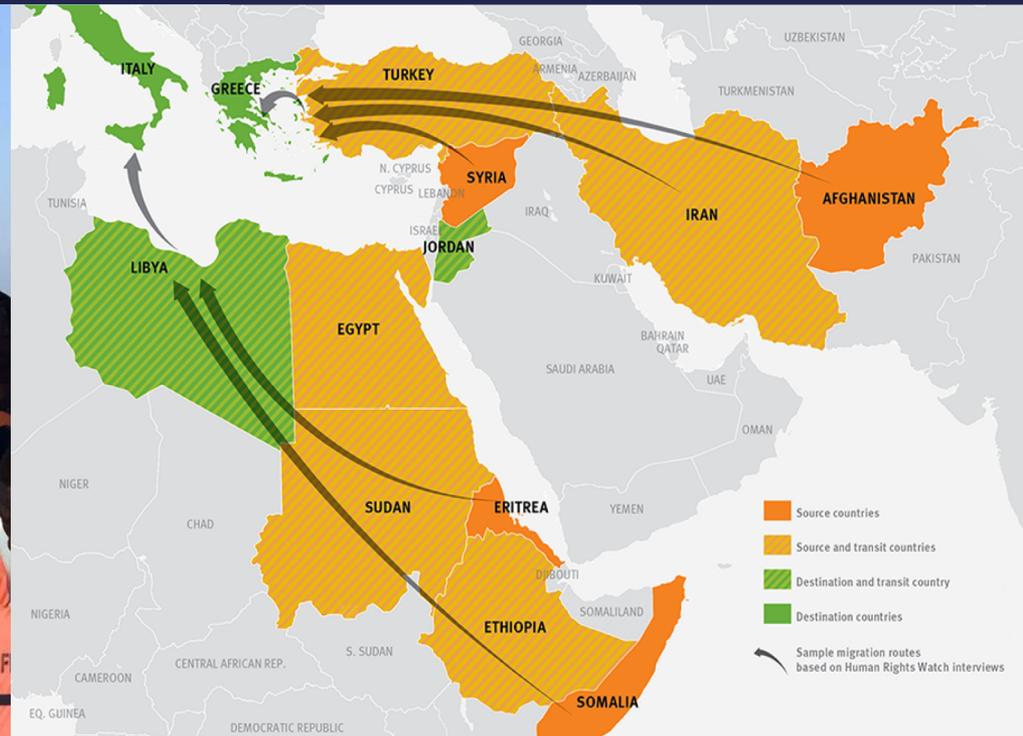




Duty to render assistance Challenges to Maritime operations

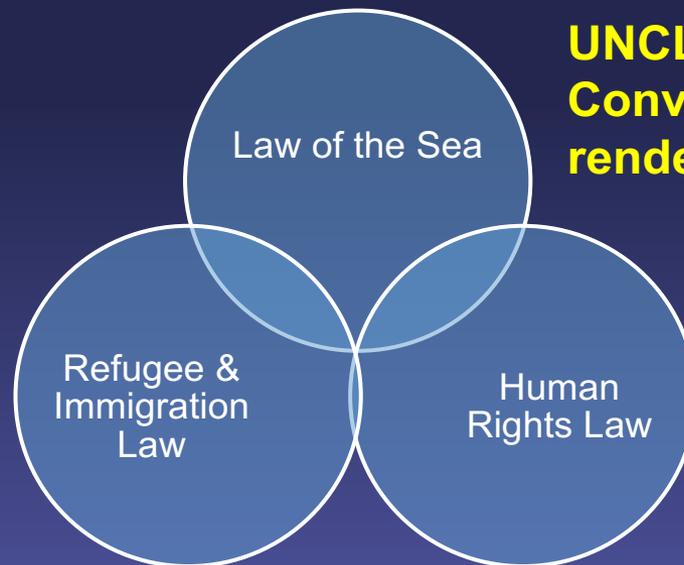
Lieutenant Freek Marchal
Netherlands Defence Academy

Introduction



Mass migration and military response

- UN mandated : EU – NATO military response *under peacetime regulations*
- Interplay: Law of the Sea, HR Law, (refugee law)



**UNCLOS, SOLAS, SAR
Convention: Duty to
render assistance**

**Refugee Convention,
National Law, EU
Common Policy**

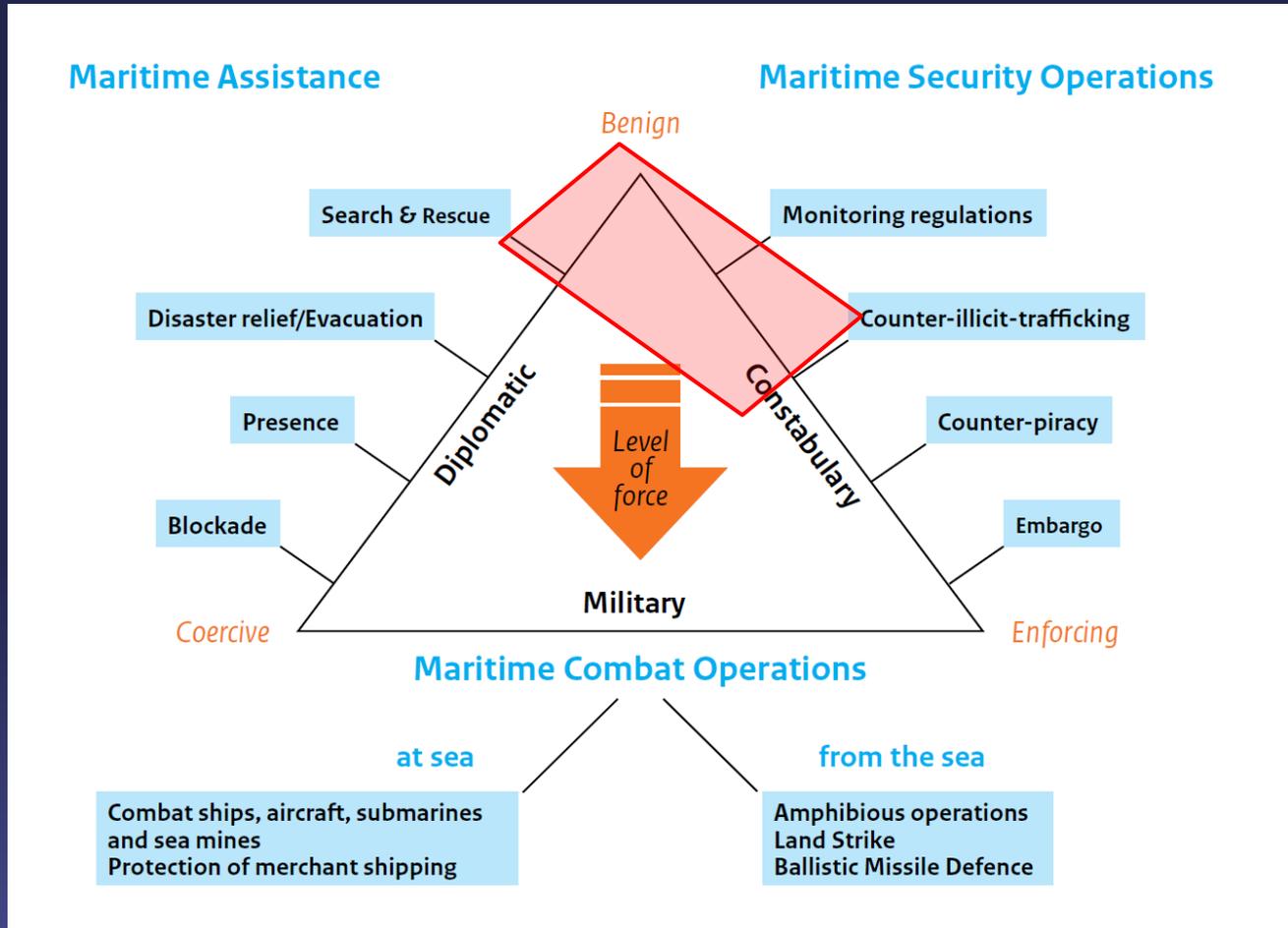
**EU HR Treaty, ECtHR
(Hirsi Jamaa), *non-
refoulement***

Mass migration and military response (1)

CG like ops, military means

UNSCR 2240:

- **Assisting Libya:**
- **Inspect vessels suspected of human smuggling and – trafficking**
- **“good faith efforts to obtain consent”**
- **Disposal if confirmed**



Mass migration and military response (2)

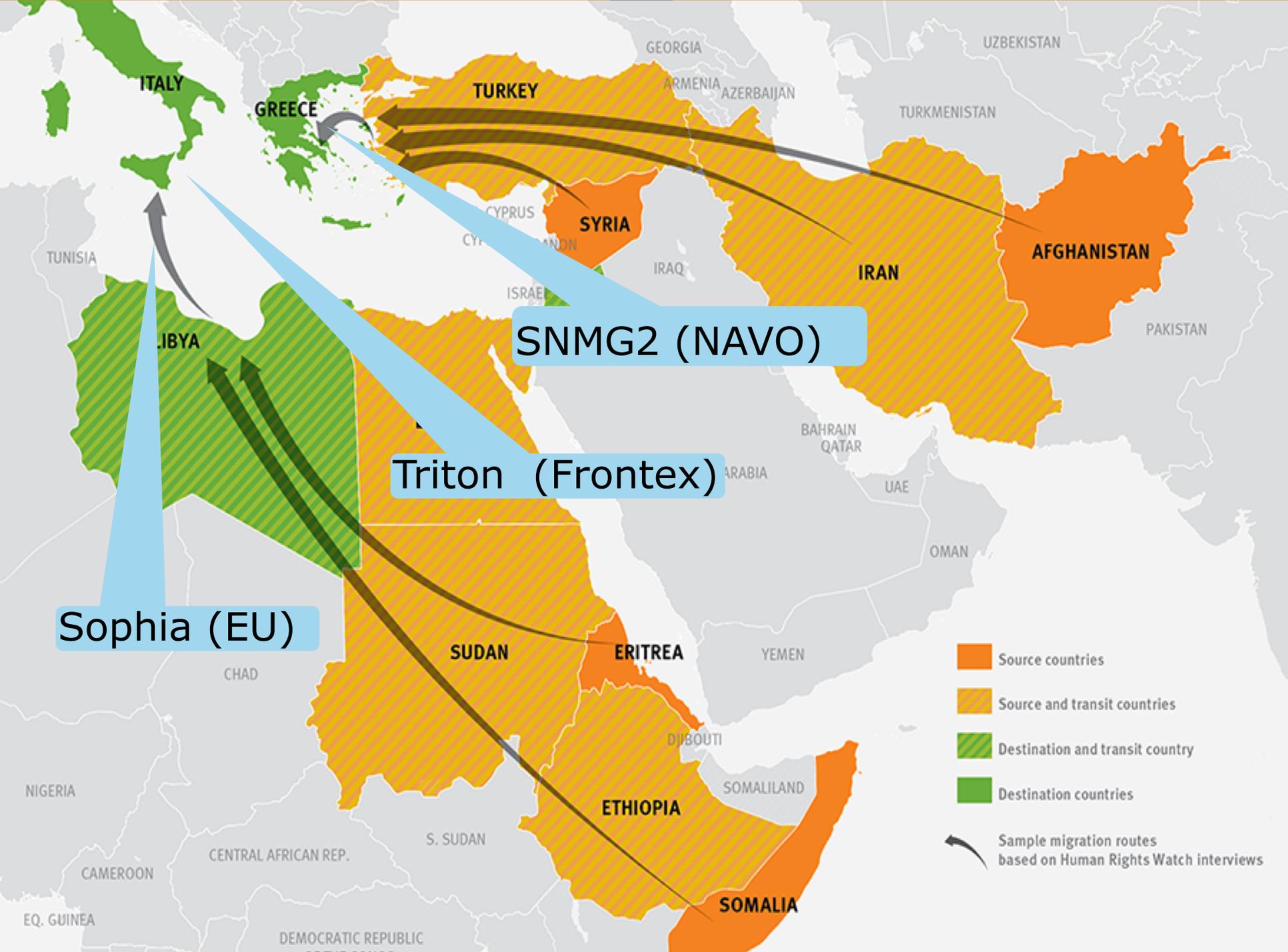
[...use *all measures commensurate* to the specific circumstances in confronting migrant smugglers or human traffickers in carrying out activities under paragraphs 7 and 8 and in *full compliance with international human rights law*...]

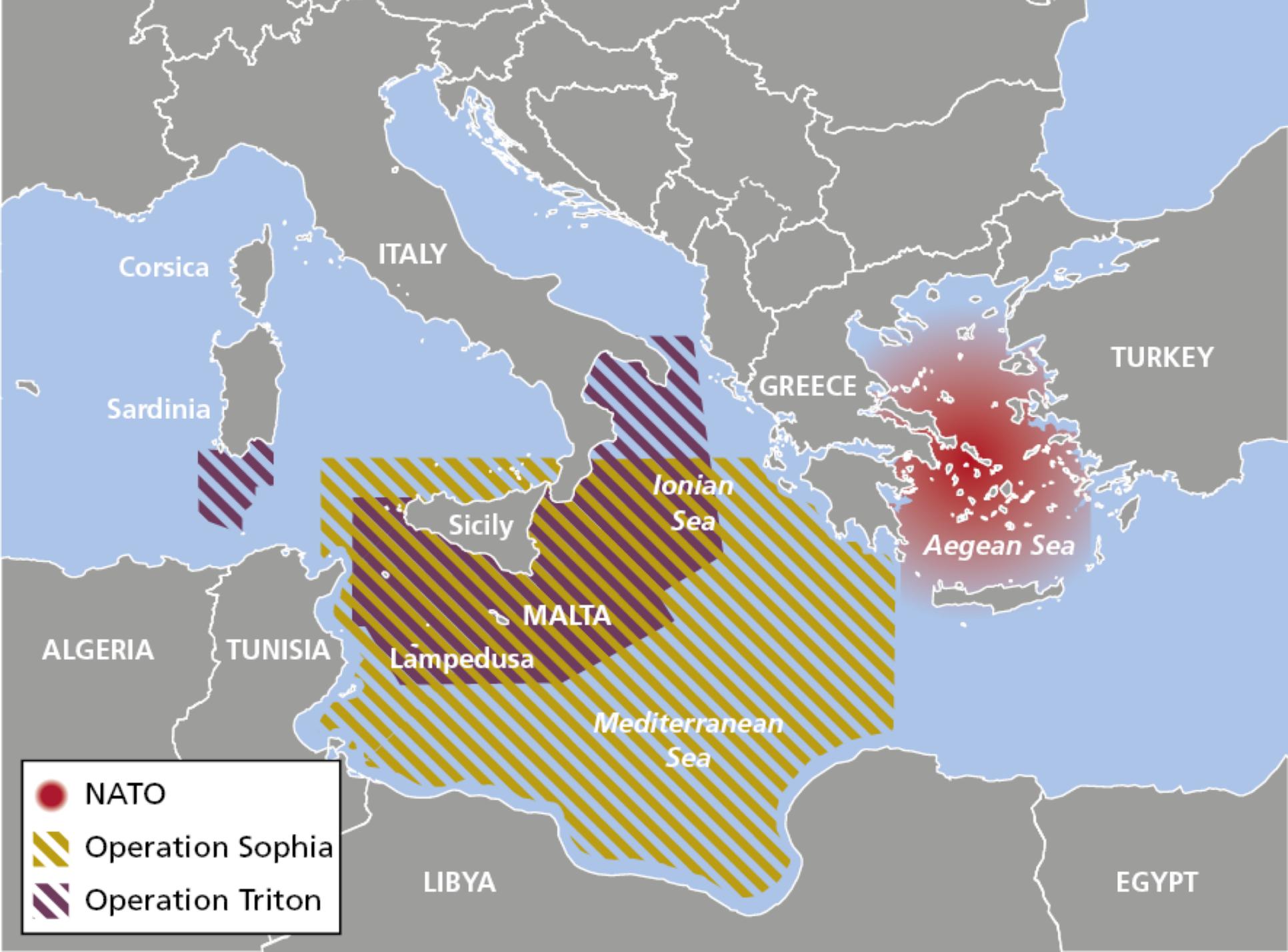




Full compliance

- 1: Pick-up: Monitor, inspect, apprehend, **save**
- 2: Push-back? : Jurisdiction, human rights, *non refoulement*
- 3: Drop off? : National law; smugglers/traffickers, economic migrant, asylum seeker





Duty to render assistance in practice



MARINA MILITARE

Figures

- 5143 deaths in 2017

TOTAL ARRIVALS BY SEA AND DEATHS IN THE MEDITERRANEAN 2016-2017				
	1 JANUARY – 31 DECEMBER 2017		1 JANUARY – 31 DECEMBER 2016	
Country of Arrival	Arrivals	Deaths	Arrivals	Deaths
Italy	119,310	2,832 (Central Med. route) (as of 20 December)	181,436	4,581 (Central Med. route)
Greece	29,595	61 (Eastern Med. route) (as of 20 December)	173,561	434 (Eastern Med. route)
Cyprus	1,067		345	
Spain	21,663 (as of 28 December)	223 (Western Med. route) (as of 20 December)	8,162	128 (Western Med. route)
Estimated Total	171,635	3,116 (as of 20 December)	363,504	5,143

Data on deaths of migrants compiled by IOM's Global Migration Data Analysis Centre.

All numbers are minimum estimates.
Arrivals based on data from respective governments and IOM field offices.

Source: International Organization for Migration (UN)

Duty to render assistance

- Distress?

Main element
of the duty to
render
assistance



Some other challenges

- Human smuggling vs human trafficking; how to define?
- International mandate; national law (OPCON shift)
- Illegal activity : security frame vs. human rights obligations/limitations
- Involvement of NGO activity



Questions?

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