

In the Force Field of the Law: On Affect and Connectivity in the Casework of Forensic Architecture

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Abstract

Law needs a force; without its force, it would be nothing. This article proposes a conceptualization of the force of law as affective by examining the political aesthetics of “Forensic Architecture,” a project based at Goldsmiths, University of London. The novelty of Forensic Architecture’s analytical approach arises, on the one hand, from its use of technologies of power that are otherwise employed by states and their military forces—thus reversing the direction of the surveillant gaze towards a disobedient practice of seeing and sensing. On the other hand, the notion of a “force field” operates as a particular critique of European border policy. The force of law appears to merge into, and at the same time emerge out of, a complex arrangement of technological devices, legal regulations, and human actions. This essay re-traces the political aesthetics of the “left-to-die-boat” case, where a boat filled with migrants was left without any assistance despite the legal regulation that obliges obliging seafarers to rescue anyone in distress in the Mediterranean Sea. Forensic Architecture’s case-work unsettles human-centered “norms of representation” typically used in critical writings on the European Union (EU) border regime; instead, the law is demonstrated to be enfolded within an affective force field that operates with “touch” and “connectivity” and that allows us to see and sense the law in a newly pluralistic manner.

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A. The Forces of and Within the Law

The force of law (*Gesetzeskraft*), Jacques Derrida reminds us, is deeply ambiguous.¹ It is bound to the idea that there is a force of the law that is tied to a legitimate power and that the law itself needs to be enforced or executed: There is no law without the use of force or even “the violence that one always deems unjust.”² Violence, indeed, is what law promises to exclude. But violence is also what the law involves, i.e. in the “originary” moments of law-making, in its constantly being in tension with justice, and in acts of enforcing the law that rely on violence as the legitimate use of force. Furthermore, there is the notion of legal force (*Rechtskraft*), which has a specific meaning. It refers to the taking effect of a legal act (*Inkrafttreten*). This procedure involves a moment of completion: When a judgment enters into legal force the process of legislation and the interpretation of laws come to an end. This transports the idea of law’s capacity for producing reliability: The legal act or judgment will stay as it is. It will be permanent. A judgment obtains legal force and consequently impels or restrains individual activities or institutional procedures.

Andreas Fischer-Lescano’s recent elaborations on legal force and the force of law play with the connotations of both of these terms.³ As he contends, the force of law tells us about law’s a-rational moments, about law’s drive and energy, and perhaps also about law’s susceptibility to social forces. Such a “force within the law,”⁴ Fischer-Lescano points out, demarcates the “unmarked space”⁵ of an assumed legal rationality or, using Stanley Fish’s words, of laws claim to have a “formal existence.”⁶ Indeed, according to Gilles Deleuze, a force is something pre-verbal; it concerns intensities and relations, as well as non-linear processes of division and distribution.⁷ Yet, the a-rational quality of law does not mean it is irrational, and the force of law is nothing outside of or intrinsically different from what the law is. In fact, the force is what sets the law in motion. Without its force, the law would be nothing.⁸

¹ See generally Jacques Derrida, *The Force of Law*, 11 CARDOZO L. REV. 919 (1990).

² *Id.* at 927.

³ See ANDREAS FISCHER-LESCANO, RECHTSKRAFT (2013) [hereinafter FISCHER-LESCANO, RECHTSKRAFT]; see also Andreas Fischer-Lescano, *Radikale Rechtskritik*, 47 KRITISCHE JUSTIZ [KJ] 171 (2014) [hereinafter Fischer-Lescano, *Radikale Rechtskritik*].

⁴ FISCHER-LESCANO, RECHTSKRAFT, *supra* note 3, at 15.

⁵ *Id.* at 17 (emphasis added). Author’s translation.

⁶ Stanley Fish, *The Law Wishes to Have a Formal Existence*, in THE STANLEY FISH READER 165 (H. Aram Veesser ed., 1999).

⁷ See GILLES DELEUZE, FOUCAULT (1988).

⁸ See Susanne Krasmann, *Über die Kraft im Recht*, 35 ZEITSCHRIFT FÜR RECHTSZOLOGIE 207 (2015).

In this regard, various questions arise: What does this force entail? How can we conceive of the forcefulness of the law? Is there a threshold at which non-legal powers—like social forces—address, mobilize, and interact with the law? To address these questions, we take inspiration from an approach that, at first glance, does not seem to have much relation to the law at all. The approach is that of Forensic Architecture, a research project based at Goldsmiths, University of London, led by architect Eyal Weizman. Forensic Architecture traces and exposes detrimental or illegitimate governmental or corporate practices, such as drone strikes, oppressive urban architecture, and environmental disasters.⁹ Yet, the project is also about the law, albeit in a very particular way. First, Forensic Architecture transgresses the established boundaries between the legal and the political spheres. The name “Forensic Architecture” is significant: It alludes to the classical notion of *forensis*—Latin for “pertaining to the forum”—which “designates the practice and skill of making an argument by using objects before a professional, political or legal gathering.”¹⁰ This forum consists of much more than the courtroom. Indeed, Forensic Architecture understands itself as a “counter-forensics”¹¹ that endeavors to establish a public truth outside of the narrow juridical sphere. Second, the project takes a novel and innovative analytical approach to render the effects of harmful political practices visible to a broader public by drawing on the very technologies of power that are usually employed by states and their military, such as satellite images. The direction of the surveillant gaze is thus reversed. Third, Forensic Architecture is committed to “a materialist idea of truth.”¹² In the process of assembling evidence, human witnesses rarely act as the most important voices. Rather, material sources are at play, such as the cracks and holes a bomb leaves on the surface of a building. At the center of the forensic project, these traces are made into evidence through the employment of a range of high-tech instruments and expert interpretation.

Yet Forensic Architecture is not only about establishing a public truth. The project also initiates a particular aesthetic practice that makes a politico-legal claim. Thus, it situates the law within a wider material and political force field. The force of law here begins to unfold far beyond the threshold of “serious” legal spheres¹³ consisting of the courtroom, statutes, or practices of adjudication and law making. The law deploys its own forces, but it also needs to be enforced in order to be recognized and connected to political concerns. It follows from our analysis of Forensic Architecture’s operations that this is a primarily affective endeavor. In other words, the force of law is an affective force. It operates, in Brian Massumi’s sense

⁹ See generally *Forensic Architecture* (Feb. 23, 2016), <http://www.forensic-architecture.org>.

¹⁰ Eyal Weizman, *Forensic Architecture*, 164 *RADICAL PHIL.* 9, 11 (2010) [hereinafter Weizman, *Forensic Architecture*].

¹¹ Eyal Weizman, *Introduction*, in *FORENSIS 9* (Forensic Architecture eds., 2014) [hereinafter Weizman, *Introduction*].

¹² See Gastón Gordillo, *Review Essay: Empire on Trial*, 33 *ENV'T & PLAN. D: SOC. & SPACE* 382, 385 (2015).

¹³ MICHEL FOUCAULT, *THE ARCHAEOLOGY OF KNOWLEDGE* 210 (2002). The concept of a “serious” legal sphere is based on Foucault’s understanding of discourse as a series of “serious” statements.

of the affective, through intensities, connectivity, susceptibility, and it is less concerned with what happens between people than that which occurs between human and non-human bodies.¹⁴ Affect reveals much about the materiality of communication,¹⁵ as it “traffics in abilities, intensities, and passages.”¹⁶

This article examines just one of many forensic inquiries into state atrocities, genocides, and environmental crimes provided by Forensic Architecture’s website. The so-called “left-to-die-boat” case traces the fate of a boat with seventy-two migrants from Libya, which was left to drift in the Mediterranean for two weeks in 2011 despite distress calls and numerous encounters with military vessels. The case has also functioned as a legal and political intervention in a broader public sphere, and as such gives us a clear sense of how to imagine the law through the notion of force.

B. “Liquid Traces”: The Legal Production of “Collective Indifference”

The last decade has witnessed a growing body of literature documenting the violence of the European border regime, namely the conjunction of legal regulations, programs, technologies, and practices of intervention that govern the movements of migrants on the Mediterranean and between land and sea. Critical migration scholars and activists have denounced “Europe’s bleeding border”¹⁷ and its politics of “detention, deportation, and ‘letting drown.’”¹⁸ At the European Union’s maritime frontier, it is argued, the “spectacle of border ‘protection’” by Frontex—the European Union (EU) agency which was established in 2004 to secure its external borders—and others obscures how illegality is produced through policies of exclusion that force migrants into crossing through the Mediterranean, thereby risking their lives.¹⁹ Additionally, an increasingly “stretched” and externalized border regime

¹⁴ See Brian Massumi, *The Autonomy of Affect*, 31 *CULTURAL CRITIQUE* 83, 98–99 (1995).

¹⁵ See generally JEREMY PACKER & STEPHEN B. CROFTS WILEY, *COMMUNICATION MATTERS* (2012).

¹⁶ Compare Greta Olson, *The Turn to Passion: Has Law and Literature become Law and Affect?*, in 28 *L. & LITERATURE* 335, 338 (Frans-Willem Korsten & Yasco Horstmann eds., 2016), with Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 *HASTINGS L. J.*, 805 (1987). In Pierre Bourdieu’s theory of the juridical field, the present notion of the force of law exceeds the scope of only juridical actors and their habitualized professional practices that are involved in the production of law.

¹⁷ See Timothy Raeymaekers, *Introduction: Europe’s Bleeding Border and the Mediterranean as a Relational Space*, 13 *ACME: AN INT’L E-JOURNAL FOR CRITICAL GEOGRAPHIES* 163, 164 (2014).

¹⁸ Yolande Jansen, Robin Celikates & Joos de Bloois, *Introduction*, in *THE IRREGULARIZATION OF MIGRATION IN CONTEMPORARY EUROPE*, ix, xi (Jansen, Celikates, and de Bloois eds., 2015); Nicholas de Genova, *Extremities and Regularities*, in *THE IRREGULARIZATION OF MIGRATION IN CONTEMPORARY EUROPE* 3–14 (Yolande Jansen, Robin Celikates & Joos de Bloois eds., 2015).

¹⁹ See Charles Heller et al., *Acts of Disobedient Listening*, in *MOVING ON* 22, 24 (Marion Bayer et al. eds., 2015).

has given rise to a wide range of “precarious transit zones” along Europe’s margins.²⁰ Thus, “Fortress Europe” is no longer the appropriate metaphor to critique European border politics.²¹ Instead, a sophisticated regime of limitation, hierarchization, and the categorization of migrants within a system of “differential inclusion” has come into being.²² Border and migration politics have shifted their focus from merely restricting mobility to becoming increasingly sensitive to migrants’ strategies, thus shifting border management “from a ‘front-line’ to a series of points and surveillance nodes along changing itineraries.”²³ We are witnessing a form of *viapolitics*, where “vehicles, routes and journeys” have become surfaces for the exercise of power within an extended regime of migration and border control.²⁴

“Liquid traces” was a joint investigation of the “left-to-die-boat” case led by Forensic Architecture and a coalition of NGOs.²⁵ The investigation addressed the growing unease amongst a wider European public towards the EU’s border politics and developed a very specific mode of critique. How is it possible, the researchers of Forensic Architecture ask, that within the highly surveyed and regulated space of the Mediterranean, a boat containing seventy-two migrants did not receive any assistance when it ran out of fuel? “Liquid traces” reestablishes these events in a seventy-page report, an eighteen-minute video, and a range of other visual materials on their website as well as a set of academic reflections in the volume *Forensis*.²⁶ In combination, these forensic interventions provided the basis for several legal cases claiming “liability for non-assistance of people in distress at sea,”²⁷ a report for the Council of Europe, as well as the basis for activist and academic debates.

A closer look at the video on Forensic Architecture’s website shows how the “left-to-die-boat” case differs from more dominant forms of representing the current migrant crisis, including critical ones. The video does not draw the viewer into the story through personal

²⁰ See Sabine Hess, *Gefangen in der Mobilität*, 5 BEHEMOTH 8, 8 (2012); see also Maribel Casas-Cortes et al., *Riding Routes and Itinerant Borders*, 47 ANTIPODE 894, 906 (2015).

²¹ See Manuela Bojadžijev & Serhat Karakayalı, *Autonomie der Migration*, in TURBULENTE RÄNDER 203, 204 (Transit Migration Forschungsgruppe ed., 2007).

²² See SANDRO MEZZADRA & BRETT NEILSON, BORDER AS METHOD OR THE MULTIPLICATION OF LABOR 7 (2013).

²³ Casas-Cortes et al., *supra* note 20, at 11.

²⁴ See William Walters, *Migration, Vehicles, and Politics*, 18 EURO. J. SOC. THEORY 469, 471–72 (2015).

²⁵ The project is named Forensic Oceanography. Since it is an initiative within the framework of Forensic Architecture, we will use the latter term for the sake of simplicity.

²⁶ See *Cases: The Left-to-Die Boat*, FORENSIC ARCHITECTURE, <http://www.forensic-architecture.org/case/left-die-boat/> [hereinafter FORENSIC ARCHITECTURE, *Cases: The Left-to-Die Boat*]; see also Charles Heller & Lorenzo Pezzani, *Liquid Traces: The Left-to-Die Boat Case*, in FORENSIS 657 (Forensic Architecture ed., 2014).

²⁷ Heller & Pezzani, at 673.

minutes into the video, the boat enters the scene, appearing visually as a dot on the satellite image and markedly not as an image of migrants on a ship: “In the early hours of the 27th of March, seventy-two people embarked on a ten-meter-long rubber boat. Before departing, the Libyan military handed them a GPS and a satellite phone.”³⁰

From here, a story of connectivity unravels: When the vessel came under distress, the migrants called an Eritrean priest at the Vatican who redirected their message to the Italian coast guard. Subsequently, the coast guard sent out signals informing other ships of the boat’s distress. As the narrator explains, when a helicopter flew close by, the pilot of the boat threw away the satellite phone for fear of being charged with smuggling, believing that help was on the way. When the helicopter returned, eight bottles of water and biscuits were thrown down to the migrants before they were ultimately abandoned. None of the nearby vessels diverted their routes to come to the boat’s aid. After days of drifting without food or water, people on the boat began to die. After half of the passengers were dead, the boat met a military ship that also refused to assist. Here, the narrator makes the video’s most explicit statement about liability: “Despite witnessing the passengers’ suffering, the military vessel left without providing them with any assistance. In so doing, it murdered them without touching their bodies.”³¹ The boat was eventually stranded on the Libyan shore and, after fourteen days at sea, only nine people survived. Their testimonies and the digital traces form the basis of Forensic Architecture’s map of the boat’s journey and its demarcation of the many points at which help was denied to the passengers (see Figure 2). As the narrator notes, “Every point and every line drawn on this map seeks to inscribe responsibility in a sea of impunity.”³²

³⁰ FORENSIC ARCHITECTURE, *Cases: The Left-to-Die Boat*, *supra* note 26, at (04:03–04:16).

³¹ *Id.* at (13:31–13:43).

³² *Id.* at (16:00–16:08).

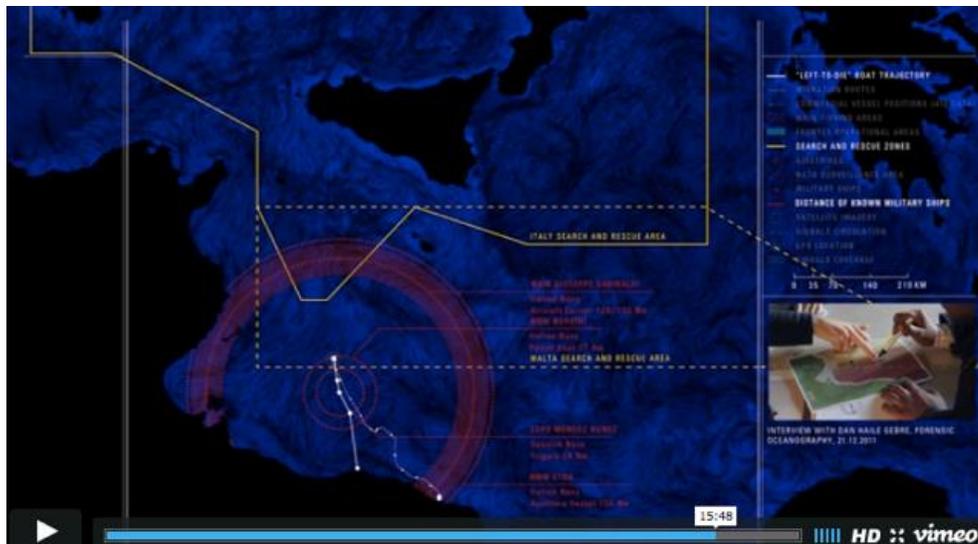


Figure 2. *Liquid Traces – The Left-to-Die Boat Case* (directed by FORENSIC OCEANOGRAPHY [Charles Heller and Lorenzo Pezzani], 2014)

What happened? How does one explain the “humanitarian and . . . legal failure”³³ to apply the law obliging “seafarers to rescue anyone in distress at sea if informed of their distress?”³⁴ The high seas of the Mediterranean are not a legal vacuum. Rather, international waters are a “lawscape”³⁵—a space imprinted by legal normativity. Nevertheless, the legal framework does not automatically provide the protection it should. As the Rapporteur to the Commission on Migration, Refugees and Displaced Persons of the European Parliament, Tineke Strik, explains in her report on the incident,³⁶ the United Nations Convention on the Law of the Sea (UNCLOS) from 1982 implies that states have two legal obligations: (1) “[A]ll states should take all necessary steps to ensure that shipmasters of ships flying their flags assist persons in distress, proceed to the rescue of persons and render assistance in collision situations”; and (2) that “[c]oastal states are required to ‘promote the establishment, operation and maintenance of an adequate and effective search and rescue service.’”³⁷ These lawful obligations apply “without consideration of the nationality, status or

³³ Heller et al., *Liquid Traces: The Left-to-Die Boat Case*, in FORENSICS, *supra* note 26, at 639, 644.

³⁴ *Id.* at 651.

³⁵ See Andreas Philippopoulos-Mihalopoulos, *Atmospheres of Law*, 7 EMOTION, SPACE & SOC. 35, 35 (2012).

³⁶ See Tineke Strik, *Lives Lost in the Mediterranean Sea: Who Is Responsible?*, in PARLIAMENTARY ASSEMBLY: COMMITTEE ON MIGRATION, REFUGEES AND DISPLACED PERSONS (2012, provisional version).

³⁷ *Id.* at 10 (quoting from Article 98 of the UNCLOS).

circumstances of the persons in distress.”³⁸ UNCLOS formalizes an expectation that neighboring states should cooperate and coordinate search and rescue activities, which failed in the case of the left-to-die boat. As the rapporteur implies, this was a failure on a systematic level. The migrant vessel was in Libya’s Search and Rescue (SAR) zone, yet Libya was neither willing nor capable of coordinating rescue operations—a circumstance for which the legal framework was not prepared. Thus, when SAR does not properly function, the institutional duties of neighboring countries are not clearly regulated.³⁹ But UNCLOS’ purpose is precisely to prevent situations in which people in distress are made to navigate a no-man’s land. In other words, a neighboring state is never relieved of its responsibility to come to the rescue, even when the ship in question is outside its own sovereign territory.

Yet, international law does not penalize those who knowingly fail to come to the rescue of a vessel in distress. Moreover, an uncertainty prevails about where rescued people can disembark, which contributes to the hesitation of private or commercial vessels to offer help.⁴⁰ In short, in the case of the left-to-die boat, “failures at every step of the way and by all key actors” occurred, from NATO to Libya, Spain, and Italy.⁴¹ But as Forensic Architecture’s case work demonstrates, what remains most troubling is that a helicopter and a naval vessel came close at two moments, interacted with the migrant boat, and then left and never returned. To this day the identities of the operators of the helicopter and the boat remain undisclosed.

Generally, the history of the SAR zones in the Mediterranean has been conflict-laden. This is due in part to the lack of clarity in the rules of necessary intervention. In this case, Tunisia and Libya had not defined the boundaries of their naval zones; other countries, like Italy and Malta, share overlapping SAR zones.⁴² As the Forensic Architecture investigators deduce, this situation leads to the formation of a space of “unbundled and elastic sovereignty,” which enables actors to “abide by obligations at sea selectively according to their interests, expanding and retracting their jurisdictional claims at will.”⁴³ Given the various actors within this maritime border constellation, the “responsibility for the deaths and violations that are its structural product is shared, diffuse[d], and thus, difficult to address.”⁴⁴ Moreover,

³⁸ *Id.* at 11.

³⁹ *See id.* at 14.

⁴⁰ *See id.* at 15.

⁴¹ *See id.* at 20.

⁴² *See generally* Tanja E. Aalberts & Thomas Gammeltoft-Hansen, *Sovereignty at Sea*, 17 J. INT’L REL. & DEV. 439 (2014).

⁴³ Heller & Pezzani, *supra* note 26, at 664.

⁴⁴ *Id.* at 671.

“[w]hile 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.”⁴⁵ According to the findings of Forensic Architecture, the question of why those nearby ignored their duty to render assistance and failed to save the people on the boat becomes a question of how the law systematically provides conditions for this type of negligence to take place.⁴⁶

The critical literature on the governance of the Mediterranean offers several clues on how overlapping, partly competing, legal regulations and norms might lead to a failure to render assistance. Tugba Basaran argues that the search and rescue regime in the Mediterranean operates through a legal system that operates as an engine of “collective indifference” towards people dying at high seas.⁴⁷ Indifference, here, is not to be misunderstood as coldheartedness or a disregard arising from disrespect or disgust. Rather, it is the result of contradictory legal norms. While deaths at sea are often presented as the products of “forces of nature,” the result of a “lack of human engagement,” or as the outcome of the practices of ruthless smugglers,⁴⁸ the duty to render assistance is, in fact, diluted by the restriction and legal sanctioning of individual and spontaneous rescue efforts. The *Cap Anamur* incident from 2004 provides a notable case in point: The humanitarian organization’s vessel, which sailed under a German flag, allowed thirty-seven people in distress on board in the area between Libya and Lampedusa. Yet, for several days the vessel was denied permission to dock, and when it finally did in Sicily, the head of the organization—who was on board—as well as the captain and first officer of the ship were detained for assisting irregular entry.⁴⁹ In fact, in recent years, EU border policy has led to the increasing monopolization of search and rescue tasks that became indistinguishable from attempts to contain irregular migration. As Basaran argues, discouraging non-state actors from assisting vessels under distress fosters a sense of detachment from “public compassion” and establishes a normative order for European societies in which “letting drown” represents one brutal instantiation of a wider politics of securitizing (undesired) populations.⁵⁰ Thus, the logic of indifference is embedded in a “differential treatment” of populations seeking to claim and exercise their “freedom of movement.”⁵¹ EU anti-

⁴⁵ *Id.* at 678.

⁴⁶ Strik, *supra* note 36.

⁴⁷ See Tugba Basaran, *The Saved and the Drowned*, 46 SECURITY DIALOGUE 205, 206 (2015).

⁴⁸ See *id.* at 206.

⁴⁹ See Paolo Cuttita, *From the Cap Anamur to Mare Nostrum*, in THE COMMON EUROPEAN ASYLUM SYSTEM AND HUMAN RIGHTS 21, 21 (Claudio Matera & Amanda Taylor eds., 2014).

⁵⁰ See Basaran, *supra* note 47.

⁵¹ See *id.*; Sandro Mezzadra, *The Proliferation of Borders and the Right to Escape*, in THE IRREGULARIZATION OF MIGRATION IN CONTEMPORARY EUROPE 121, 127 (Yolande Jansen, Robin Celikates & Joost de Bloois eds. 2015).

smuggling and anti-trafficking legislation, Elspeth Guild and Sergio Carrera therefore assert, “often create[s] a presumption that a captain is committing the offence of smuggling or trafficking if he or she brings unauthorized people into harbors.”⁵²

In their analysis of the search and rescue regime in *mare liberum*, Tanja Aalberts and Thomas Gammeltoft-Hansen go even further:⁵³ They argue that the systematic failure to rescue people on vessels in distress in the Mediterranean, is less the outcome of conflicting legal norms or an unclear, fragmented legal regime but more “the simultaneous expansion and politisation of international law.”⁵⁴ Contrary to the benevolent conception of law or legal norms as regulating certain spaces and actions, Aalberts and Gammeltoft-Hansen focus on the constitutive effects of international law to create sovereign authority.⁵⁵ In response to the standoff concerning the legal responsibilities of the coastal state, the flag state of the rescuing vessel, and the state of the next possible port of disembarkation, the 2004 amendments to the SAR regime provide further guidelines for coordination and cooperation.⁵⁶ The regulation amounts to a “territorialisation” of the universal obligation of hospitality, which “turned into a particular obligation . . . for any single state at any point on the high seas” to render assistance to vessels under distress.⁵⁷ In the context of the Frontex regime of coordinated maritime operations, this regulation opened up the space for active search and rescue operations in foreign SAR regions, where the respective responsibility to provide disembarkation places could be deferred. Attempts to strengthen the humanitarian commitment to saving lives in *mare liberum* through legislation resulted in an extended obligation of the states and a “respatialization” of the high seas. This led to “an increase of possibilities to disclaim sovereign responsibility.”⁵⁸ With a plurality of legal regulations in place, various legal spaces exist and overlap, which results in a mindset that a different sovereignty can always be held responsible.

Interestingly, Forensic Architecture does not pursue the type of theoretical legal argument referenced here. “The ultimate destination” of the investigation was to provide the basis for

⁵² ELSPETH GUILD & SERGIO CARRERA, *EU BORDERS AND THEIR CONTROLS 2* (2013); see also Didier Bigo, *Death in the Mediterranean Sea*, in *THE IRREGULARIZATION OF MIGRATION IN CONTEMPORARY EUROPE*, *supra* note 51, at 55; RAEYMAEKERS, *supra* note 17, at 163–164.

⁵³ See Aalberts & Gammeltoft-Hansen, *supra* note 42.

⁵⁴ *Id.* at 441.

⁵⁵ See *id.* at 457.

⁵⁶ Int’l Maritime Org. [IMO], *Resolution MSC.167(78): Guidelines on the Treatment of Persons Rescued at Sea* (May 20, 2004) (entering into force in 2006).

⁵⁷ See Aalberts & Gammeltoft-Hansen, *supra* note 42, at 451.

⁵⁸ *Id.* at 461.

a number of legal cases regarding “non-assistance of people in distress at sea.”⁵⁹ While it proved impossible to bring NATO to court due to its immunity status, cases were filed against persons unknown in national courts in France, Spain, Italy, and Belgium. Additionally, Freedom of Information requests were submitted in Canada, the U.S., and the UK. None of these legal approaches successfully determined “legal responsibility” for the sixty-eight deaths on the left-to-die vessel.⁶⁰ Yet, the investigation was also meant to extend beyond the courtroom. Some of the maps and images created within the project have been circulated in international press articles, and interactive maps that were redrawn based on the Forensic Architecture’s original disseminated on other websites. The investigators state that the broader aim of the investigation was to draw attention to the “systematic issue” of migrant deaths in the Mediterranean and the impunity that surrounds the perpetrators of these deaths. Visualizing events played an important role in Forensic Architecture’s efforts. It has provided a methodology that migrant right groups replicated to create participatory mapping projects “as a civilian right to look at the sea.”⁶¹ As the remainder of the article explains, Forensic Architecture’s achievement lies beyond the success or failure of the legal cases themselves. Rather, it is important to understand the aesthetics through which the project makes its case, that is, the (affective) rationalities of the force of law.

C. The Force of Law’s Affective Rationalities

How might we draw upon this case to better appreciate what the force of law is and how it works? According to Andreas Fischer-Lescano, this is a question of aesthetics and of how social emotion, drive, and energy morph into a force of law.⁶² As Fischer-Lescano holds, the law needs to develop a “culture of a feeling of justice” (*Rechtsgefühlkultur*)⁶³ and a “sensorium” so as to sense, decipher, and detect the moment when legal force turns into legal violence.⁶⁴ This may even give rise to a feeling of “disgust” when the law is employed with the effect that one may be indifferent and ignore human suffering.⁶⁵

⁵⁹ Heller & Pezzani, *supra* note 26, at 654; FORENSIC ARCHITECTURE, <http://www.forensic-architecture.org>.

⁶⁰ FORENSIC ARCHITECTURE, <http://www.forensic-architecture.org>.

⁶¹ Heller & Pezzani, *supra* note 26, at 654. See, for example, the initiative Watch the Med—an online mapping platform “to monitor the deaths and violations of migrants’ rights at the maritime borders of the EU” and their “alarm phone” that began to operate in October 2014. WATCH THE MED, <http://watchthemed.net/>. The “alarm phone” is a 24/7 hotline “for boatpeople in distress” and run by a network of activist and migrant groups, who offer advice and raise alarm “when people in immediate distress are not promptly rescued or even attacked and pushed-back by European border authorities.” *Id.*

⁶² See Fischer-Lescano, *Radikale Rechtskritik*, *supra* note 3, at 171.

⁶³ FISCHER-LESCANO, RECHTSKRAFT, *supra* note 3, at 118.

⁶⁴ See *id.* at 102.

⁶⁵ See *id.* at 171; Olson, *supra* note 16.

To be sure, the “left-to-die-boat” case may leave many viewers horrified at the death of so many people who should—and could—have been rescued. But the affective operation stretches beyond anger, empathy, or a concern with the biographical story of the migrants, such as whether they were active in the Tunisian revolution that the EU celebrated so much and may have been pursuing an “uncanny idea of freedom, one that comprised freedom of movement.”⁶⁶ While addressing its deadly subject, Forensic Architecture neither moralizes nor enters into the details of the individual lives lost. Furthermore, investigators conducted narrative interviews with the survivors, but these interviews were not meant to reconstruct their subjective experiences. Rather, the interviews were a part of the overall attempt to “recollect . . . precise elements that could support the reconstruction of the spatiotemporal coordinates of the event and the identification of the various vessels and aircrafts encountered by the migrants while at sea.”⁶⁷

This quiet and detailed reconstruction of the case leads to making a powerful forensic claim within the political sphere. The claim addresses the “elastic sovereignty” that is constituted by the maritime border regime, which allows for an irresponsible set of practices conditioned by the law. The audience is addressed as political subjects who are willing to connect the dots, with Forensic Architecture helping them to do so. The presentation of the project deploys its own rhythm in recounting the chain of events. The scene is thus multifaceted: The narrator’s account on the central screen is corroborated by video-insertions in the side bar. These video-insertions provide additional pieces of evidence and feature interviews with experts and professionals, legal documents, and images of the European border agency, Frontex, operating its patrol boats at night, among other things. The viewer must know not only of the boat’s whereabouts in the midst of “a high-wired sea,”⁶⁸ but he or she must also be able to relate the main narrative to a number of other topics, such as what leads people to flee in the first place and why in this particular way.

Forensic Architecture carefully traces what Weizman has termed “field causality”—a mode of capturing “the thick fabric of lateral relations, associations and chains of actions between material things, large environments, individuals, and collective action.”⁶⁹ In order to establish field causalities in the pursuit of publicizing forms of violence, one has to examine “force fields” that do not follow a simple logic of structure and causation; rather, these force fields can be understood as nonlinear, simultaneous, and dispersed “causal ecologies.” In the case of the left-to-die-boat, this ecology included the parameters of travel, the vessel’s fuel supply, sovereign divisions of the sea, the passengers’ call-to-help-messages, and the

⁶⁶ Mezzadra, *supra* note 51, at 121, 127.

⁶⁷ FORENSIC ARCHITECTURE, *Cases: The Left-to-Die Boat*, *supra* note 26.

⁶⁸ Ruben Andersson, *Hardwiring the Frontier?*, 47 SECURITY DIALOGUE 1 (2016).

⁶⁹ Weizman, *Introduction*, *supra* note 11, at 27.

weather conditions. The gravitational point in the middle of this force field is the international law that requires ships to assist others in distress and coastal states to organize rescue operations in their SAR zones.⁷⁰ This law is taken for granted as a reliable constant, but actually, it is a law lacking force. Forensic Architecture points out that the plural agency of maritime sovereigns causes the political failure to apply this law. The project's critique does not dwell on specific EU regulations and practices: It "refuses to disclose clandestine migration."⁷¹ Instead, the project's "disobedient gaze"⁷² reverses the border control's technological eye to render the violence of the border regime visible: "While these remote sensing technologies are usually used for surveillance, they are here repurposed as evidence of guilt."⁷³ Thus, the cause that Forensic Architecture sought to address is far broader and more fundamental than the single left-to-die-boat. It is paradigmatic of a failed EU border policy.

In the story told in the video, the force of law is what sets the enforcement of law in motion. Two operational modes are at work here: Touch and connectivity. The Mediterranean Sea is imagined as a tactile surface, that is, as a material space with winds and currents as well as electromagnetic waves that move between different sensory devices.⁷⁴ It is a dense "sensorium," which, after its technological apparatus has been repurposed, may become "a sort of digital archive" to be interrogated as a witness⁷⁵—a witness for the killings. On the one hand, the video's narrator states that the vessel that came close and denied help "murdered [the passengers] without touching their bodies."⁷⁶ If touch is always reciprocal, in the sense that touching entails being touched,⁷⁷ then the situation presented a dramatic lack of touch eventually holding the migrants' vulnerability at bay. Forensic Architecture establishes precisely the fact of this distance, or non-touch, and denial. On the other hand, there is the sea which "bear[s] witness on how it [itself] has been made to kill"⁷⁸ and is consequently turned into a "deadly liquid" or a "liquid trap." Through tracing this relationship of touch and non-touch, Forensic Architecture assumes a distant gaze, one that

⁷⁰ See Heller & Pezzani, *supra* note 26, at 670.

⁷¹ FORENSIC ARCHITECTURE, *Cases: The Left-to-Die Boat*, *supra* note 26.

⁷² *Id.*; Heller et al., *supra* note 19, at 647.

⁷³ FORENSIC ARCHITECTURE, *Cases: The Left-to-Die Boat*, *supra* note 26, at (10:39-10:46).

⁷⁴ See Heller & Pezzani, *supra* note 26, at 658.

⁷⁵ See *id.* at 658, 661.

⁷⁶ FORENSIC ARCHITECTURE, *Cases: The Left-to-Die Boat*, *supra* note 26, at (13:31-13:43).

⁷⁷ DAVINA COOPER, *EVERYDAY UTOPIAS: THE CONCEPTUAL LIFE OF PROMISING SPACES* 50 (2014); ERIN MANNING, *POLITICS OF TOUCH: SENSE, MOVEMENT, AND SOVEREIGNTY* 9 (2007).

⁷⁸ Heller & Pezzani, *supra* note 26, at 658, 671.

manages to connect seemingly disparate spatial practices and to “reinscribe responsibility within the space of the unbundled sovereignty at sea.”⁷⁹

Connectivity is the other key mode through which one can understand the events in their broader context and the links between the various pieces of evidence. Connectivity is an operational mode by which to establish relations that cannot be grasped at the level of mere representation, signification, and semiotics. It is a mode of reaching out and linking. Connection thereby occurs less “from node to node” or between people and things, but rather focuses on relationality and the “relational operations themselves.”⁸⁰ Connectivity is what plays out in between these relations and emerges from them. Connectivity also involves the act of reaching out to the law; it is perhaps here that the law unfolds its own force⁸¹ in that it allows, and indeed incites, us to connect to and envision its legal, or legally binding, force.

As operational modes, touch and connectivity are affective. Forensic Architecture acts within and addresses an affective force field, whose modes—touch and connectivity—operate both as a way of seeing and knowing what happened and establishing the connections. These modes indicate that the EU border regime cherishes multiple sovereignties that render the international obligation to offer support a mere legal entity without force.

Thus, we follow Fischer-Lescano in imagining the force of law as that which exceeds the verbal and the subjective.⁸² Nonetheless, rather than by emotion, we understand the force of law to be shaped by affect. Through the prism of Forensic Architecture’s work on “liquid traces,” the force of law does not appear to involve social energy but instead concerns material evidence and touch; it is not about drive but rather connectivity and the sensible. If those who refrained from rescuing the refugees on the boat disregarded their suffering or were simply indifferent, then another source of indifference also has to be taken into account. The law itself remains indifferent as long as it is not addressed, enforced, or called out. Given that the force of law in the “left-to-die-boat” case relies on connectivity, the traceable, the touchable, and the sensible, we may conclude that the force of law forms and informs a particular type of affective rationality, rather than simply being a-rational.

⁷⁹ *Id.* at 674.

⁸⁰ Ute Tellmann et al., *Operations of the Global*, 13 *DISTINKTION* 209, 211 (2012); Urs Staeheli, *Listing the Global: Dis/Connectivity Beyond Representation*, 13 *DISTINKTION* 233 (2012).

⁸¹ See Yishai Blank & Issi Rosen-Zvi, *The Spatial Turn in Legal Theory*, 10 *HAGAR STUDIES IN CULTURE, POLITY & IDENTITY* 39 (2010).

⁸² See FISCHER-LESCANO, *RECHTSKRAFT*, *supra* note 3, at 81.

D. Conclusion: From the Political to the Legal and Back Again

Forensic Architecture, some have argued, is more of a political project than a legal one.⁸³ It challenges our habits of perceiving violence and perhaps of understanding ourselves as political subjects. Yet, the project also invests its viewer with a sense of injustice and an awareness of the failure to do justice to people who fled their country and endured hardship. If this failure is also due to a failure to enforce an existing law, then Forensic Architecture enables us to understand how the force of law is driven, or blocked, by an assemblage of legal regulations, infrastructures, and actions that create their own force field. This force field surrounds the law and, in a way, is already “in touch” with the law. The presentation of the “left-to-die-boat” case enacts a specific form of political aesthetics by tracing this affective force field that operates through touch and connectivity. The audience is not addressed through appeals to emotions nor connected by a supposedly shared understanding of the meaning and value of human rights.⁸⁴ No image of an exhausted, desperate refugee or of a dead child is meant to touch us; what is required is instead our political esprit and our ability to understand the assemblage of such deadly events.

Consumers of international media now seem to be able to recognize a refugee situation from afar. It typically includes scenes of groups of people on the move, in boats, stranded on islands, trying to get around fences, marching on highways, or arriving at train stations. In contrast, the left-to-die-boat that is depicted in the Forensic Architecture video represents a stagnant, static image of maritime sovereignty and of non-accountability. The movements that are visualized in the video appear comparatively insignificant given the overall field of connectivity: The dot representing the boat in question moves very little, and the camera angle remains constant. Perhaps the video’s most nuanced political statement about the “liquid traces” case lies in its interrogation of current migration within a force field of connection, or the lack of connection, of being encouraged, bound, or overlooked by the law.

The “left-to-die-boat” case occurs at the intersection of scientific epistemology and the “aesthetic regime” of the arts, which can be understood as a particular sphere of experience that unfolds an affective force and mode of identification in its own right.⁸⁵ As Jacques Rancière holds, the political potential of art lies in its uselessness as well as its power to disrupt the established “distribution of the sensible.”⁸⁶ The aesthetic regime allows us to see things differently, as the clear distinction between the fictive and reality is suspended—the

⁸³ See Gordillo, *supra* note 12, at 383.

⁸⁴ See generally DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004).

⁸⁵ See JACQUES RANCIÈRE, *IST KUNST WIDERSTÄNDIG?* 41, 57 (2008).

⁸⁶ See generally JACQUES RANCIÈRE, *LE PARTAGE DU SENSIBLE* (2000).

real, as Rancière puts it, must first be fictionalized in order to be thinkable.⁸⁷ Nonetheless, although the aesthetic regime is dissociated from social reality, it is not decipherable without it. Thus, the Forensic Architecture video attracts viewers' attention through familiar yet unfamiliar representations of the Mediterranean as a liquid "lawscape" and the migrant passengers' desperate attempts to reach European shores. The "left-to-die-boat" video highlights the signals that were sent out and received, and the technologies involved. Forensic Architecture's political and ethical project is indeed inseparable from its aesthetics. The viewer's ethical and technological gaze is forced to take in the entanglements caused by a revolution, a military intervention operating via cell phone, a lack of drinking water, and a variety of satellite signals for apprehending how the freedom of movement can and cannot be achieved in an ocean, which is, in the twenty-first century, highly technologized, zoned, and monitored—and which is, to be sure, not the same as being under control.

In creating an affective, and highly sophisticated, counter narrative of what went wrong in this case, and in many other instances that came before and after, Forensic Architecture addresses the law by creating a new forum. Viewers may not be moved emotionally, but they may be affected in how they see and comprehend things. Here lies the threshold of where the law comes into force: If the force of law is enacted at the very moment that one speaks through and to the law, "even though no proper legal decision has yet been taken,"⁸⁸ then Forensic Architecture has made things speak in a legal sense through connecting what was disconnected and through expounding a story that goes beyond a simple narrative. Rather, the project makes the story palpable and comprehensible by rendering a chain of incidents visible and imaginable. It demonstrates that connectivity is needed to enforce the law, and that dis-connection and non-touch may be, and in this case came to be, forms of exercising violence.

In summary, Forensic Architecture works to unravel current human-centered "norms of representation"⁸⁹ of migration that operate through images of a single person's hardships as well as through a political discourse on masses, flows, quotas, and redistribution. Part of this prevailing norm is the moral stance that is taken, for example, in evoking empathy for the fate of a single refugee or, alternately, in feeding into the notion that there is a "migrancy problematic."⁹⁰ The video of the "left-to-die-boat" case, by contrast, does not rely on any emotional appeal—there are no actors that appear on screen. Rather, the screen shows only dots, lines of movement, and demarcations for the zones of responsibility. While represented in a seemingly "cold" or unemotional manner, the story becomes all the more

⁸⁷ See *id.* at 61.

⁸⁸ Kyle McGee, *The Fragile Force of Law*, 11 L., CULTURE & HUMAN. 467, 472 (2015).

⁸⁹ José Luis Romanillos, *Mortal Questions: Geographies on the Other Side of Life*, 39 PROGRESS IN HUMAN GEOGRAPHY 560, 577 (2015).

⁹⁰ See Suzanne Hall, *Migrant Urbanisms*, 49 SOCIOLOGY 853, 853 (2015).

affectively charged as the narrative unfolds and intensifies, rendering a sense of urgency more acute. Forensic Architecture's political aesthetic opens up new forums that "exceed the kinds of 'evidence' and expertise admissible within state-sanctioned forums and which also expose[s] different publics to normally inaudible or invisible violences [sic]."⁹¹

It then comes almost as a surprise that Forensic Architecture's sophisticated work on the case led to a quest to find and sue the responsible actors. Whose helicopter was it, for example, whose operators did no more than toss a few packs of biscuits and bottles of water? What happened to Forensic Architecture's plea for an increase of forums and forms of witnessing if, after the complex operation of tracing the field causality had been completed, the political-legal endeavor turned into a search for perpetrators? Did Forensic Architecture downgrade its project to tell the truth through an assemblage of objects, spatial locations, and signals to a mere *means* to present evidence? Did it deliver the law back to the courtroom in the end?

To pursue such an argument, let us briefly consider how Forensic Architecture deals with and thereby conceptualizes the law. We see a three-part maneuver here. First, Forensic Architecture makes a theory-based practical move by expanding the forum in which the argument is presented and thus also extending the legal sphere beyond the courtroom. Second, there is an implicit presumption that international law is present, useful, and in need of enforcement. Third, Forensic Architecture makes an explicit demand for the legal accountability of those who refused to help. The court cases themselves, one learns from Forensic Architecture's website, did not succeed. Yet the question of "success" or "failure" cannot be reduced to courtroom achievements, if we are to seriously consider the idea of the force field. With its careful reconstruction of the "left-to-die-boat" case, Forensic Architecture offers a wider sense of the law through the pluralization of quasi-legal forums and forms of evidence. Why, then, was it necessary to suddenly return to the idea of the law as a stable pillar that can be relied on within the dark matter of the ocean?

To conceive of the law as part of an affective force field is to gain a sense of its dynamism and dispersion. Law takes turns before or when it is "enforced." To state that the law needs to be enforced is to say that there is a law and a force of law that are separate from one another. By contrast, the notion of an affective force field, we argue, is not devoid of the law. The law is already enfolded within it, and so are we, the spectators who try to imagine and make sense of law's force. This may entail seeing and sensing the law in a newly plural manner.

⁹¹ Romanillos, *supra* note 89, at 577.