



Analysis

Italy renews Memorandum with Libya, as evidence of a secret Malta-Libya deal surfaces

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Introduction

The 2017 Memorandum of Understanding (MoU) between Italy and Libya was tacitly renewed without amendments on 2 February 2020, amid widespread criticism over its legality and effects since October 2019. Appeals from civil society and MPs for the MoU to be scrapped were repeated at the time of its renewal, including the Council of Europe Commissioner for Human Rights, Dunja Mijatović, calling on the Italian government to “urgently suspend the co-operation activities in place with the Libyan Coast Guard.”

This article outlines the parliamentary debate that accompanied the interior minister's declared intention to renew the MoU in November 2019. Luciana Lamorgese, the interior minister, promised improvements, despite acknowledging the agreement's inherent flaws and problematic nature. An outline of the arguments by MPs from across the political spectrum is followed by a focus on the debate's blind spots, omissions and biases.

Instrumental reasoning is used to justify systemic abuses against migrants and refugees, as well as collusion with criminals, to stop migration flows. A crucial requirement for the official account at the EU and national levels to work, is to disregard judicial sentences and official statements that repeatedly declare that the MoU, returns to Libya and cooperation with the Libyan coastguard are unlawful because they contravene the international normative framework.

The interior minister informs Parliament

On 6 November 2019, the Italian interior minister, Luciana Lamorgese, informed Parliament of developments regarding renewal of the MoU between Italy and Libya, signed on 2 February 2017 by the then Italian prime minister, Paolo Gentiloni, and the Libyan (Government of National Accord, GNA) president, Al-Serraj.

The agreement would be tacitly renewed on 2 February 2020, as either party's withdrawal should have been notified three months prior to this date. Lamorgese described the context for the MoU's signature, referring to support Italy received from the European Commission and members of the Council of the EU in the Malta Declaration on external aspects of migration policy on 3 February 2019. In both cases, support was expressed for member states directly engaged with Libyan authorities through a "global approach" to contain the flow of migrants by providing training, technological and technical support.

Lamorgese recalled that the MoU states that any activities undertaken must comply with international obligations and human rights agreements. Italy's support for the consolidation of Libyan institutions to promote orderly migration flows and the fight against people trafficking supposedly takes place within this normative framework. The considerable decrease by 97.2% in arrivals from Libya and of deaths at sea from 2017 to 2019, are deemed evidence of the MoU's achievements. Nonetheless, "a lessening of attention on migration dynamics that continue to affect our country and on related humanitarian risks would be unjustifiable".

This is a key structural feature of EU and national migration policies in member states. If things "improve", it validates anything that has been done but does not mean the effort, means and resources deployed should decrease; if things "worsen", the resources, means and efforts deployed at the institutional level must increase and intensify. Structural effects and harmful or illegal aspects like rights violations, state crimes, death, systematic torture and collusion with criminal organisations or authoritarian states that are promoted are not in this narrative.

Lamorgese noted the MoU's contribution to these achievements, alongside its function to avoid the Libyan authorities' isolation by involving them in common strategies against human trafficking, for which Italy is its main partner. Efforts have been made to improve reception conditions by involving the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR), which were only allowed into the country due to mediation by Italy, despite Libya not having signed the Geneva Convention. This has allowed UNHCR to undertake important activities including health assistance at disembarkation points and monitoring of detention conditions in Libyan centres. Humanitarian evacuations from Libya to Niger are now a best practice which began in December 2017, enabling 859 asylum seekers to be received in Italy from emergency situations, 808 of them from Libya.

Humanitarian corridors have been set up in public-private partnership with *CEI* (the Italian Bishops' Conference) and the *Comunità di Sant'Egidio* to allow a further 496 persons' transfer to Italy from transit countries. Italy's financial contribution has helped IOM to enact over 45,000 assisted voluntary returns of migrants to their countries of origin since 2016, more than 8,000 of them in 2019.

Italy was described as working to strengthen the capabilities of Libyan authorities involved in controlling their land and sea borders, at the same time as contributing to the country's stabilisation. Lamorgese recognised that a conflict involving different factions is underway, with the fragmentation of public powers and general conditions of insecurity viewed as liable to facilitate the work of criminal networks involved in trafficking. She also raised the risk of militant jihadis embarking on vessels heading for Italy and other European states. The human rights situation in detention centres run by the Libyan interior ministry's department to tackle illegal migration is considered a "relevant" aspect, in view of concerns expressed by humanitarian bodies and civil society groups. These concerns range from opaque

management methods and limited access, to inhuman and degrading treatment, and precarious hygienic and sanitary conditions.

Following a resumption of armed conflict in April 2019, detention centres also ended up being within the conflict area. In this context, through the Africa Fund, Italy has intervened to improve the situation since 2018 through its development cooperation agency and NGOs. These actions aim to improve the centres and conditions within them, including health care, psychological support, and the distribution of emergency and essential items. Despite such efforts' limited reach, the UN recognises them as positive and they should be further "strengthened and implemented".

The emphasis should lie in striking a balance and consolidating positive achievements to further develop cooperation levels and offer the prospect of sustainable, durable and effective policies, also through dialogue with the African Union and its states. The experience of the MoU's first three years should allow better direction of efforts and resources to increase its positive effects and to resolve the critical aspects that persist, starting from detention centres. Hence, the MoU should be developed by paying attention to human rights, people's dignity, support for people in vulnerable situations and promoting a more responsible outlook among Libyan authorities, according to Lamorgese. This may be achieved through the Italian-Libyan commission envisaged in the MoU's article 3 to improve the agreement by way of an operational-humanitarian plan involving four main interventions (although it is not the commission's purpose).

The first action concerns detention centres, to improve their conditions and those of migrants and asylum seekers held there, with a view to gradually closing them. They must be transformed in agreement with Libyan authorities, by handing over their management to the UN, involving both UNHCR and the IOM. Second, interventions must promote humanitarian corridors that require bilateral deals, as well as humanitarian evacuations and other European projects. Italy should engage other member states in promoting European humanitarian corridors directed and funded by the EU, to alleviate the migratory pressure on Libya. Information campaigns should discourage people from undertaking the journey through Libya, by pointing out the existence of humanitarian schemes in countries of origin. Humanitarian corridors are important to achieve the MoU's goals, although the Italian government's activities should not be limited to its scope. Means for the ordinary management of legal migration in Italy's interest and in accordance with its Constitution and laws should be a part of the way in which a modern democracy responds to such a complex phenomenon. The third intervention Lamorgese referred to concerns the involvement of IOM to enact an Italian EU-funded project to strengthen the surveillance of land borders in southern Libya. Finally, activities to support Libyan municipal councils should continue to ensure the distribution of medical equipment, health care materials, emergency rescue vehicles, school materials and medicines. In a formal note, the Italian embassy requested that the Italian-Libyan commission envisaged in the MoU's article 3 should meet to update and improve the agreement's effectiveness on 1 November 2019, receiving a positive reply on 3 November.

Thus, disregarding appeals from civil society groups and international bodies that call for the MoU's cessation due to its implications in terms of human rights abuses, systematic torture, collusion with criminal elements, endangering lives at sea and violation of the non-*refoulement* principle, the 5-Star Movement (M5S)/Democratic Party (PD)/Free and Equal (LeU) coalition government tacitly renewed the agreement.

The Chamber responds

Reactions to Lamorgese's justification for not withdrawing Italy's support for the MoU as several appeals from civil society demanded, were varied. Pino Cabras (M5S) supported the interior minister by highlighting the centrality of Libya in Italy's strategic outlook in the region, historically and in the current situation of conflict and people trafficking.

This area offers a test of Italy's diplomatic patience, adaptability and attention paid to national and international frameworks. Cabras argued that the MoU's historical and political function has not been exhausted and efforts must seek to prevent a dangerous political and military void resulting from the destabilising effect of human trafficking.

The MoU was signed hurriedly in an emergency context, and subsequent phases in the midst of an armed conflict were also confused. While it is intolerable that humans are caught up in human trafficking activities, the MoU's results include successful arrivals using the central Mediterranean route decreasing from 160,000 (2016) to 22,000 (2018), and the Libyan coast guard undertaking rescues in a search-and-rescue (SAR) zone that it had not previously taken charge over. Deaths at sea have decreased drastically, despite problems like the composition of the Libyan coast guard including people from militias and actors involved in various forms of trafficking. Detention centre management must be reviewed in depth and improved, involving international bodies and the UN. Apart from preventing a political void in Libya, it is necessary to stabilise a wider region going deep into the Sahel to create a band that stretches deep into Africa, termed the "wider Mediterranean". Cabras ended with an apocalyptic prospective reading of north African demography to justify a shift from fuelling human rights violations in the name of the fight against illegal immigration to more comprehensive (almost colonial) efforts, using the same pretext.

Nicola Molteni of the Lega was concerned by an increase in arrivals after the change of government in August 2019, from 5,200 arrivals to 10,000. He criticised the government, highlighted measures adopted when his own party was in power (article forthcoming), including fast-track procedures to enact returns. Molteni claimed that Italy was treated unfairly by the EU, that the Malta Agreement was not operative and that disembarkations were mainly taking place in Italy.

Molteni proudly noted that the only time when the Ocean Viking NGO rescue boat did not take the people it rescued to Italy, but to Malta, was when Matteo Salvini was interior minister. He raised the arguments used consistently by M5S-Lega coalition ministers to refuse disembarkation and violate the law of the sea on the basis of nationality, noting that this NGO was French and flew a Norwegian flag.

For Molteni, the Libyan coast guard should be thanked rather than "demonised". Without it, Italy would have to receive the 5,000 people held in Libyan government centres and all the 650,000 foreigners who are currently in Libya. Defending the MoU, Molteni argued that it should be maintained to avoid returning to the situation of 2016, when arrival numbers were high and lots of money (€5 billion) was spent on reception and integration, both of which he described as "fake". Actions in Libya should concern stabilisation and pacification through political and diplomatic action; asking the EU to deploy the €6+1 billion euros earmarked for Turkey to fund cooperation, development and growth in Libya; and asking international bodies like UNHCR and IOM continue their worthy actions, but to improve them.

Finally, he criticised the interior minister for inviting NGOs for consultation, on two grounds. First, the ministry is the home of Italian citizens' security, of law enforcement, legality and police forces and officers. Second, NGOs, the Lega's pet hate, are accused of having "violated Italian law, endangered the security of Italian armed forces personnel, endangered our country's security!", and of offending "our country's dignity and sovereignty".

Forza Italia's Laura Ravetto supported the MoU's renewal, describing it as the only positive thing done by the Gentiloni government, with Minniti as interior minister, following in the footsteps of the approach used by her party leader, Berlusconi, in 2010. She argued that claims that the MoU had been underwritten by mayors were questionable, due to the lack of formal administrative elections, and that they had been agreed with various tribal chiefs. Ravetto criticised the government for an increase in arrivals, for Lampedusa being overwhelmed and for the planned expansion of the detention centre (CPRs) estate not having started yet. Both the PD and M5S were accused of contradicting their previous actions by calling for the deal to be renegotiated. Ravetto stressed that this was dangerous, because it takes both parties' agreement to modify a deal, and she was worried that introducing humanitarian clauses may result in Libyans discontinuing controls of their borders' security. Suspending the Libyan coast guard's activities may result in more departures, deaths at sea and worsening conditions in detention centres.

Regarding involvement of international bodies and civil society, Ravetto noted that article 2 envisages UNHCR's involvement in Libya, which would not otherwise have had access to the centres and lays the blame for human rights concerns at its door: "It would be necessary to ask UNHCR what it is actually doing". According to Ravetto, the key issue is that migrants should not even transit in Libya or reach its detention centres, and humanitarian corridors and regular migration flow management should exist for people with a right to enter the EU. Warning of the danger of not renewing the MoU, and linking it to defence of borders, security and social security, Ravetto ended by dismissing human rights concerns as "the left's typical propaganda mechanism, because it is afraid to say it is doing what is right, because the centre-right has always said and done what is right".

The PD's Lia Quartapelle Procopio welcomed discussion of the MoU's renewal in parliament because, despite its importance, evidence of human rights abuses was too great for it to be a mere administrative passage. She welcomed the government's intention to renegotiate the deal, adding that its Libyan counterparts had agreed to discuss changes in the commission set up by the MoU. Recognising a need to cooperate with Libyan authorities to fight illegal immigration and trafficking, Quartapelle called for Italian involvement against traffickers and human rights abuses. She argued that non-renewal would leave things as they are and play into the hands of traffickers (although it is in force and judicial sentences and reports talk of camps, killings, deaths by neglect and systematic torture).

Calling for substantial modifications, the MP claimed that the MoU's outlook was correct, but its implementation was faulty, as shown by reports by Nancy Porsia and Nello Scavo, who have been placed under protection.¹ The UN confirms their allegations, and Italy cannot simply ignore this. Quartapelle accused the past government's interior and foreign affairs ministers of ignoring the Libyan dossier, apart from photo opportunities and propaganda, and of treating

¹ See: Anti-migration cooperation between the EU, Italy and Libya: some truths, *Statewatch Analysis*, March 2020, <http://www.statewatch.org/analyses/no-356-some-truths-about-libya.pdf>

NGOs as enemies despite a lack of evidence against them and although they were only responsible for 8% of arrivals. She approved Lamorgese's proposal for a humanitarian evacuation (only possible thanks to the MoU) with a view to closing Libya's detention camps due to horrible human rights violations that have taken place there.

Finally, Quartapelle argued that centres managed by the UN should be used to grant access to the EU and return people to their countries of origin, and that legal migration routes should be opened, pointing to a civil society proposal entitled "Ero straniero" (I was a foreigner). Advocating a break from the previous government's indifference and propaganda, she asked for a long-term strategy to focus on international cooperation and structural conditions in countries of origin.

Fratelli d'Italia (FDI) MP, Andrea Delle Vedove, mocked the government for raising humanitarian and human rights concerns in parliament while it renewed the MoU. He dismissed this as an exercise to put its conscience at rest and protect the reputation of the deal's critics within the government coalition. Allegations about the horrors that take place and on the Libyan coast guard's membership and actions, clash with the fact that the MoU is the only way to defend Italy's borders. FDI supports the move towards rationality that renewal of the MoU entails, but it invites the minister to hear the Italian Navy as advisors, rather than NGOs. Delle Vedove called for a naval blockade against these criminal elements engaged in hostile acts against Italy.

Moreover, the minister should refrain from mentioning the EU's important support to Italy, considering that €220 million have been earmarked for three years, whereas Erdogan has been allocated €7 billion euros to seal his borders with the EU, turning him into a "sultan". A similar allocation for Libya should be provided, "because we do not surrender to a Europe that seals its northern borders and opens its southern ones to turn Italy into the refugee camp for the whole of Europe".

Gennaro Migliore of the new Italia Viva party (led by former PD leader and prime minister Matteo Renzi) thanked Lamorgese for her work and for a shift in comparison with her predecessor that allowed her to talk and seek concertation with stakeholders including NGOs.

He argued that opposition MPs' tone and loud voices were a way to mask their failures and violations committed in government, which he linked to a rekindling of racism. Libya must be dealt with seriously, and facts are currently known that were not known when the MoU was signed, like traffickers' membership of the coast guard and a context of warfare that developed in April. Changes on the ground in Libya require that the MoU be reviewed, as the government appears willing to do, and the issue cannot be viewed purely through the prism of migration, particularly as arrivals are currently higher in Greece and Spain.

Attention should focus on the reasons for the MoU and on its parts that have not been duly implemented, in particular because the relevant state authority, al-Serraj's Government of National Accord (GNA), is supported by groups that must be deemed a threat, like Ansar al Sharia. Migliore called for a change in direction, "discontinuity", not only in relation to Salvini, but also regarding rescuing people and emptying the detention camps, because we cannot see people suffering in this way without acting to put this right. Migliore expressed his conviction that the government will do so.

Erasmus Palazzoto of Liberi e Uguali (LeU) was scathing in his criticism of the deal, although he thanked Lamorgese for addressing the issue in parliament. He argued that many issues should be considered but, to date, the prevalent ones have been defence of Italy's economic

and energetic strategic interests, like ENI's oil concessions, and stabilisation and strengthening of Italy's main partners.

Palazzotto stated that linking Libya's stabilisation and security to migration policy has been a longstanding mistake since the conflict in 2011. The international community and Italy, whose role was prominent in Libya's transition, reconstruction and stabilisation, have failed in their efforts, and the terms of this discussion offers proof of problems in Italy's relationship with Libya's so-called authorities. Palazzotto argued against continuing to pretend that it is not a failed state and that Libyan authorities and institutions are reliable partners, because this is simply not the case.

He stressed the link between people traffickers and the Libyan coast guard, mentioning Bija, the head of the coast guard's branch in Zawiya who is also leader of a militia group that is defending Tripoli and the head of traffickers in the city of Zawiya. This is documented by the UN which imposed sanctions against him. Palazzotto spoke of the protection that the minister herself had to provide to two journalists for revealing Bija's relations with the Italian government. We also know about conditions and abuses from the testimonies of people who arrive from Libya after fleeing that "hell" and those of people from civil society who work to defend our civilisation. He referred to people and NGOs saving lives at sea in the Mediterranean while states look away, as defending legality and humanity by fulfilling a duty to assist people in danger at sea, who should be viewed as survivors rather than as migrants and/or refugees.

Palazzotto understands why the EU waged a war against NGOs that were witnessing what was happening in the Mediterranean and in Libyan camps, and thanked Lamorgese for resuming dialogue with them. As an MP and citizen, he participated in NGO rescue missions to understand how choices made in parliament make a difference for the lives and deaths of thousands of people. He invited the minister to do the same, perhaps on an official ship, and to try to listen to the accounts from women who escape the detention camps. This would enable minister Lamorgese to consider what she would be willing to do to escape them, or to remove her children from those Italian and EU-funded sites of torture. Palazzotto added that we already know that camps managed by the UN are not an option, that the UN itself has demanded their closure, and that even the EU has confirmed that Libya is not a place of safety and that it cannot directly manage camps there.

Beyond hypocrisy and propaganda, the reality is that there is a humanitarian emergency in Libya and the worst systematic human rights violations since World War II are taking place in EU and Italian-funded concentration camps. "We have a duty to put an end to all this", Palazzotto argued. Italy should unshackle itself from a two-fold blackmail: that of the nationalist right which uses the propaganda of fear to block the government in a mind-frame whereby it is defending Italy from an invasion, although official figures state that only 8,000 people arrived in 2019 in a country of 66 million people. This, he argued, was neither an invasion nor a threat for public security. A second blackmail Italy faces is by traffickers in Libya (some of them coast guard members) threatening to send migrants across the sea if Italy interrupts this deal, like Erdogan does in Turkey.

Restoring Italy and the EU's judicial civility through a clear break requires changes of style, language and a return to institutional normality, but also facts. Palazzotto believes the MoU should be suspended and scrapped, but instead the government has started a negotiation. This negotiation should focus on three key features: 1) the closure of centres and an end to detention of migrants in Libya, for which its government should announce that being a migrant

in Libya is not a crime leading to detention; 2) an EU humanitarian evacuation plan for people in camps; and 3) resuming an authentic EU rescue mission to restore its civility and humanity.

Maurizio Lupi of the Mixed Group (Noi con l'Italia, NCI) summed up a few points. Libya is at war, it risks slipping out of control, and Italy's main task is to assist its stabilisation, as an important Mediterranean and European country. This is indispensable, because the issue of migration flows has only ever been resolved when there was a reliable counterpart.

Second, migration flows cannot be fought through a MoU, because they are caused by poverty, a demographic explosion and wars that are out of control in Africa, so a comprehensive outlook is needed. Third, the MoU has achieved some results, as the 38,000 people who have not been able to enter (almost half of the total) show; it may be modified, but it must be maintained.

Although it is intolerable that human rights are not respected in reception centres for irregular migrants, it is of fundamental importance to safeguard borders, which are not just Italian, but European as well. Italy should stop losing credibility at the international and diplomatic levels, Lupi concluded, recalling claims that Libya would become stable by Italian prime minister, Giuseppe Conte, after the Palermo Conference on the north African country.

Riccardo Magi of the Mixed Group (+ Europa) pointed to irregularities in the adoption of the MoU in 2017 that raise issues about the nature of parliamentary democracy. It is a bilateral agreement whose nature is political and envisages a substantial use of resources, so it should have been ratified in parliament as established by article 80 of the Constitution, to authorise its execution.

He claimed that an improvement in detention conditions in Libya is unrealistic and pointed to the UN's description of the system as being unreformable, because the Libyan state cannot even guarantee its own citizens' human rights. Magi argued that Italy has promoted the stabilisation of the power of paramilitary bodies, militias and traffickers. In order to avoid investigation and a guilty verdict before the International Criminal Court, which must be done at any cost, an evacuation plan is necessary, followed by an international mission to implement it, and a new rescue mission in the Mediterranean must be activated.

What the minister failed to report, while Malta also empowers the Libyan coast guard

Like the official narrative in the Commission's accounts of achievements under the European Agenda on Migration, backed up by the Malta Declaration in October 2019, the information provided by Lamorgese omits that promoting human rights violations on a massive scale in Libya has been the strategy adopted to lower the number of arrivals.

The hotspots on Greek islands, combined with the EU-Turkey deal, were the internal dimension of a strategy which sought to circumvent the non-refoulement principle and ensure that reception conditions for asylum seekers could be violated systematically. Even refugees from war-torn countries were turned into illegal entrants awaiting return to Turkey under the terms of the EU-Turkey deal, thus violating the Directive on Reception Conditions on a large scale by excluding them from access to asylum procedures. The criteria for relocations in Italy were set using thresholds that excluded almost everyone who arrived from relocation, to then pretend that people who were not relocation candidates were economic migrants.

Eritrean nationals were the exception to the systematic denial of access to relocations based on nationality, to undermine the principle of individual examination of asylum applications and to enable both migrants and refugees to be conceptualised as "economic migrants" to be

returned to their home countries. Rather than promoting human rights, a strategy has been deployed to stop them coming into play, for which the MoU between Italy and the makeshift Libyan al-Serraj government is a key component.

The expansiveness of efforts to enforce the EU's migration and border policy within and beyond its borders undermines their internal justification, including notions of self-determination and compatriot preference (Miller, 2016). This policy substantively amounts to a wave of coercion, unlawful practices and institutional discrimination to be enacted in wholesale fashion by devising procedures and pseudo-legal instruments to enable unlawful acts by states.

These actions against national, EU and international normative frameworks in pursuit of effective implementation of strategic immigration policy goals has been far-reaching. Thus, the problem of people reaching or attempting to reach the EU through Libya is turned, in some interventions in the debate, into a problem that some people manage to enter Libya. This is most evident in reference to a "wider Mediterranean" and to Libya's southern borders to justify efforts stretching into Africa, justified by a need for "stabilisation" (MP Cabras, above). More generally, excluding the interventions by MPs Palazzotto and Magi, acknowledgement of human rights abuses (as demonstrated by the media, international organisations and NGOs) is subordinated to migration management and border protection goals.

The role of international organisations like UNHCR and IOM is portrayed as a beneficial outcome of the MoU that contributes to improving conditions in Libya. However, both organisations' frequent statements that stress limits in their ability to intervene, the prevalence of arbitrary detention and human rights abuses in Libyan centres to which they have limited access, and that people should not be returned there, are systematically ignored. This does not just apply to the Libyan government, but also to the Italian government, the Commission and Frontex.

In effect, Italy and the EU formally recognise these bodies' role, but they substantively ignore their findings and demands that people should not disembark in Libya, that detainees be evacuated and that sea rescue operations be strengthened. In the case of NGOs carrying out rescue operations, calls to refrain from obstructing them are contradicted by efforts to present their activities as needing regulation, including in the recent Malta declaration. Such interventions are deemed necessary, despite court cases and statements by international bodies confirming that NGOs are complying with the law of the sea in circumstances in which member states are contravening it, often in complicity with the Commission. Cases alleging responsibility in crimes against humanity have been filed with the International Criminal Court over the role the EU and member states have played in developing policies promoting deaths at sea and human rights abuses in Libya, by lawyers Omer Schatz and Juan Branco. The Global Legal Action Network (GLAN) has submitted a case to the UN Human Rights Commission (with Forensic Oceanography and Doctors Without Borders) concerning Italy's role in so-called "privatised push-backs" in connection with returns to Libya by the Nivin merchant ship in November 2018.

Italian courts have certified that conditions in Libyan centres amount to inhuman and degrading treatment, as well as rejecting charges against civilian crews that presented life-saving operations as assisting illegal immigration. On 10 October 2017, a life sentence was issued by the first court of assizes in Milan against Osman Matammud, a Somali man who had been involved in running collection camps in the context of people smuggling operations. He was charged for offences including people smuggling, kidnapping, extortion, rape, torture

and beatings which, according to the proceedings of the trial, led to “at least four deaths”, including in migrant detention camps in Bani Walid and Sabrata. Although Matammud claimed he was a migrant, 17 plaintiffs provided accounts of the treatment they endured and witnessed being meted out by the defendant, who they referred to as “Ismail”.

The sentence reconstructed the types of treatment people were subjected to in various detention sites, their context and purposes (including to obtain payments by relatives), and the selection of people from attempts to cross the Mediterranean Sea. These accounts provide damning testimonies of conditions migrants are subjected to in Libya, amounting to torture, inhuman and degrading treatment.

A case in which two men from Sudan and Ghana were acquitted on 3 June 2019 on charges of rebellion on board of a merchant vessel that led to the *Vos Thalassa* being assisted by the Italian coastguard ship *Diciotti* in July 2018, certified relevant issues regarding the MoU between Italy and Libya. The two defendants were deemed ringleaders who, as part of a group, had used violence and threats to prevent the captain and crew from carrying out their duties, namely returning the rescued passengers to Libya. Charges were also brought for committing acts to allow the illegal entry of more than five people.

They were acquitted on grounds that included acting in self-defence to defend their personal rights (to life and to physical and sexual integrity, among others), in consideration of the likely treatment that awaited them in Libya.

The sentence also analysed juridical aspects pertaining to the MoU between Italy and the Libyan Government of National Accord (GNA), including its validity. Several international instruments (in addition to art. 2 of the Italian Constitution) are listed as protecting human rights: the 1948 Universal Declaration of Human Rights, the ECHR, the International Covenant on Civil and Political Rights, the Maastricht (1992) and Lisbon Treaties (2009), the Nice Charter of Fundamental Rights (2000), the Oviedo Convention on human rights and biomedicine and the binding European Charter of Fundamental Rights. The SAR (1979, Hamburg), SOLAS (1974, London) and UNCLOS Conventions (1982, Montego Bay) are referred to in relation to the law of the sea, requiring that people in danger at sea be rescued. The SAR Convention also establishes a duty “to deliver persons retrieved at sea to a place of safety” (point 2.1.9), which should be assigned as swiftly as possible, where the rescue operation ends and survivors’ security is guaranteed. Place of safety (PoS) simply refers to a place where people’s security is guaranteed, in terms of “physical protection” (p. 26), but if people are also defined as “migrants/refugees/asylum seekers”, safety refers to further criteria to ensure that people fundamental rights are not violated (like Geneva Convention compliance).

After clarifying that the Rome Maritime Rescue Coordination Centre’s (IMRCC) received the distress call and was responsible for deciding where the rescued people should be taken, the sentence notes that:

“At the time of the accused’s and their unidentified co-actors’ reaction, it was not just the right to non-refoulement that was violated, individual rights were also in play concerning physical and sexual integrity, which - according to the same witness heard in the evidential hearings - had been seriously violated during their first passage in Libya.” (p. 28)

A key section of this sentence compares the Hamburg Convention and the MoU that was confirmed on 2 February 2020. The former sets basic rules to facilitate sea rescue by agreeing maritime SAR zone boundaries between coastline states to ensure the necessary coordination and cooperation, allowing ship captains who assist people whose life is at risk to be relieved of this duty and to deviate from their route as little as possible. Italian authorities' supposed duty to take instructions from their Libyan counterparts is a product of the 2017 MoU, not the Hamburg (SAR) Convention.

The MoU attempts to resolve the problem of people arriving in Italy through Libya by supposedly setting up temporary reception centres run by the Libyan interior ministry prior to repatriation or voluntary return, and by providing technical and technological support to Libyan authorities from the defence and interior ministries fighting irregular migration. The Hamburg Convention requires that sea rescues end in a place of safety, raising the issue of the agreement's legality, because there is little doubt that the situation in the summer of 2018 in Libya included serious and systematic human rights violations, beyond Libya not having signed the Geneva Convention.

Further, in relation to the prohibition of torture and the non-refoulement principle's *jus cogens* status (a fundamental, overriding principle of international law), the MoU is deemed by the sentence to "lack validity" (under the 1969 Vienna Convention) for contravening imperative norms of international law. It is also incompatible with article 10 of the Italian Constitution, which prescribes compliance with international law.

A third sentence of November 2019 concerns the return of Eritrean nationals rescued at sea in July 2009 by an Italian Navy vessel. It affirms that handing them over to a Libyan coast guard vessel without guaranteeing access to asylum procedures amounted to a collective refoulement. Violations of the Italian Constitution, the Geneva Convention and the European Charter of Fundamental Rights were compounded by the fact that conditions migrants and refugees were subjected to in Libya were notorious. Despite the existence of a bilateral treaty between Italy and Libya and of an Italian ministerial decree against irregular migration that may have appeared to authorise such practices, this does not allow authorities to disregard the international, EU and national normative frameworks.

Further, the involvement of people traffickers in the Libyan coastguard and the interior ministry department to fight irregular migration has been documented by journalists, notably Nello Scavo for *Avvenire* newspaper. Scavo's reports belied the portrayal of these activities as undermining traffickers' business model, by showing that well known traffickers were involved in setting up so-called "temporary reception centres", and that Italian and EU funding was adding to and diversifying their sources of revenue, including the use of violence to demand ransom payments.

More generally, fighting irregular migration has resulted in strategic and structural developments to achieve unlawful goals by subcontracting *refoulements* and detention to Libyan authorities. Some interventions in the debate, from both the government and opposition benches, consider that the MoU contributes to asserting and stabilising Libyan state capabilities, in a context that is sometimes referred to using the expression "failed state". However, asserting a state's authority starting from the promotion of racism and human rights abuses against foreigners and by enhancing coercive capabilities of problematic official and informal authorities, is at best questionable.

Conclusion

This account shows how illegal acts by states are authorised using administrative agreements of dubious legality, like the Italy-Libya MoU that has just been renewed without amendments, to achieve EU immigration policy goals. More importantly, it delves into a national debate and the pseudo-legal means used to eluding prevalent normative frameworks through ad hoc agreements.

Evidence of the Libyan management of its SAR zone being inefficient and reliant on Italian and EU coordination and assistance, calls into question their responsibility for rescues and returns to Libya that may amount to collective *refoulements* into situations amounting to torture and to inhuman and degrading treatment.

Moreover, violence and aggressive actions by members of the Libyan coast guard against migrants (including shootings and dangerous rescue manoeuvres) and NGO rescue crews (as well as Italian fishing boats) have been documented. In these conditions, not only have EU and MS sea rescue authorities ceded control of a large SAR zone to the Libyan coast guard which they established themselves, but a secret deal with Malta has also surfaced that authorises cooperation with the Libyan coast guard to rescue and/or intercept migrants. Reuters is reported as claiming that the Maltese deal even encourages the Libyan authorities to act beyond their territorial waters in the Maltese SAR zone.² This represents another step towards undermining maritime safety and the insurance it offers seafarers for the sake of protecting the EU's borders. Renewing an MoU that was already certified as unlawful before the security situation in Libya descended into open warfare, adds the risk of violent death or recruitment for combat to concerns about widespread human rights violations and conditions in Libya for people who are returned there.

Source

Informativa urgente del Governo in relazione al Memorandum Italia-Libia in tema di contrasto all'immigrazione illegale e al traffico di esseri umani, 6.11.2019, <https://www.camera.it/leg18/410?idSeduta=0253&tipo=stenografico#sed0253.stenografico.tit00130>

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² 'Malta has deal with Libya coastguard over migrant interceptions: report', *Reuters*, 10 November 2019, <https://www.reuters.com/article/us-europe-migrants-malta/malta-has-deal-with-libya-coastguard-over-migrant-interceptions-report-idUSKBN1XK0B7>; Ivan Martin, 'Secret migration deal in tatters as Libya orders coast guard to stop missions', *Times of Malta*, 24 February 2020, <https://timesofmalta.com/articles/view/secret-migration-deal-in-tatters-as-libya-orders-coast-guard-to-stop.773183>; Karl Azzopardi, 'Gafà reacts to ICC complaint on Libya migration deal: 'Cassola should report EU commissioner as well'', *Malta Today*, 24 February 2020, https://www.maltatoday.com.mt/news/national/100534/cassola_investigate_nevillegafa_criminalcourt#.XIVJw0N7lp9

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