



Analysis

Anti-migration cooperation between the EU, Italy and Libya: some truths

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Apart from a regression in human rights standards that immigration policy is producing within the EU's borders by promoting racism in politics and institutional discrimination in pursuit of its strategic objectives, the effects of EU migration policy's externalisation to third countries are also harmful.

Introduction

In October 2019, investigative journalist Nello Scavo of *Avvenire* newspaper published a series of articles on the Italian government's negotiations in 2017 involving a Libyan trafficker in the context of cooperation with the Libyan coast guard and to set up migrant reception centres.¹ At the time, Italian government and opposition parties were insinuating that NGOs rescuing migrants in the Mediterranean off the Libyan coast were colluding with traffickers. Two years of judicial investigations into NGOs and humanitarian workers did not provide proof of the allegations.

However, criminalisation and vilification by some media, politicians and the far right have drawn on Frontex's risk analysis model to portray them as a "pull factor", regardless of whether they had any direct and/or dubious relations with traffickers. NGOs were saving people who states had decided should drown, or at best be returned to Libyan detention camps, for disobeying a prohibition to migrate to the EU and to dissuade others.

Scavo is under protection after interviewing the trafficker concerned, Abdul Rahman Milad (aka *Bija*), via Skype. Bija expressed his anger against Scavo for his reports, confirmed that he travelled to Italy regularly with a visa, and accused another freelance journalist who has documented abuses linked to Italian-Libyan cooperation in this field, Nancy Porsia, of lying about him. Porsia is currently not allowed into Libya, as freedom of information is another positive value that is being undermined by the EU's immigration policy and the technical and

¹ "La trattativa nascosta. Dalla Libia a Mineo, il negoziato tra l'Italia e il boss", *Avvenire*, Nello Scavo, 4.10.2019 (find a fuller list of articles in this series in the sources at the end of the article), <https://www.avvenire.it/attualita/pagine/dalla-libia-al-mineo-negoziato-boss-libico>

operative deals between Libya, Italy and the EU (see below). She has been placed under protection. An appeal by the Palermo *Forum Antirazzista* in support of both journalists followed official confirmation that the two journalists were placed under protection.² The appeal calls for “*active solidarity*” to oppose Italian cooperation with Libya, for magistrates to investigate these negotiations, and for widespread coverage of the news emerging from their reports.

The Italian agreement with Libya of 2 February 2017 on cooperation against illegal migration through a memorandum of understanding (MoU)³ was up for renewal on 4 November 2019. Renewal would be automatic in February 2020 unless action was taken to suspend or terminate it by Italy or by al-Serraj’s UN-backed Government of National Accord (GNA), which does not control the whole of Libya’s territory, in which a civil war is underway.

Various organisations called for the Italian government to scrap the MoU⁴, but the government has not been receptive, as announced by the interior minister, Luciana Lamorgese, on 6 November 2019. She was considering proposing modifications in the context of Italian-Libyan dialogue (article forthcoming).

What the EU’s migration management model entails, as enacted by Italy

When the Renzi government took office in February 2014, it made a strategic decision to cooperate with the EU on migration policy to prevent arrivals and perfect a system to enable progress by neutralising limits to state powers to deal with so-called irregular migrants. This marked a break with the previous Letta government’s policy to prioritise sea rescues and people’s safety at sea without fingerprinting everyone systematically upon their entry into Italy, as required by the EU and other member states in application of the Dublin system.

With the suspension of Italy’s *Mare Nostrum* operation, the launch of the European Agenda on Migration in the spring of 2015 and of the hotspot approach in the autumn of 2015, a hardline outlook was promoted at the institutional level.⁵ This outlook, promoted by the

² “Solidarietà attiva ai giornalisti Nancy Porsia e Nello Scavo”, *Cronache di ordinario razzismo*, 23.10.2019,

<http://www.cronachediordinariorazzismo.org/solidarieta-attiva-ai-giornalisti-nancy-porsia-e-nello-scavo/>

³ The text of the MoU, commentary and background are available at “Italy-Libya New Memorandum of Understanding on “illegal immigration” and border security signed”, *Statewatch news online*, 3.2.17 <https://www.statewatch.org/news/2017/feb/italy-libya-mou.htm>

⁴ Osservatorio Solidarietà, *Appello urgente contro rinnovo accordo*, 28.10.2019, <http://osservatoriosolidarieta.org/libia-appello-urgente-contro-rinnovo-accordo/> ; English version here, <https://docs.google.com/document/d/1-HwY87HYOvKUsWinmjimEyExfwWddDw3mT07wCWJ9m8/edit> ; and Tavolo Asilo: lettera aperta a

Governo e Parlamento per annullamento Memorandum Italia Libia, 30.10.2019, <https://www.intersos.org/tavolo-asilo-lettera-aperta-governo-parlamento-annullamento-memorandum-italia-libia/> ; and an appeal by MPs, *Migranti. L'appello dei parlamentari: sospendere l'accordo con la Libia*, *Avvenire*, *Redazione Interni*, 30.10.2019, <https://www.avvenire.it/attualita/pagine/italia-libia-l-appello-dei-parlamentari>

⁵ EU/Italy Commission requires large scale abuse of migrants for relocation to proceed, Yasha Maccanico (February 2016), *Statewatch*, <https://www.statewatch.org/analyses/no-288-italy-report-dec-15.pdf> ; Eighth report on relocation and resettlement: Commission welcomes increase in relocations and ignores harmful systematic effects, Yasha Maccanico (January, 2017), *Statewatch*, <http://www.statewatch.org/analyses/no-306-eu-eighth%20report%20on%20relocation.pdf> ; 9th report on relocation and resettlement: Mystification and selective use of data in effort to present a dysfunctional approach as “sustainable”, Yasha Maccanico (March 2017), *Statewatch*

Commission and Frontex and supported by several member state governments within the Council, was not about affirming the EU's declared values and principles, legality, human rights and providing solutions to problems, quite the contrary. It was geared at saving a database (Eurodac) and promoting institutional mistreatment of non-Europeans as routine.

Three initial steps entailed retreating naval assets from a deadly stretch in the central Mediterranean, setting up hotspots to enable the systematic fingerprinting of everyone who reached Europe and preventing secondary movements from Italy and Greece to other member states. In the first case, Frontex repeatedly claimed that sea rescue operations were a “*pull factor*” because the law of the sea does not allow people to be disembarked in places that are unsafe, like Libya. People drowning at sea barely feature in the agency's risk analyses, because this seems to have been identified as a solution to the problem of people arriving and as a way to “*undermine the traffickers' business model*” by making crossings more risky. This raises issues about human rights and the law of the sea, including the right to life, *non-refoulement* and asylum seekers' reception, but it is only a part of the picture.

Perfecting the EU's migration management model entailed fingerprinting anyone who disembarks and relaxing rules to reintroduce internal borders in the Schengen area that had supposedly been abolished, to prevent so-called secondary movements. In exchange for improving practices and procedures that would worsen a structural disadvantage experienced by countries on the front line, they were offered relocations of certified asylum seekers to other member states. The number of relocations that were envisaged was laughable, considering the number of arrivals, yet the scheme's targets were not met, as several member states rejected the Commission's efforts to enforce them on several grounds.

Most importantly, the criteria for relocations were set in a way that excluded almost everyone who arrived from being potential candidates. Relocation eligibility rules implemented in hotspots excluded most of the nationalities of people arriving in Italy, and they were followed by the EU-Turkey deal that set an arbitrary exclusion date - 21 March 2016 - for people arriving in Greece, because it could not be denied that people from countries like Syria were refugees.

This institutional effort to disqualify people from relocation was later used to argue that a) the relocations did not fail, because the need for them had been overestimated; and b) almost all the people arriving were economic migrants. This occurred despite tens of thousands of people receiving asylum after passing through hotspots and being hurriedly classified as illegal migrants, which sometimes entailed issuing expulsion orders. Refugees kept in Greek island hotspots in degrading conditions for long periods awaiting their return to Turkey have borne the brunt of the EU's work to dismantle human rights protection and refugee reception standards through an emergency engineered by the European Agenda on Migration. Italy and

<https://www.statewatch.org/analyses/no-310-9th-report-relocation.pdf> ; “Europe must do more...” Hasn't it done enough? 20 years of restrictive EU immigration policy have – inevitably - led us to the current situation, Yasha Maccanico (February 2016), Statewatch <http://statewatch.org/analyses/no-284-europe-must-do-more.pdf> ; European Commission Fact Sheet, European Agenda on Migration: Securing Europe's External Borders, Strasbourg, 15 December 2015, <http://www.statewatch.org/news/2015/dec/eu-com-migration-agend-prel.pdf>

Greece should become enclosures for migrants instrumentally classified as irregular that they must not be able to leave.⁶

Promoting criminalisation for immigration management purposes

Vilification of humanitarian activities by citizens and civil society groups at sea and on the mainland was a key aspect of this Agenda on Migration. Under the Renzi and Gentiloni coalition governments led by the centre-left *Partito Democratico* (PD), activities were undertaken to set up hotspots, security controls, reception activities and to reach deals on readmission and returns with third countries. These governments complied with relentless demands from the Commission to water down legal guarantees for migrants and asylum seekers, reach a 100% fingerprinting rate by any means necessary (including violence), prevent secondary movements and introduce legal reforms that contravene the Italian Constitution and the European Charter of Fundamental Rights.

Different passages in such efforts involved restricting the possibility to file appeals against refusals of asylum, subordinating rights to fingerprinting and registration in Eurodac, striking agreements with third countries including Libya and Sudan and doing some groundwork towards enacting large-scale expulsions, like expanding Italy's detention estate. Allowing the use of force against the people who arrive, for whom the Italian state has a duty of care, was an instrumental step to prevent the risk of possible legal repercussions discouraging member states from making personnel available for Frontex.

This is one of several perverse effects of this agency's operation (article forthcoming). Frontex has been renamed the European Border and Coast Guard Agency (EBCGA) and has been assigned new functions, funding, powers and a standing corps of officers to target foreigners classified as "irregular migrants" and enact large-scale deportations.

These dynamics required undermining virtuous cases of small-scale reception undertaken within the framework of the SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*, protection system for asylum seekers and refugees) network, for reception activities to be spread out across the Italian territory. This process began under PD-led coalition governments and intensified after the 5 Star Movement-Lega coalition government came to power in the summer of 2018, for 14 months during which hostility to migrants and people helping them was institutionalised and explicit.

It was codified in two decrees, the *decreto sicurezza* and *decreto sicurezza bis*, converted into law in December 2018 and August 2019, respectively. The PD-led government had promoted developments like introducing a code of conduct for NGOs undertaking sea rescues (praised by the Commission and Council), to pretend that they were breaking the law. In fact, the EU and member states were violating the international human rights framework, the law of the sea and their own national constitutions and penal codes by failing to intervene, compounded by obstruction of civilian rescue missions when people were liable to drown in shipwrecks. Insistence that rescued people should be taken to Libya's notorious torture and detention

⁶ The final EU/Turkey refugee deal: a legal assessment, Statewatch, Steve Peers (Professor of Law, University of Essex) (18 March 2016), <https://www.statewatch.org/analyses/no-289-eu-turkey-legal-analysis.pdf> ; EU-Turkey statement, 18 March 2016, European Council, Council of the European Union, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

camps, created on behalf of the EU's externalisation of its migration policies (via Italy) since the turn of the century, is another way in which the normative frameworks referred to above are being violated, most notably with regards to *non-refoulement*. The grounds for the charges faced by sea rescue NGOs in Italy include people smuggling and failure to return people to Libya on instructions from the Libyan rescue coordination centre and coastguard.

These two bodies were set up under pressure from the EU to neutralise its obligations under international law, and they do not function as would be necessary for a sovereign SAR zone, without assistance from Italy and the EU (see below). Fines of up to 1 million euros and prison sentences of up to 20 years may result from judicial proceedings. People have continued to die at sea off the Libyan coast in the summer, autumn and winter of 2019, while several civilian rescue vessels are held by the Italian authorities, seized on spurious grounds.

A two-pincer drive at the EU and national levels sought to normalise inhumanity towards migrants and refugees. The key point was to create and maintain a situation of emergency in two countries of arrival, because if people were able to move (the dreaded "secondary movements") authorities could no longer refer to a crisis or emergency that would justify their violation of applicable rules.

Disregarding the fact that an emergency mechanism for large inflows of refugees was envisaged under the dysfunctional Dublin system, and not activating it, was also important. However, and conversely, rules had to be followed strictly regarding registration in the Eurodac database, despite official recognition that the Dublin system was inadequate and had to be reformed. The hotspot operation was engineered to save this database, because Italy and Greece's failure to systematically register people who arrived in 2013/2014 had shown that it was a source of problems rather than a solution. It contributed to making their asylum systems hard to manage because anyone entering through their borders would be permanently attached to the first country they entered.

While Italy and Greece were encouraged to undermine rights and legal guarantees for people who arrived irregularly (men, women and children, many of them vulnerable and/or traumatised), obstructing NGOs carrying out rescue activities at sea and associations helping people who were left destitute in both countries also became a priority.

Procedures were developed requiring registration with authorities to help people on Greek beaches, and Italy introduced a "code of conduct" for NGOs operating at sea. In effect, states that were violating the law of the sea (a genuine "code of conduct" that already exists under international law) and on reception conditions systematically, were developing pseudo-norms to stop civil society from preventing crimes committed by states. This included normalising the Commission and Frontex-inspired outlook whereby allowing people to drown at sea was conducive to fighting irregular migration or undermining the traffickers' business model, or both. A worrying aspect in this process, were the Commission's "*progress*" and "*state of play*" reports in which it acted like a taskmaster to push two member states to violate their constitutions and EU law to achieve strategic policy goals. A Commission "*non-paper*"⁷ explicitly subordinated rights in general to the acquisition of fingerprints: it was entitled "*no registration, no rights*". Further, procedures for relocations were set up to minimise access to such procedures for the dual purpose of accommodating countries that refused relocations

⁷ <http://www.statewatch.org/news/2015/dec/eu-com-No-registration-no-rights.pdf>

and to present a false impression that hardly any of the people who arrived were asylum seekers. Both the Commission and Frontex have since pushed this argument, disregarding people who obtained asylum outside of the framework of relocations and hotspots. As shown below, these are not the only instances that may be conceptualised as mystification by public authorities to enable misdeeds by states and allow member states to relinquish their responsibilities under international law.

However, on the Italian mainland, this drive was accompanied by an attack on small-scale reception that actually took the needs of people into account in favour of an approach involving warehousing people in pitiful conditions. This operation began under the centre-left and intensified under the coalition government between the 5 Star Movement and the Lega (in force from June 2018 to August 2019). It involved withdrawing funding and initiating investigations to find irregularities and criminalise virtuous examples that should henceforth be considered pull factors.

Domenico Lucano, who had set up an admired reception system in the small Calabrian town of Riace of which he was mayor, was a high-profile target of such practices. He was temporarily driven away from his hometown, and is undergoing criminal proceedings. Under the 5SM-Lega government, administrative impediments and judicial actions were accompanied by vilification in the media, up to the point where the interior minister, Matteo Salvini, described people who help foreigners as enemies of Italians. Far-right activists intensified actions against migrants, refugees and people helping them.⁸

Co-operation with an ill-functioning state, militias and traffickers: asserting a fiction

If possible, the mystification peddled regarding Libya and the Libyan state to allow people to be disembarked there and set up a make-believe coast guard authority to take over a search and rescue zone that did not exist, was even worse than that used to promote human rights violations on a large scale within the EU.

This entire process was indicative of the Commission, Frontex and member states' belief that anything they wish to do to combat irregular migration is legal, because they say so. The Libyan government does not control the territory of the whole country, which has been in an intermittent state of civil war, currently very active, since the Gheddafi regime was overthrown. However, striking deals with an authority was necessary to continue cooperation in this field, so parts of the Italian-Libyan treaty struck with Gheddafi were revived with the al-Serraj Government of National Accord (GNA), in the form of a MoU. Secondly, awareness that the GNA did not control the country resulted in deals being struck with different groups and local authorities, for the common objective of preventing illegal migration and promoting a corollary of abuses perpetrated against people whose mobility is forbidden.

Beyond the fact that this meant striking deals with legally problematic militias and groups which sometimes opposed each other, a risk of rekindling conflict through assistance provided to different parties was disregarded. Frontex's risk analysis model subordinates any other risks,

⁸ "The shrinking space for solidarity with migrants and refugees: how the European Union and Member States target and criminalize defenders of the rights of people on the move", TNI, Sept. 2018, Y. Maccanico, B. Hayes, S. Kenny and F. Barack, https://www.tni.org/files/publication-downloads/web_theshrinkingspace.pdf

including those resulting from adopted policy options, to decreasing the number of arrivals, even when they are already very low.

Thirdly, a functioning Libyan coastguard had to be created, funded, trained and equipped for the EU's own policy goals, regardless of whether it was a priority for a government that did not even control its territory and whose priorities may have lied elsewhere. The goal was for people detained and mistreated in Libya's notorious detention camps (set up at the EU's and Italy's behest) not to be able to escape them to reach Europe, and to be caught and returned to degrading places if they managed to depart. EU vessels and authorities were formally not allowed to disembark people in Libya because it was unsafe, as certified by a 2012 ECtHR sentence against Italy for doing so (*Hirsi Jamaa et al vs. Italy*, case no. 27765/09). Fourth, Libya did not have a search-and-rescue (SAR) zone, because it did not have a government that controlled its entire territory, it did not have a fully functioning coastguard or maritime rescue coordination centre.

In March 2019, the Italian interior minister asserted a “*closed ports*” policy to counter NGOs guilty of saving people that member states, the Commission and Frontex had decided should die to discourage them from attempting to migrate to the EU. Salvini argued that the Commission supported his efforts in a Directive, a circular letter to relevant authorities, by pointing to the EU Agenda on Migration and the Action Plan against migrant smuggling in this field as backing the wholesale criminalisation of rescue efforts as a way to oppose traffickers.

Both the law of the sea and international obligations to refugees under the Geneva Convention and to rescued people under the law of the sea should be subordinated to immigration and security concerns:

*“to prevent the possible instrumental use of international obligations set in these same agreements and the methodical violation of national and European norms on the surveillance of maritime borders and to counter illegal immigration”.*⁹

As the Italian government's continued practice to refuse to allow rescue vessels to dock while keeping them at sea for long periods came in for criticism, Salvini drew on a letter from the Commission to Frontex Executive Director Fabrice Leggeri, to argue that the Libyan SAR zone was regular. This meant that Leggeri should not worry about the legal implications of aerial activities to coordinate the Libyan coastguard to rescue (or catch) people and return them to detention and mistreatment camps. The Commission issued a swift, uncompromising, formal rebuttal to explain that Libya was not safe and that vessels flying EU flags were not allowed to disembark people in Libya. However, the letter from Paraskevi Michou (Director General for Home Affairs and Migration) that Salvini had used to make his case belied such claims.¹⁰

This incident highlighted a key problem in this field, the considerable distance between its formal and substantive aspects. Firstly, while Libya is formally not safe for numerous well documented reasons linked to inhumane conditions, abuses and violent acts to which migrants

⁹ Italy's redefinition of sea rescue as a crime draws on EU policy for inspiration, Statewatch, Yasha Maccanico, April 2019

<https://www.statewatch.org/analyses/no-341-italy-salvini-boats-directive.pdf>

¹⁰ The Commission and Italy tie themselves up in knots over Libya, Statewatch, Yasha Maccanico (June 2019), <https://www.statewatch.org/analyses/no-344-Commission-and-Italy-tie-themselves-up-in-knots-over-libya.pdf>

are subjected in detention camps, the letter to Leggeri shows how this is simply disregarded at the technical and operative levels. Regarding EU coordination of Libyan naval assets to rescue (catch and return to detention) migrants at sea, the coast guard performance was improving and cooperation within assertion of Libyan sovereignty over its SAR zone should continue, all the more so as Italy also provides assistance. This is further proof that Libya is not equipped for the function it has obtained recognition for - it has no maritime rescue coordination centre and distress calls are often not answered - but it also points to EU and Italian participation in returning people to places where they are tortured and abused.

The EU mission in the Mediterranean has been limited to aerial surveillance by the withdrawal of naval assets to avoid the possibility that they may be called upon to rescue someone in compliance with the law of the sea, or be accused for failing to do so. Drones are being tested and used as part of the available resources for this function. An EUNAVFOR MED document published by *Libya Address* in August 2019,¹¹ provides further evidence of the nature of the Libyan declaration of ownership of their SAR area, by stating the mission's priority

“To force the LCG&N [Libyan Coast Guard and Navy] to become the prime actor and progressively take full ownership of their area of responsibility”.

The EU Mediterranean force naval assets would “*gradually assume a ‘second line’ posture*” as of mid-2017; this was a way to achieve what is referred to as a “*legal finish*” to manage rescued migrants and suspected smugglers “*apprehended in Libyan territorial waters*”.

It meant relinquishing any obligation the EU and its member states had to provide asylum to people escaping conflicts in their home countries and/or detention and torture in Libya. Such details from a restricted document are useful to deconstruct a fiction the EU and member states (and the Michou letter) peddled, whereby the issue supposedly affirmed Libyan sovereignty.

In conclusion, the structural involvement of both Italy and the EU's EUNAVFOR MED Operation Sophia in carrying out refoulements to Libyan detention centres is both evident and documented. Avramopoulos, Frontex Director Fabrice Leggeri, Federica Mogherini and the Council consider this an achievement that has contributed to lowering the number of arrivals in EU territory, as their press statements and progress reports on the European Agenda on Migration confirm¹².

The Bija case

As the deadline for scrapping the Italian-Libyan MoU approached in early November 2019, Nello Scavo's articles had documented negotiations between the Italian interior ministry when it was headed by Marco Minniti in 2017 and a notorious trafficker. Abdul Rahman Milad (aka

¹¹ Leaked report from Operation Sophia show that EU is worried that 300,000 people could flee Libya, *Libyan Address*, 22.8.2019, <http://www.addresslibya.com/en/archives/49781> ; Eunavfor Med Op Sophia six-monthly report 1 Dec. 2018 – 31 May 2019, from EEAS to PSC, July 2019, <https://assets.documentcloud.org/documents/6294327/EUNAVFOR-MED-Op-SOPHIA-Six-Monthly-Report.pdf>

¹² European Agenda on Migration four years on: Marked progress needs consolidating in face of volatile situation, 16.10.2019 https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6075 , Progress report on the implementation of the European Agenda on Migration 16.10.2019 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20191016_com-2019-481-report_en.pdf

Bija), identified as a trafficker by the UN Sanctions Committee and by the USA, travelled to Italy and held meetings with interior ministry officials and staff in several locations, including the Mineo reception centre for asylum seekers on 11 May 2017. Photographs were also published of a meeting involving *Bija* at the Rome headquarters of the Italian coastguard days later, and *Bija* himself subsequently told Scavo that he had visited both the justice and the interior ministries. The interior ministry initially replied to the allegations by suggesting that he had obtained an entry permit using a false name (soon revealed not to have been the case), after which it claimed that IOM had organised the meetings (IOM denied this, arguing that the interior ministry had organised the mission).

Images of *Bija* striking rescued migrants¹³ on a rescue vessel are also available, and a UN report had suggested that he headed a trafficking network and that the centres run by his groups were among those where violence against detainees was worst. He leads the Libyan coast guard in Zawyah, which is operative thanks to resources provided by Italy and the EU, although the UN deems that he should be punished for trafficking, for causing boats to sink using firearms, and for systematic mistreatment in detention camps rescued migrants are taken to.

Contrary to claims that EU activity aimed to undermine the smugglers' and traffickers' "business model", it turns out that the revenue streams they relied upon multiplied, to include funding and resources provided by the EU and member states. Profits from trafficking were compounded by funding for the Libyan coastguard and the resources with which it was equipped, and by mistreatment of detainees to try to extort ransom payments from their relatives.

Allegations from Zuwara are reported as claiming that migrants his unit rescues (or intercepts) are generally those who board rival traffickers' vessels. *Bija* has been under a sanction regime imposed by the UN since July 2018, including a prohibition to travel and a cessation of his activities for crimes under investigation by the International Criminal Court. This investigation's documents include allegations that a rescue boat donated by Italy was used by his unit and that members of his militia were trained in the context of EUNAVFOR MED Operation Sophia's training for Libyan coast guard officers. *Bija* is also believed to have ordered his men to fire at NGO and fishermen's vessels.¹⁴

Interviewed by Amedeo Ricucci of Italian public broadcaster *Rai 1* in the autumn of 2017, *Bija* explained that a contract to provide security to Italian oil companies could result in him curtailing other activities. These included shooting at vessels and cooperation with trafficking networks. Witnesses have told the ICC in The Hague that they were taken to camps where they were abused after being intercepted at sea by a rescue boat donated by Italy that his unit was operating. In the meantime, the UN continued to report on the frightful and inhumane detention conditions migrants were subjected to, including UNHCR's spokesman, Rupert Colville, mentioning "*tens of people who died of tuberculosis*" in a context of systematic malnutrition.

¹³ Trew, B. and Kington, T., 14 February 2017, "Video shows Libyan coastguard whipping rescued migrants", *The Times*, online, <https://www.thetimes.co.uk/article/video-shows-libyan-coastguard-whipping-rescued-migrants-6d8g2jqz6>

¹⁴ Libia. Bija, il boss dei trafficanti in azione. A caccia di motori per i barconi, *Avvenire*, Nello Scavo, 15.6.2019, <https://www.avvenire.it/attualita/pagine/il-ritorno-del-boss-degli-scafisti>

Evidence emerged in June 2019 of the crew of the naval patrol vessel used by his unit, in plainclothes, recovering a *Yamaha* motor engine from a *Zodiac* dinghy whose 53 passengers had been rescued by the *Sea Watch* NGO rescue boat. “*Cruel, inhumane and degrading treatment*” has been alleged in a document submitted to the UN Security Council in May 2019 in the area *Bija* controls near Zuwara. Thus, the authorities involved in these policies are aware of who they are dealing with, funding and equipping. Yet, while the Italian state attempts to equivocate over the importance of these revelations, it is not considering the option not to renew the MoU, despite appeals from civil society and MPs.

Like for the establishment of a Libyan SAR zone when Libya does not have a rescue coordination centre or a functioning government in control of its territory, the EU and its member states simply disregard evidence as they work to assert a fiction. Since 2015, a strand of these developments has focused on preventing information on deadly effects of EU migration policy and its externalisation from reaching the public.

This is the backdrop for activities to obstruct NGOs by the EU and its member states because, apart from saving lives at sea (upholding the law of the sea and contravening institutional outlooks in the process), they produce evidence of these policies’ human cost. In order to conceal what is happening in the Mediterranean and as protection against possible allegations of failure to rescue, customary open access sea traffic monitoring has been downscaled and the volume of information made available by the Italian coast guard has decreased. Some journalists painstakingly continue to provide data that used to be available but is no longer forthcoming, among whom Sergio Scandura of *Radio Radicale* deserves a mention (the Aegean Boat Report plays a similar role to document arrivals in Greece and SAR incidents in the eastern Mediterranean).¹⁵ Scandura is among many actors targeted by right wing activists who take their cue from the EU and Italian governments to vilify people helping migrants as “*pull factors*”, accomplices of traffickers or as working against Italians.

Scavo’s first article in the series on *Bija* was published on 4 October, noting that he is deemed a lynchpin of organised crime with ramifications in politics and the economy, involved in trafficking, sinking migrant vessels and running detention centres. Scavo documented *Bija*’s involvement in a meeting in Mineo (Sicily) in the context of negotiations to stop migrant crossings on 11 May 2017. The meeting to study the “*Mineo model*” for reception centres included north African representatives of international humanitarian agencies.

Only a few days later, a report submitted to the UN Security Council noted the involvement of *Bija* and other members of the Libyan coastguard in crimes, including sinking vessels carrying migrants. On 14 February 2017, *The Times* newspaper published a video in which *Bija* can be seen in camouflage gear beating migrants on a dinghy.

On 20 February, Nancy Porsia published an in-depth report (*TRT World*) that follows a previous investigation in *The Post Internazionale* that reconstructed the connections and protections that *Bija* enjoyed. He had already been identified as a leading trafficker in 2016 by media including *Panorama* and *Il Giornale* and, for several years, by investigative journalists Sergio Scandurra for *Radio Radicale* and Francesca Mannocchi for *L’Espresso*. Nonetheless,

¹⁵ Reports by Sergio Scandura on sea routes and sea rescues, Radio Radicale, <https://www.radioradicale.it/soggetti/29575/sergio-scandura> , his Twitter feed @scandura , and Tommy Olsen’s blog “Aegean Boat Report”, <https://aegeanboatreport.com>

he was present at the meeting as a commander of the Libyan coastguard. An unexpected incident occurred when one of the people staying in Mineo recognised the Libyans getting off a minibus and moved away, uttering the words “*Mafia Libya, Mafia Libya*”. A source who was present at the meeting noted the Libyans’ interest in the costs of reception centre activities and their suggestion that “*Italy could finance the creation of structures for migrants throughout the country, saving itself money and problems*”.

Criminal investigations that are underway at the UN level note that a rescue boat used by *Bija*’s men took people intercepted at sea to *al-Nasr* detention centre, where they were held in brutal conditions and beaten. Investigations into trafficking in Palermo and Agrigento led to the arrest of three people among the migrants in the hotspot in Messina and heard that *Bija* was involved in selecting the people to embark. He is easy to recognise due to a war wound, two phalanxes that are missing from his right hand, explains Scavo’s account.

Departures decreased in the months that followed the meeting, and the Libyan delegation reportedly visited two other centres in Sicily, including the hotspot in Pozzallo. UN documents available to the ICC¹⁶ indicate that *Bija*’s unit received a boat from Italy and participated in training activities in the framework of the EUNAVFOR MED and Operation Sophia missions. Hence, both Italy and the EU have been working with traffickers while they accuse NGOs of direct or indirect collusion with them. UN documents also refer to his relationship with another trafficker who is on the UN’s sanctions list, Mohammed Kachlaf.

Photographs were posted on the Italian coast guard’s website of a meeting in Rome at its headquarters for training activities in which *Bija* participated on 15 May 2017, alongside another person on whom investigations are underway. The coastguard’s website described these activities as being part of the IOM-coordinated project “*Sea Demm – Sea and Desert Migration Management for Libyan authorities to rescue migrants*”. It was described as an opportunity for dealing with issues like SAR activities, border controls, the definition of SAR zones in the central Mediterranean, and Italian-Libyan cooperation projects including plans to set up a Maritime Rescue Coordination Centre (MRCC).

These revelations drew reactions from the Italian interior ministry suggesting that *Bija* may have travelled to Italy after obtaining a visa under a false name and that he had been invited by the IOM. Both claims were refuted as other details emerged, including an Austrian intelligence service (HNA) report that preceded the meeting and noted *Bija*’s involvement in trafficking. IOM responded by claiming in an official statement that the Italian interior ministry requested the meeting, and that the visa had been issued regularly. The statement notes that *Bija* was nominated in the mission by the Libyan government and was admitted in Italy as a “*member of the Libyan technical working group on operative search and rescue*”.

The interior ministry responded to a parliamentary question by noting that sanctions against *Bija* were adopted by the UN’s sanctions committee over a year after the meeting in June 2018. This disregards that two weeks after the meetings, on 1 June 2017, a UN report indicated that *Bija* was the head of the coastguard in *Zawyah*, as well as being involved in people trafficking and other illegal activities. A defence studies centre (the *Centro Alti Studi*

¹⁶ United Nations Security Council, S/2019/682, 26.8.2019, United Nations Support Mission in Libya Report of the Secretary-General, https://unsmil.unmissions.org/sites/default/files/sg_report_on_unsmil_s_2019_628e.pdf

per la Difesa) report had also singled out *Bija* as the boss of illegal activities in the coastal area from Tripoli to the Tunisian border. Journalistic and academic reports had focused on *Bija* as a trafficker before the meetings, including those by *ISPI* and *Internazionale* (by Annalisa Camilli). The interior ministry refused to answer a question about the persistence of relations with the trafficker, although it denied that any members of the external intelligence agency (AISE) or security officials were involved. However, the IOM has stated that “*in those days, Italian interior ministry officials were everywhere*”. Riccardo Magi, a +*Europa* party MP, called for a parliamentary inquiry:

“For months, I have forcefully been asking for an inquiry. There is a need to reconstruct all the passages that have led our government to reach agreements with criminals. While smoke was being thrown in people’s faces, vilifying the NGOs’ work, militias and veritable human traffickers were being funded and trained”.

Admiral Giuseppe De Giorgi, who was the Navy’s Chief of Staff from 2013 to 2016, argues that the Italian intelligence service knew about the Libyan situation, and that negotiations with Libyan clans had failed from both a political-military perspective and a humanitarian one. He viewed developments as allowing traffickers a “*free rein*”. In relation to the withdrawal of the *Mare Nostrum* operation’s naval assets from the central Mediterranean route, he stated that:

“The withdrawal of the Navy’s ships has contributed to widening the space of impunity of criminal organisations involved in illegally exploiting the sea and its communication routes”.

Despite officially verified accounts of systematic abuses in centres for migrants, especially in Misurata, Zawiyah, Tripoli and Bani Walid, agreements between Italy, Libya and the EU envisage € 285 million to be provided until 2023, just for the Libyan coastguard. A shopping list of miscellaneous equipment the Libyan PM al-Serraj requested from Italy in March 2017 (from helicopters to rescue vessels, jeeps, dinghies, ambulances, oxygen masks, binoculars, etc.) included items worth no less than €800 million euros.

Are the EU and member states turning into rogue states?

Apart from a regression in human rights standards that immigration policy is producing within the EU’s borders by promoting racism in politics and institutional discrimination in pursuit of its strategic objectives, the effects of EU migration policy’s externalisation to third countries are also harmful.

The goal to stop arrivals after central Mediterranean crossings was enacted by trying to ensure that anyone leaving Libya’s northern coast drowns or, at best, is caught and returned to the Libyan camps from which evidence of systematic torture and abuses continues to emerge. Cooperation with any militia or criminal organisation whose services may prove useful is another boundary to what states may do that no longer seems to carry much weight. In fact, the EU pushes its migration management agenda by enrolling anyone, including parties like the Sudanese *Janjaweed* that have been found guilty of crimes against humanity in the past, or notorious traffickers like *Bija*. Such parties can be relied upon to be forceful in their activities against irregular migration.

Internally, the European Agenda on Migration and the hotspot approach have normalised crude discrimination based on nationality and the exclusion of migrants and refugees from safeguards provided by the ordinary functioning of the rule of law. The Commission and

Frontex engineered this drift, often acting at the behest of member states. In the case of Frontex, its structurally inscribed ideological function is an aspect that is understated. This function involves concocting any available pretext and harnessing any scrap of information or data to promote institutional discrimination as a scientific or “*technical*” endeavour linked to “*effective*” achievement of migration policy goals.

Its in-built purpose is to expand its own role and normalise anything that can contribute to advancing the fight against immigration and cruelty towards migrants. Doing so involves the continuous creation of structures, procedures and criteria to achieve absolute goals. The hotspot approach to fingerprint 100% of the people arriving and the promise of relocations were used as a show of force, proof that even during large influxes of people escaping conflict, persecution and poverty, the EU could come up with procedures to exclude them systematically. Legality no longer applies to this field, and the role assigned to criminal elements outside the EU to intimidate civil society actors is taken on by far-right groups and politicians to vilify people acting in solidarity within its borders.

The UN and its special rapporteurs and experts, as well as courts of law, have repeatedly condemned the EU’s and member states’ restrictive immigration policies and their resultant practices, to no avail. The Libyan government is not in control of its territory, Libya is in the midst of a civil war and is not a safe place, the Libyan coastguard includes traffickers and Libyan detention centres are places of systematic torture which now also run the risk of being bombed, as happened in Tajoura on 2 July 2019.

The attack by General Haftar’s forces resulted in 53 deaths, with reports that detention centre guards shot some migrants who tried to flee, which the Libyan interior ministry denies. The Libyan coastguard is a costly fiction set up to allow the EU to relinquish its responsibilities in wholesale fashion. It often does not answer distress calls and it returns people to torture camps, all funded by the EU and its states. The Libyan coastguard’s coordination by Italian and EU missions is evidence of involvement in *refoulements* prohibited by international law. Its attacks and intimidation of NGO rescue boats is the step that follows the code of conduct imposed by Italy and the EU to ensure that people drown at sea for dissuasive purposes.

During the writing of this article, Libya itself has produced its own “*code of conduct*” to intimidate NGO vessels and to stop them saving lives and documenting state crimes. In effect, after paying criminal parties in third countries to abuse migrants, they are being deployed to intimidate European citizens. In the meantime, from June 2018 to August 2019, torture on board of boats by EU states by denying them a safe harbour and effectively turning them into sites of detention has been normalised. Even European citizens have been subjected to conditions that would amount to inhuman and degrading treatment in carceral contexts, as punishment for not returning people to places where they will be abused.

The effort of mystification that the EU and Italy are undertaking is such, that journalism and freedom of information must be reined in. So, after pressure by the EU (and member states) to interpret illegality as effectiveness from 2014 to 2019, when the European far-right was enrolled in its efforts, allies were also found among the traffickers that these policies supposedly work to fight.

Their targets: anyone who does not support these efforts and anyone willing to consider that non-Europeans moving without authorisation are human beings. Frontex has been operating to dismantle this notion since its creation, to make irregular migration status prevail over any

other consideration such as people being refugees, asylum seekers or vulnerable subjects. It is a way to subordinate people's rights to procedures. After coordinating the spread of human rights abuses throughout the EU and so-called transit countries, border forces in Balkan countries are turning into units tasked with abusing and frightening supposedly irregular or economic migrants who may well be refugees but must not have access to relevant procedures.

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