



Analysis

Mediterranean: As the fiction of a Libyan search and rescue zone begins to crumble, EU states use the coronavirus pandemic to declare themselves unsafe

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Introduction

The search and rescue zone assigned to Libya in the central Mediterranean has been obvious since its inception as a fiction that was useful to assert EU efforts to reduce the number of arrivals by sea. Shortly after a submission to the International Maritime Organization (IMO) was filed in late March 2020, calling for it to be scrapped for not fulfilling the relevant requirements, attempted sea crossings from Libya resumed. EU states responded by opportunistically declaring themselves unsafe due to the Covid-19 emergency.

Frontex aircraft were monitoring events from the sky, and over the Easter weekend (11-12 April) one vessel which seemed to have disappeared was returned to Libya, with five dead people on board and seven reported as having drowned at sea. At least one Maltese official has confirmed a personal role in coordinating *refoulements* such as these, on the orders of the prime minister's office, for the last three years.

In a separate operation, the NGO rescue vessel Alan Kurdi rescued people who were in danger at sea before being denied permission to disembark for over ten days, with over 150 people on board. The Council of Europe's Commissioner for Human Rights, Dunja Mijatović, responded by declaring that:

“Despite the unprecedented challenges European countries face due to COVID-19, saving lives at sea and disembarking survivors in a safe port must continue”.

Submission to the IMO in London

“The Libyan SAR zone is an illusion”, according to a submission to the International Maritime Organization (IMO) filed by *Open Arms*, the *Comitato Nuovi Desaparecidos*, *Progetto Diritti* and a team of lawyers specialised in migration, alongside independent Italian MP Gregorio De Falco (formerly of the 5 Star Movement, and a cruise ship captain).¹ News of this submission was reported by Emilio Drudi in *Tempi Moderni* on 31 March.²

The document argues that Libya does not fulfil the essential requirements to control a maritime search and rescue area as it lacks an operative centre for receiving distress calls and organising and co-ordinating sea rescues, and does not have adequate radio communications capabilities on the coast or in secondary sites. Neither does Libya have an adequate fleet, helicopters or aerial vessels for carrying out monitoring or rescues – not to mention the fact that Libya cannot be considered a place of safety, as confirmed by the Italian Court of Cassation's sentence in the case of *Carola Rackete* and *Sea Watch 3*, which reaffirmed that rescues must end in a place of safety.

All of this has been common knowledge since the notification of the Libyan SAR zone to the IMO in December 2017. The fiction is convenient for the EU because it allows Italy and Malta to relinquish their duties to rescue and receive migrants who may be in danger during sea crossings. The submission by *Open Arms* and others requests that the IMO strike this SAR

1 Facebook page of the Comitato Giustizia per i nuovi desaparecidos del Mediterraneo, <https://www.facebook.com/nuovidesaparecidos>; Progetto Diritti website, <https://www.progettodiritti.it>

2 “Esposto All’Imo Per Demolire L’alibi Della Zona Sar Libica”, Emilio Drudi, 31.3.2020, *Tempi Moderni*, <http://www.tempi-moderni.net/2020/03/31/esposto-allimo-per-demolire-lalibi-della-zona-sar-libica/>

zone from international records and registers, because it is purely nominal and puts more lives in peril at sea than it contributes to saving.

The submission was also sent to the International Criminal Court (ICC), which was recently contacted by the International Organisation on Migration (IOM) due to continuing *refoulements* enacted by Libyan coastguards coordinated by European actors. Striking off the Libyan SAR zone from international registers would contribute to dismantling an alibi which the EU as a whole, with Italy at the forefront, has used to justify policies and practices of closure and *refoulement*.

Point by point

The submission's case rests on four points to call for a cancellation of the SAR zone.

1. Equipment, resources and technical capabilities

The submission argues that Libya does not possess even a fraction of the necessary capabilities for managing a SAR zone, which is crucial for the safety of thousands of people's lives. It lacks a maritime or joint rescue coordination centre, a central operative office and coastal radio stations, meaning that it is not in a position to autonomously coordinate SAR operations, and it sometimes even fails to receive distress calls issued by radio at sea.

The submission points to claims that Italian navy ships may be coordinating the Libyan coastguard (which the Italian judiciary is investigating). Malta also appears to be involved. A colleague of former Maltese prime minister Joseph Muscat, Neville Gafà, said to journalists enquiring about SAR cooperation between Libya and Malta, that intergovernmental cooperation regarding migration was ongoing, and that the Maltese armed forces including the Navy were coordinating rescue efforts by the Libyan Coast Guard in the Mediterranean (Gafà has now stated that he personally helped coordinate pushbacks on the orders of the prime minister's office – see the postscript to this article). However, Libya's naval resources consist of crafts donated by Italy and are inadequate for accomplishing this role, and the Coast Guard do not have any helicopters or aircraft deployed for SAR purposes.

2. The Libyan Coast Guard

The Libyan Coast Guard is the crucial actor for SAR operations. However, it is not a single unified structure, but rather a collection of command centres answering to different authorities and local power figures, without a single chain of command acting on behalf of the state. Each of these command centres has its own interests, organisation and operative sphere, and the crews have been criticised for their treatment of rescued persons. Their capabilities and the system they use to intervene sometimes results in the people the Libyan Coast Guard is supposed to rescue being further endangered.

3. Safe harbour

On the crucial issue of rescues having to end in a safe harbour, the submission clearly states that there is no way for Libya to be considered a "*safe harbour*" in which to disembark shipwrecked people rescued at sea. The submission states it is a "*living hell*" for people trapped in Libyan territory (particularly in Tripolitania), spattered with detention facilities (*laagers* is the submission's preferred term) where death, torture, rape, slave labour, abuses and violence are daily occurrences. Press reports over the last few years, as well as

complaints by NGOs and horrific, repetitive reports by international bodies including UNHCR, IOM and the UN mission in Libya, provide evidence of this.

A sentence by the Milan court of assizes that convicted a Somali trafficker describes the Bani Walid camp – that the EU insists on calling a reception or detention centre – as reminiscent of Nazi *laagers*. More recently, and in agreement with what they have been reporting for several years, UNHCR and IOM have called on the international community to evacuate migrants and refugees from Libyan camps, as many as possible as swiftly as possible, with a view to closing them definitively. The civil war that intensified again in April 2019 and the battle for Tripoli make the situation even worse, where numerous migrants and refugees have been killed or injured, alongside many Libyan civilians. This must be considered relevant to the fact that a rescue operation can only be considered accomplished once people disembark in a safe port. This point was re-affirmed by the Italian Court of Cassation in the acquittal of Carola Rackete in the *Sea Watch 3* case (Rackete was charged for entering Italian territorial waters, and then the port of Lampedusa, without authorisation).

4. Mass indiscriminate *refoulements*

The final point in the submission concerns mass indiscriminate *refoulements*, because if the Libyan Navy or Coast Guard intercept or block people in boats at sea, it cannot be considered a rescue operation. Rather, they are large-scale and indiscriminate *refoulements* of the people

Previous coverage

Statewatch analysed both the nature of the Libyan SAR zone, the legal violations and the serious irregularities that it entails.

[Anti-migration cooperation between the EU, Italy and Libya: some truths, March 2020](#)

[The Commission and Italy tie themselves up in knots over Libya, June 2019](#)

in vessels who are taken back to a place where they obviously do not want to go. Their despair is such that they sometimes prefer jumping into the sea, putting their lives in peril, rather than being forced to board so-called rescue boats that will take them back to Libya and the hell that they managed to escape. Substantively, this practice appears to violate the law of the sea, international law, the 1951 Geneva Convention and the Italian Constitution. The submission recalls that, in 2020, this fate has been experienced by the 2,200 people the Libya Coast Guard claims it has saved.

Italy declares itself unsafe by inter-ministerial decree...

The novel coronavirus pandemic is a tragedy that has brought to the surface the structural flaws in states' public health provision. At the same time, it has provided the 'mother of all pretexts' to border-mongers and migration prohibitionists, and Italy was swift to take advantage. As the umpteenth instance unfolded of sea vessels needing rescuing and vessels known to be in distress being left at sea despite distress calls being received, an inter-ministerial decree was signed on 7 April by the ministers of infrastructure and transports minister in concert with the foreign affairs minister, the interior affairs minister and the and health minister.³ Article 1 of this decree does not require comment:

³ The inter-ministerial decree of 7 April 2020, [https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI\(R\).0000150.07-04-2020%20\(3\).pdf](https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI(R).0000150.07-04-2020%20(3).pdf)

“1. For the entire duration of the national health emergency deriving from the spread of the Covid-19 virus, Italian ports do not ensure the necessary requirements to be classified and defined as a Place of Safety [English in the original], in accordance with provisions in the Hamburg Convention on maritime search and rescue, in cases involving rescues undertaken by naval units flying a foreign flag outside of the Italian SAR zone.”

This appeared to accomplish the ultimate goal of efforts by successive interior ministers (Marco Minniti and Matteo Salvini were prominent in these) to assert the principle that rescuers' nationality is a valid reason to obstruct sea rescues, forbid disembarkation and keep vulnerable people at sea. This contravenes a central plank of the law of the sea, namely, that ships should be encouraged to undertake rescues because states will minimise their inconvenience for engaging in a prescribed duty.

Professor Fulvio Vassallo Paleologo of Palermo University noted that if the hierarchy of sources of law still deserves recognition, then the decree, as an administrative act, cannot be used to seriously affect legal provisions that are also disciplined by international conventions. He argued that:

“You cannot use the state of emergency deriving from a pandemic to further criminalise humanitarian rescue interventions enacted by NGO ships, which are denied a safe port in which to disembark, thus impeding the completion of sea rescue operations in the open sea”.

Vassallo Paleologo notes that through this decree, the government has used a health emergency to worsen provisions adopted by its predecessor (the *Legai*/Five Star Movement coalition), whose hostility to migrants was explicit.

The premises justifying the decree include several international instruments on human rights and the law of the sea which are contravened by its content, along with references to national, international and global measures related to the Covid-19 pandemic allowing the adoption of emergency provisions. The decree says, essentially, that the Covid-19 crisis makes it impossible for Italy to be considered, or to provide, “*safe places*”. There are four considerations in the decree that reveal its opportunism.

Firstly, this is because the health services and personnel are overburdened, and any activity would affect the functioning of the national health service. Secondly, it cannot be excluded that some rescued people may have Covid-19. Thirdly, police and law enforcement personnel are deployed on a large scale to monitor compliance with restrictions introduced to tackle the emergency and ensure the effectiveness of measures to prevent the virus spreading. The fourth and final premise does away with principles of the law of the sea introduced to ensure that vessels engage in rescue activities without suffering detrimental consequences, in terms of time and commercial interests:

“DEEMING that assistance and care activities to be enacted in a “safe port” can be ensured by the country whose flag the naval units fly if they have undertaken operations outside of the Italian SAR zone, without having been coordinated by the Rome MRCC [Maritime Rescue Coordination Centre].”

Four NGOs engaged in sea rescues promptly wrote a letter to the Council of Europe Commissioner for Human Rights, Dunja Mijatović, informing her of the decree and of several

flaws in both the text and its consequences in practice, starting from not assigning a place of safety (POS) to foreign civilian rescue vessels.⁴ They say the adopted measures are: “*devoid of any logical or empirical foundation, widely discriminatory and entirely disproportionate in relation to their stated objectives, as well as clearly contravening international treaties and, in particular, the [European] Convention [on Human Rights] [ECHR] which the decree nonetheless evokes*”.

In more concrete terms, the letter considers it troubling that a hypothetical risk of rescued people being infected:

“can be used to infer, in a general and abstract way, that there is a current and concrete threat to the national public well-being, nor does it seem acceptable that such a relevant measure that is liable to affect the fundamental rights of people rescued at sea guaranteed by the Convention’s articles 2 and 3 may be adopted on purely preventative grounds.”

Before pointing to norms of international law that cannot be derogated, even during emergencies, like the “*right to life, the prohibition of torture or inhuman and degrading treatment*” (all of which are at risk in Libya and the central Mediterranean) and asking the Commissioner to intervene, the four NGOs highlighted the situation of the *Alan Kurdi* (Sea Eye), that at that moment was at sea with 150 rescued people on board. These people were vulnerable and many of them had undergone “*atrocious violence*” and “*systematic human rights violations*”, yet Italy was not assigning it a place of safety (POS) in which to disembark.

In a statement on 16 April 2020, Commissioner Mijatović, called on Council of Europe (CoE) member states:

“to promptly respond to any call of distress at sea, deploy the necessary rescue capacity in a timely manner, and effectively co-operate to identify a place of safety where survivors can be disembarked, taking all necessary measures to protect the health of all involved”.⁵

She mentioned problematic past state practices that had undermined rescue operations in the Mediterranean and noted that responses to the Covid-19 emergency had resulted in Italy and Malta both closing their ports to NGO vessels and not providing customary rescue and disembarkation for people and vessels in distress. This development “*has further aggravated existing gaps in SAR operations in the Central Mediterranean*”. Whilst acknowledging the difficulties faced by both countries and encouraging both flag states and members of the CoE to lend support and assistance to coastal states, the statement ended bluntly:

“The COVID-19 crisis cannot justify knowingly abandoning people to drown, leaving rescued migrants stranded at sea for days, or seeing them effectively returned to Libya where they are exposed to grave human rights violations. European solidarity and

4 Letter from Mediterranean Saving Humans, Médecins sans Frontières Italy, Open Arms Italia and Sea Watch, original (in Italian),

<https://twitter.com/SeaWatchItaly/status/1248989200340353024/photo/1>

5 Commissioner for Human Rights, Council of Europe, ‘States should ensure rescue at sea and allow safe disembarkation during the Covid-19 crisis’, 16 April 2020,

<https://www.coe.int/en/web/commissioner/-/states-should-ensure-rescue-at-sea-and-allow-safe-disembarkation-during-the-covid-19-crisis>

concrete action to share responsibility and protect human rights is now more than ever of the essence”.

ASGI, the Italian Association of Juridical Studies on Immigration, reacted to the decree by calling for it to be immediately abrogated and producing a detailed legal analysis.⁶ The decree is interpreted as a “*general*” instruction for authorities not to assign a POS to foreign rescue vessels, disregarding the need for cases to be assessed individually and the manageable number of people involved (434 in 2020, up to 14 April), whose rights should be protected “*with – and not at the expense of – public health*”. The critical points that ASGI raises are:

1. a decree cannot be used to close Italy’s ports to vessels undertaking SAR activities;
2. assigning a place of safety to a rescue vessel amounts to “*safeguarding people’s rights concretely*”
3. Medical monitoring measures (quarantine) can be implemented either on vessels or in other medical or residential accommodation;
4. the 1979 Hamburg Convention requires timeliness in assigning a POS and consideration of circumstances including a situation of distress, weather and sea conditions and rescued people’s personal conditions;
5. a decree cannot lessen the Italian MRCC’s operative reactivity, serve as a pretext to enact *refoulements* or to discourage, dissuade or delay rescue operations of people fleeing Libya, to which people cannot ever be returned as Libyan ports are not places of safety (1951 Geneva Convention on refugees);
6. there is a risk of a “*de facto derogation*” of international and constitutional norms by decree, contrary to contractual obligations and fundamental principles for the functioning of the Italian state.

Previous coverage

Statewatch has been tracking how decrees are being used to subordinate human rights and the law of the sea to the strategic objectives of policies against “irregular” migration at the national and EU levels:

[Italy renews Memorandum with Libya, as evidence of a secret Malta-Libya deal surfaces](#), March 2020

[Italy’s redefinition of sea rescue as a crime draws on EU policy for inspiration](#), April 2019

[Statewatch translation of the joint NGO letter to the Council of Europe Commissioner for Human Rights](#), 11 April 2020

...and Malta and Libya follow suit as they enact refoulements

Notwithstanding the calls issued by the Commissioner for Human Rights, during the Easter weekend Italy and Malta committed all of the actions of which she disapproved, namely, “abandoning people to drown, leaving rescued migrants stranded at sea for

6 Nota ASGI. ‘ASGI chiede l’immediata revoca del decreto interministeriale del 7 aprile 2020. L’Italia è sempre vincolata all’obbligo di fornire un porto sicuro alle persone salvate in mare’, 15 April 2020, <https://www.asgi.it/wp-content/uploads/2020/04/Nota-ASGI-porti-e-accoglienza-porti-sicuri-COVID14-4-2020-def.pdf>; Associazione Studi Giuridici sull’Immigrazione press statement, ‘Soccorsi in mare: ASGI chiede l’immediata revoca del decreto interministeriale del 7 aprile 2020’, 15 April 2020, <https://www.asgi.it/asilo-e-protezione-internazionale/soccorsi-nota/>

days, or seeing them effectively returned to Libya where they are exposed to grave human rights violations.”

Alarm Phone, an NGO that maintains radio and telephone contacts with people at sea and alerts rescue coordination centres about distress calls it receives, was at the heart of these events. After spending several days and nights in contact with vessels in distress and requesting that states enact SAR operations, *Alarm Phone* produced a chronology of events that includes details of omissions and the malfunctioning of the Libyan SAR zone. Its report ‘*Twelve deaths and a secret push-back*’ confirms that Libyan ports are not safe, that the Maltese Armed Forces were in fact coordinating operations with the Libyan Coast Guard and attempting to dissuade migrants by misusing their powers, and that leaving people in hazardous conditions at sea has become official policy.

The report begins in the following terms:

“Twelve people have lost their lives due to European action and inaction in the Mediterranean Sea. Authorities in Malta, Italy, Libya, Portugal, Germany, as well as the EU border agency Frontex were informed about a group of 55 [eventually 63 people] in distress at sea but chose to let twelve of them die of thirst and drowning, while orchestrating the forced return of the survivors back to Libya, a place of war, torture, and rape.

As we will show in this report, and contrary to Malta’s claims, the boat had drifted within the Maltese Search and Rescue (SAR) zone, not far from the Italian island of Lampedusa. All authorities have failed to intervene, using the COVID-19 pandemic as an excuse to dramatically breach the law of the sea as well as human rights and refugee conventions. Though foremost the Armed Forces of Malta, all these authorities hold responsibility for the death of twelve human beings and the suffering of dozens of others.”⁷

The report covers a number of crucial issues:

- Libyan admission that it was unable to intervene on the morning of Saturday 11 April: *“The Libyan Coastguard now only does coordination work because of COVID-19, we can’t do any rescue action, but we are in contact with Italy and Malta.”*
- Confirmation from Frontex that its aircraft had spotted the vessels in danger and informed the relevant MRCCs in Italy, Libya, Malta and Tunisia on 10 April.
- A call-out was issued by the Maltese MRCC to merchant vessels on 14 April, calling for them to rescue one of the vessels in distress. When the cargo ship *Ivan* responded, seven passengers died during the rescue operation in adverse weather conditions and with Maltese Armed Forces support, before two different private vessels took over.
- On the evening of 14 April, Malta stated that all SAR operations had been completed, without mentioning a boat that was missing until the arrival of the surviving 56 people (including five bodies) in Libya was confirmed on the following morning, for which Malta admitted its coordination role.

⁷ ‘Twelve Deaths and a Secret Push-Back to Libya’, *Alarm Phone*, 16 April 2020, <https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya>

These events have to be seen in the long-term context, ongoing for several years, in which the EU and its counterparts in third countries have been working to impose illegality as the norm. When the fiction of a fully functional Libyan SAR zone was placed under scrutiny and liable to be repealed, the COVID-19 emergency served as a pretext for Italy to follow suit by declaring itself unsafe. Malta also argued that its ports were closed and Libya temporarily postponed a disembarkation because of an attack near the port. Libya is in the midst of a civil war, after all.

These claims were used to justify the abandonment of people at sea for long periods, to which it appears a routine 14-day quarantine on board of ships is being instituted in Italy, on board of ferry boats off the Sicilian coast. This development is reminiscent of proposals during the early phases of implementation of the hotspot approach in southern Italy, that included calls for “floating hotspots” to be established on which to undertake procedures prior to disembarkation.⁸ The Covid-19 emergency is thus allowing long-term plans to be introduced using a public health emergency.

The *Malta Times* responded to events in a courageous editorial entitled ‘*We have blood on our hands*’, linking the latest push-back to Libya to a case in 2002 in which 220 Eritreans were deported to Libya before their transfer to their home country, where they were tortured. This highlighted the continuity of efforts to assert policies that violate human rights in the central Mediterranean, pointing to a shift:

“In 2002, we witnessed a sin of commission. In 2020, it is a sin of omission. Both are terrible crimes.”⁹

The article also confirmed reports that the Maltese Armed Forces adopt delaying tactics when called upon to rescue migrants in distress, and was critical of European lack of support for frontline states in this field:

“It is a known secret that the Armed Forces of Malta have been instructed to adopt delaying tactics when migrants are sighted in water, hoping they land in Italy or are forcibly returned to a country they are fleeing from. This tactic has now had tragic consequences.

It is equally disgraceful that several EU member states have adopted an almost non-responsive attitude to the subject of migration, especially when the tragedy isn’t happening at their doorstep.”

The Maltese Armed Forces denied allegations that they sabotaged a boat and left it adrift to intimidate people who were at sea and convince them that they would never reach Malta. Domestic judicial investigations may be underway into these incidents. The Maltese prime minister, Robert Abela, responded as follows in reference to the Covid-19 emergency:

⁸ ‘Any hotspot to identify migrants at sea is illegal’, ASGI statement translated by Statewatch, 9 June 2016, <http://statewatch.org/news/2016/jun/it-floating-hotspots-asgi.html>

⁹ ‘We have blood on our hands’, *Times of Malta*, <https://timesofmalta.com/articles/view/we-have-blood-on-our-hands.785993>

*“My conscience is clear because we have done everything in our power to protect our people and all those who live in this country”.*¹⁰

However, the UNHCR envoy Vincent Coquetel noted a few problems with events he had observed from afar:

*“But for sure, lives could have been saved, the rescue should not have been delayed, those ‘rescued’ should not have been returned to #Libya & now need to be rescued from serious risks to their life”.*¹¹

Frontex and Libya

Although Frontex aircraft first observed the vessels at sea on 10 April and notified the relevant MRCCs, they were not rescued for days and 12 people are believed to have died, either on board or drowning at sea during an attempted rescue that went awry. An immediate reaction, reported by *Radio Radicale* journalist Sergio Scandura, is that private air traffic mapping services have been informed that they should not include Frontex aircraft flight routes.

Scandura has been reconstructing naval and air traffic in the central Mediterranean admirably at a time when information from official sources including the Italian Coast Guard is being scaled back, in a similar way to the reporting undertaken in the sea stretch between Turkey and Greece by *Aegean Boat Report*. He noticed a message requiring that the flight routes of two aircraft flying in Frontex missions (*Osprey 3* and *Eagle 1*) were removed from the *FlightAware* tracking platform, due to “*European government data rules*” (in the words of the site).¹² Thus, the evening after it was established that the EU mission observed vessels in distress for several days resulting in the deaths of at least 12 people, flight paths became state secrets. The problem would seem to be, then, not that member states and the EU were acting unlawfully, but rather that there was proof of their misdeeds, adding to the available material on refoulements, omission and obstruction of rescues, and on the fictitious nature of the so-called ‘Libyan SAR zone’.

Statewatch asked Frontex about the removal of data on its aircraft from the *FlightAware* platform and received the following response:

“It is a general practice that aircraft and boats involved in law enforcement are not made visible to avoid disclosing sensitive information, such as patrolling schedules or surveillance area. I think you would agree that we should do everything possible to prevent a criminal group smuggling illegal drugs or weapons into Europe to know where a Frontex plane or boat will be patrolling at any particular time.

In the wrong hands, detailed information about the whereabouts of a Frontex plane or boat could undermine our efforts to keep Europe’s borders safe. By revealing sensitive operational details, we would be doing a disservice to European citizens who rely on

10 ‘Maltese Prime Minister says he is under investigation following death of five migrants’, *The Journal*, 16 April 2020, <https://www.thejournal.ie/malta-prime-minister-migrant-deaths-5078016-Apr2020>

11 Ibid.

12 The full report ‘Il buco nero del Mediterraneo e un segreto di stato’, *Mediterraneo Cronaca*, 17 April 2020, is available here: <http://www.mediterraneocronaca.it/2020/04/17/il-buco-nero-del-mediterraneo-e-un-segreto-di-stato-intervista-a-sergio-scandura-radio-radicali>

their national authorities and Frontex to keep their borders secure. This could also jeopardise the lives of our crews.

In regards to your questions, Frontex did not make any such requests to the websites you mention.”

Even if these assertions are taken at face value, and hiding flight details from tracking platforms does help prevent the nefarious deeds of drugs and weapons smugglers, it must be observed that keeping those details secret is also extremely useful for those agencies and institutions who wish to limit public discussion on their role in the deaths and illegal push- and pull-backs that are ongoing in the Mediterranean.

The International Organisation for Migration weighed in on 17 April to note what many observers had known for a long time, namely that many of the people returned to Libya by the Libyan Coast Guard later disappeared into unofficial detention sites about which information is not forthcoming. At least 3,200 people have been returned to Libya in 2020, and the IOM expressed concerns as to their fate, considering the “*many first-hand accounts of abuse occurring within the formal and informal detention systems in Libya.*” Furthermore, the IOM spokesperson for the Mediterranean, Safa Msehli, said:

“Multiple credible reports from migrant communities in contact with IOM allege detainees are being handed over to smugglers and tortured in an effort to extort payments from their families, abuses that have been extensively documented by the media and UN agencies in the past.”¹³

The IOM press release¹⁴ concludes by reminding states of some basic principles:

“We remind states that saving lives is the number one priority and that distress calls must be responded to in line with international law. COVID-19 is not an excuse to forego hard-won international rights and states obligations towards vulnerable people.”

Conclusion

Events in the last fortnight provide further confirmation of the dishonesty and opportunism with which EU immigration policy is being advanced at both the national and EU levels, raising the need to pay close attention to state efforts to use a public health emergency to assert pre-existing strategies to subordinate human rights and the rule of law to strategic policy goals. In practice, the authorities consistently disregard international law and refuse to recognise any limits to what state authorities may do to achieve objectives set in absolute terms. Normative frameworks are being wrecked through attacks against cornerstones such as the duty to rescue, the right to life and the non-refoulement principle, regardless of what UN experts, international bodies (UNHCR, IOM) or the courts of law may say. Initiatives such as the above submission to the IMO to cancel the Libyan SAR zone, the case brought against the EU and some member states before the ICC by lawyers Omer Schatz and Juan Branco and the more recent submission to the European Court of Auditors by GLAN and several civil society

13 “Migrants missing in Libya a growing concern”, IOM, <https://www.iom.int/news/migrants-missing-libya-matter-gravest-concern>

organisations, offer some hope. However, the EU and member states can be expected to respond forcefully to assert their own interpretation of events and legality.

Postscript: Maltese official admits coordinating rescue and return to Libya

Following the events on Easter weekend amid criticism of Malta's role, members of the government and officials had to answer questions from the Maltese media and judiciary. In a statement given behind closed doors to a magistrate investigating a criminal case brought by the civil rights NGO *Repubblika* into this push-back,¹⁵ Neville Gafà (see above) admitted coordinating the return to Libya, acting on instructions from the Maltese prime minister's office.

The *Times of Malta* reported the claims that he repeated in public after the hearing, in what appears an attempt by EU member state governments to admit what they are doing in the hope that unlawful practices will be legalised on the basis of competing claims, not least the effectiveness of the fight against so-called irregular migration. Thus, Gafà is quoted stating that

*"I confirm that on Easter night and the days that followed I was involved in a mission in which a boat with 51 irregular migrants including 8 women and 3 minors were taken to port in Tripoli. On the same boat were five corpses."*¹⁶

Gafà claimed that he was instructed to coordinate the operation directly with the Libyan home affairs ministry and coast guard and confirmed his role in coordinating operations during the last three years, not to enact pushbacks, but rather, to prevent boats entering Maltese territorial waters and the island state's SAR zone. He argued that, during the period in question (July 2018 to January 2020), if boats entered the Maltese SAR zone they were taken to Malta, whereas if they were heading for Maltese waters, the Libyan Coast Guard would be used to "re-direct" them. Alongside recent events, these revelations strengthen the case of people who are trying to hold the EU and several member states accountable for the deaths, abuses and unlawful outcomes produced by their immigration policies and practices.

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Further reading

Omer Schatz, Juan Branco, Communication to the Office of the Prosecutor of the International Criminal Court, '[EU Migration Policies in the Central Mediterranean and Libya \(2014-2019\)](#)', June 2019

An attempt to raise a few key issues (in Italian) on the situation in the central Mediterranean, '[L'attacco frontale ai diritti dei migranti e al diritto del mare non è casuale](#)', 31 March 2020

¹⁵ 'NGO seeks criminal action against ministers over decision to shut ports', *Times of Malta*, 15.4.2020, <https://timesofmalta.com/articles/view/ngo-seeks-criminal-action-against-ministers-over-decision-to-shut.785855>

¹⁶ 'Anger as Neville Gafà says he coordinated Libya pushback on OPM orders', *Times of Malta*, 30 April 2020, <https://timesofmalta.com/articles/view/neville-gafa-says-he-coordinated-libya-pushback-on-opm-orders.788951>

Complaint to the European Court of Auditors on misuse of EU funds in Libya: [EU Financial Complicity in Libyan Migrant Abuses](#), *Global Legal Action Network*

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