

## STRATEGIC LESSONS LEARNED FROM LIBYA: THE EU-LIBYA DEAL AND ITS OUTCOME

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### ABSTRACT

The migration flow from northern African countries and the resulting overcrowding of detention centres in Italy has jumpstarted a wave of cooperation between Italy and Libya, the latter being a transit point to Europe for many Sub-Saharan countries. This situation has led to the emergence of a policy aimed at reducing crossings from Libya to Italy at any cost. The Italy-Libya Deal concluded between the Italian Prime Minister Gentiloni and Fayeze al-Serraj, Head of the UN-backed Libyan Government of National Accord, focuses on short-term and long-term goals. Short-term goals include saving lives at sea and in the desert; dismantling traffickers' and smugglers' networks; facilitating the return of those who are not entitled to stay; and opening legal ways to Europe for people in need of protection. As for the long-term goals, the deal generally addresses the root causes of irregular migration and focuses on externalizing migration control mechanisms. Some connected the decrease in migrant arrivals in Italy in summer of 2017 to the deal which might, however, have some dire consequences for its 'beneficiaries'.

### INTRODUCTION

In November 2017, the United Nations High Commissioner for Human Rights Zeid Ra'ad Al Hussein criticized the EU's migration policy towards Libya. He stated that forcing people rescued at sea to return to Libya for detention was inhuman and that "the suffering of migrants detained in Libya [was] an outrage to the conscience of humanity".<sup>1</sup> The EU has brokered a deal with the Libyan authorities as part of a broader plan to prevent migrants from leaving their countries of origin and crossing the Mediterranean Sea. It includes, *inter alia*, training the Libyan Coast Guard to intercept migrants at sea and then return them to either Libya or their country of origin.<sup>2</sup> Many migrants are then sent to detention centres, which are often overseen by armed militia groups.<sup>3</sup> Even though the deal between Italy and Libya does not explicitly permit those interceptions to take place in international waters, it is argued that the Libyan Coast Guard is operating outside Libya's territorial waters.<sup>4</sup>

<sup>1</sup> "UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity," United Nations Human Rights Office of the High Commissioner, Accessed March 15, 2019, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393>.

<sup>2</sup> Céline Bauloz, "The EU Migration Partnership Framework: an External Solution to the Crisis?," EU Immigration and Asylum Law and Policy, 31 January, 2017, Accessed January 3, 2020, <http://eumigrationlawblog.eu/the-eu-migration-partnership-framework-an-external-solution-to-the-crisis/>.

<sup>3</sup> Mark Micallef and Tuesday Reitano, "Human smuggling and Libya's political end game," Institute for Security Studies (2017): 3.

<sup>4</sup> "A perfect storm: the failure of European policies in the central Mediterranean," Amnesty International, Report, 2017, Accessed January 3, 2020, <https://www.amnesty.org/download/Documents/EUR0366552017ENGLISH.PDF>.

UN High Commissioner Al Hussein's statement was followed by a footage released by CNN that appeared to show youths from Niger and other sub-Saharan countries being sold to buyers for about \$400 (£300) at undisclosed locations in Libya.<sup>5</sup>

Many critics blamed the EU Deal and Policy towards Libya, jump-started by a draft action plan carried out in the mid-2000s between the EU and Libya and later complemented by a deal with Turkey to stop migrant crossings to Greece, for negatively impacting on the rights of migrants, their primary "beneficiaries".

### 1. LIBYA'S RELATIONS WITH THE EU

Since the beginning of the 2000s, Libya has become a key transit point into Europe by sea, with some 80,000 migrants reaching Italy's southern islands, and to a lesser extent Malta, each year.<sup>6</sup>

Since November 2004, the EU has placed considerable emphasis on "externalizing" matters of asylum and migration.<sup>7</sup> By virtue of their proximity to Europe, North African countries, in particular Libya and Morocco, are at the centre of this policy, according to which the EU is trying to partially "disburden" its borders and to transfer responsibilities concerning asylum to third countries. A central component of this policy is to strengthen the capacity of third countries to manage migration, both in the field of refugee protection as well as border control.<sup>8</sup>

EU-Libya cooperation was sparked due to the rising numbers of migrant arrivals in Italy and Malta from Libya since around the year 2000. This cooperation contained two main elements: (1) to secure the borders of the EU to prevent entry of, and (2) to return "illegal migrants" to their countries of origin or at least to the country of transit (European Parliament, 2006).<sup>9</sup> Recognizing that full cooperation could not take place in the absence of formal relations between the two parties, in June 2005 the European Council announced the initiation of 'an ad hoc dialogue' and cooperation with Libya on migration issues, which would be guided by respect for

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<sup>5</sup> Nima Elbagir, Raja Razek, *et al.*, "People for sale where lives are auctioned for \$400," CNN, 2017, Accessed January 3, 2020, <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>.

<sup>6</sup> Sara Hamood, "African Transit Migration through Libya to Europe: The Human Cost," *the American University in Cairo - Forced Migration and Refugee Studies* (2006): 5.

<sup>7</sup> Paula García Andrade, "EU Cooperation with Third Countries in the Field of Migration," *Directorate General for Internal Policies - Policy Department C: Citizens' Rights and Constitutional Affairs* (2015): 42.

<sup>8</sup> "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a European Agenda on Migration," European Commission, 2015, Accessed January 3, 2020, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf).

<sup>9</sup> Sara Hamood, "Europe's Security Approach Failing to Halt Migration from Libya," *International Journal on Multicultural Societies* 2 (2008): 128, Accessed January 3, 2020, [www.unesco.org/shs/ijms/vol10/issue2/art2](http://www.unesco.org/shs/ijms/vol10/issue2/art2).

human rights and a need to prevent loss of life at sea.<sup>10</sup> Subsequently a Joint EU-Libya Action Plan on Migration was drafted.<sup>11</sup>

Bilateral cooperation between Libya and EU Member States, most importantly Italy, at Council level emphasized the importance of border control and surveillance, with the focus on prevention of migration-related deaths. In 2004, the Italian government provided Libya's Coast Guard with training and equipment, assisted border surveillance and management; and plans were underway to continue this support in 2005.<sup>12</sup>

During that period, the European Parliament urged caution in proceeding with cooperation with Libya, fearing that Libya would fail to respect international human rights and humanitarian law. Consequently, in response to calls from within the EU and from concerned NGOs to fully integrate human rights into any cooperation (e.g. Amnesty International in 2005),<sup>13</sup> and due to widespread media coverage of deaths of migrants at sea, the EU framed its cooperation with Libya in terms of humanitarian concerns and respect of human rights principles.

Although Libya and Italy never signed a re-admission agreement, they reached a verbal agreement on returns, which allowed Italy to restrict entry into its territory and to carry out a series of mass deportations.<sup>14</sup> These deportations took place since 2004, at the time of a large influx of foreign nationals into Lampedusa. The manner, in which these deportations were carried out, was in violation of Italy's international obligations, particularly regarding the right to seek asylum and the principle of *non-refoulement*. On arrival in Libya, some returnees were detained without access to the United Nations High Commissioner for Refugees (UNHCR) and at the risk of torture or ill-treatment,<sup>15</sup> while others were sent back to their countries of origin, where they were at risk of serious human rights violations.<sup>16</sup> The fate of those returned to their country of origin still remains mostly unknown. To facilitate returns, Italy financed a programme of charter flights for the repatriation of so-called illegal immigrants from Libya back to their countries of origin and the construction of a camp for illegal immigrants in northern Libya.<sup>17</sup>

<sup>10</sup> Jiří Holík, "Security Policy of the EU towards the Maghreb: Promoting Democracy or Stability?," (PhD diss., Charles University, 2012), 38.

<sup>11</sup> Hamood, "Europe's Security Approach." 140.

<sup>12</sup> Hamood, "Europe's Security Approach." 65.

<sup>13</sup> Hamood, "Europe's Security Approach." 73.

<sup>14</sup> Hamood, "Europe's Security Approach." 138.

<sup>15</sup> "Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya," United Nations Support Mission in Libya, Report, December 20, 2018, 25-31, Accessed January 3, 2020, <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.

<sup>16</sup> "Detained and Dehumanised: Report on Human Rights Abuses against Migrants in Libya," United Nations Support Mission in Libya, Report, December 13, 2016, 12-16, Accessed January 3, 2020, [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf).

<sup>17</sup> "Report on the Technical Mission to Libya on Illegal Immigration," European Commission, Report, 2005, 59-62, Accessed January 3, 2020, <http://www.statewatch.org/news/2005/may/eu->

This wave of cooperation between Italy and Libya was suspended in 2012 due to several factors including, but not limited to, the change of Government in Libya.<sup>18</sup> In the following years, the EU encountered political difficulties in sharing the burden emerging from the migration crisis. The European Union sought to ease the pressure on Italy and Greece, two frontline states that had to process most asylum claims.<sup>19</sup> In March 2016, it negotiated a deal with Turkey to stop migrants from crossing to Greece. In exchange, the EU offered to take refugees from camps in Turkey, provided Turkey with financial aid, promised visa liberalisation and to speed up negotiations on its EU accession.<sup>20</sup>

Since the “Turkey Deal”, EU’s efforts focussed mainly on the political imperative of reducing the number of migrants reaching the EU. Following the closure of the Balkan route and the March 2016 EU-Turkey deal, arrivals in Greece from Turkey dropped significantly.<sup>21</sup> In the summer of 2016, the EU’s attention turned to the central Mediterranean route and Italy, where the number of migrant arrivals, almost all embarking from Libya, was increasing.<sup>22</sup>

In June 2016, the European Council endorsed the Commission’s proposal to set up the “Migration Partnership Framework” (MPF), focusing on the strengthening of relationships with third countries to better manage migration.<sup>23</sup> The main goal of this initiative was to support the economic, social and political development of third countries (countries of origin of migrants) and thus address the root causes of irregular migration and forced displacement. Those objectives were to be achieved through political ‘packages’ agreed between the EU and third countries and with clear commitments, such as the negotiation of re-admission agreements with countries of origin and transit.<sup>24</sup> Under this Framework, the European Council adopted the Malta Declaration of 3 February 2017 regarding the external aspects of

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report-libya-ill-imm.pdf.

<sup>18</sup> Anja Palm, “The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?,” EU Immigration and Asylum Law and Policy, October 2, 2017, Accessed January 3, 2020, <http://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>.

<sup>19</sup> “Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast),” European Union: Council of the European Union, June 29, 2013, Accessed January 3, 2020, <http://www.refworld.org/docid/51d298f04.html>.

<sup>20</sup> Luigi Scazzieri and John Springford, “How the EU and Third Countries can Manage Migration,” Centre for European Reform, Report, 2017, 2.

<sup>21</sup> Scazzieri and Springford, “How the EU,” 3.

<sup>22</sup> “Desperate and Dangerous,” 12.

<sup>23</sup> “Communication of the Commission on establishing a new Partnership Framework with third countries under the European Agenda on Migration,” European Commission, COM(2016) 385 final, June 7, 2016, Accessed January 3, 2020, [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2016/0385/COM\\_COM\(2016\)0385\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0385/COM_COM(2016)0385_EN.pdf).

<sup>24</sup> Scazzieri and Springford, “How the EU,” 3.

migration<sup>25</sup> and immediately thereafter finalized an interrelated Memorandum of Understanding (MoU) with Italy and Libya aimed at stopping migratory flows by preventing departures from North Africa.<sup>26</sup>

In short, with the help of the “MPF” the EU was seeking to externalize migration controls, emphasizing that at the same time “cooperation on re-admission and return will be a key test of the partnership between the EU and [its] partners”.<sup>27</sup> The EU proposed re-admission strategies to refugee-producing countries (Mali, Nigeria, Senegal, and Ethiopia), including financial support, in exchange for the acceptance of migrant returns from the EU.<sup>28</sup>

In view of the foregoing, the MoU between Libya and Italy forms part of a wider EU policy to combat illegal immigration, human trafficking and contraband, and to reinforce border security.

## 2. EU-LIBYA DEAL 2017

### BACKGROUND

As discussed above, cooperation with Libya on migration and border control was not a new policy choice for either Italy or the EU. During the 2000s, numerous initiatives and policies had been concluded on behalf of the Italian government with the Gaddafi regime.<sup>29</sup> This partnership was suspended due to political changes in Libya and the landmark judgment of the ECHR: *Hirsi Jamaa v Italy*, where the Court found Italy to be in gross violation of Article 3 of the ECHR, its principle of *non-refoulement* and the prohibition of collective expulsions.<sup>30</sup> The 2017 MoU revived the earlier migration policies between Italy and Libya.

Libya is not under the authority of a single Government but has three competing centres of power: (1) the UN-backed Government of National Accord; (2) the House of Representatives backed by General Khalifa Haftar and (3) the Government of

<sup>25</sup> “Informal meeting of EU heads of state or government, Malta, 03/02/2017,” European Council, 2017, Accessed January 3, 2020, <http://www.consilium.europa.eu/en/meetings/european-council/2017/02/03/>.

<sup>26</sup> Memorandum of understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic (Libya-Italy), signed on February 3, 2017, Accessed January 3, 2020, [https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM\\_translation\\_finalversion.doc.pdf](https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf).

<sup>27</sup> “European Council conclusions on migration, external relations and jobs, growth and investment,” European Council, EUCO 26/16, Brussels, 2016.

<sup>28</sup> “Second Progress Report: First Deliverables on the Partnership Framework with third countries under the European Agenda on Migration,” European Commission, COM(2016) 960 final, Brussels, 2016.

<sup>29</sup> Mariagiulia Giuffrè, “State Responsibility Beyond Borders: What Legal Basis for Italy’s Pushbacks to Libya?,” *International Journal of Refugee Law* 692 (2012): 700-03.

<sup>30</sup> *Hirsi Jamaa and Others v. Italy*, 2012, ECtHR, Application No. 27765/09, Accessed January 3, 2020, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-109231&filename=001-109231.pdf>.

National Salvation. In turn, each of these actors is fragmented and does not exercise complete control over its own forces.<sup>31</sup> Consequently, Libya does not have one Coast Guard authority administered by a central government but a set of armed groups with different allegiances. Following the template of the “Turkey Deal”, the EU delegated the authority of negotiating with Libyan actors to Italy. Italy agreed to help the Government of National Unity to police its own waters and train and equip its Coast Guard.<sup>32</sup> The EU endorsed the deal and allocated €90 million to Libya to improve conditions in detention centres and foster economic development.<sup>33</sup> Subsequent to the deal, some of the NGOs involved in search and rescue in the Mediterranean stopped operating in Libyan waters since the new regulations, *inter alia*, prevented them from transferring rescued people to their vessels.<sup>34</sup> Other NGOs that refused to comply with the regulations stopped operating in Libyan waters after they reported of being threatened and in some cases shot at by Libya’s Coast Guard.<sup>35</sup> This, as well as stepped-up EU and Italian support for the Libyan Coast Guard, resulted in bigger numbers of migrants in their attempt to cross the Mediterranean to be intercepted by Libyan boats and taken back to Libya rather than to be brought to shore in Italy.

#### UPSIDES OF THE DEAL

On the basis of the Migration Partnership Framework (MPF) and Memoranda of Understanding (MoU), the EU sought to co-operate with countries of transit and origin in Africa and Asia to reduce the number of migrants reaching Libya.<sup>36</sup> While efforts to negotiate re-admission agreements with countries of origin were very slow, the deals with Libya and other countries along the Mediterranean route appeared to reduce the numbers of migrants. Arrivals in July and August of 2017 were sharply lower than a year earlier.<sup>37</sup> According to EU officials, the decrease in the number of boats, was not only caused by the EU-Libya deal, but also by the fact that potential migrants became more aware of the increasingly dangerous character of the route through Mediterranean sea.<sup>38</sup> The drop in numbers, however, might also be explained by the fact that migrants were taking now unmonitored and even

<sup>31</sup> Scazzieri and Springford, “How the EU,” 3.

<sup>32</sup> “Memorandum of understanding,” Article 1.

<sup>33</sup> “EU Trust Fund for Africa adopts €90 million programme on protection of migrants and improved migration management in Libya,” European Commission, Press Release, April 12, 2017, Accessed January 3, 2020, [https://ec.europa.eu/europeaid/news-and-events/eu-trust-fund-africa-adopts-eu90-million-programme-protection-migrants-and-improved\\_en](https://ec.europa.eu/europeaid/news-and-events/eu-trust-fund-africa-adopts-eu90-million-programme-protection-migrants-and-improved_en).

<sup>34</sup> Jon Henley and Angela Giuffrida, “Three NGOs halt Mediterranean migrant rescues after Libyan hostility,” *the Guardian* London/Rome, August 14, 2017, Accessed January 3, 2020, <https://www.theguardian.com/world/2017/aug/14/three-ngos-halt-mediterranean-migrant-rescues-after-libyan-hostility>.

<sup>35</sup> Lizzie Dearden, “Aid workers recount Libyan coastguard attacks on refugee rescue boats as British Government continues support,” *Independent*, January 18, 2017, Accessed January 3, 2020, <http://www.independent.co.uk/news/world/africa/libyan-coastguard-attack-shooting-refugee-rescue-boat-msf-medecins-sans-frontieres-armed-bullet-a7512066.html>.

<sup>36</sup> Scazzieri and Springford, “How the EU,” 3.

<sup>37</sup> Scazzieri and Springford, “How the EU,” 4.

<sup>38</sup> Scazzieri and Springford, “How the EU,” 4.

more dangerous routes across the desert. Additionally, officials point to the fact that 7,000 migrants voluntarily left Libyan detention centres and returned to their country of origin since the beginning of 2017, thanks to a repatriation programme conducted by the International Organisation for Migration (IOM).<sup>39</sup> Furthermore, the EU initiated screening systems for migrants in countries to Libya's south, such as Mali and Niger. Together with the UNHCR, processing centres in these countries were set up to stop migrants from travelling onwards. Those centres also deal with migrants transferred from Libya, and UNHCR proceeds there with the identification of migrants qualifying for asylum.<sup>40</sup> The EU thus strived towards establishing extraterritorial processing facilities to help lessen asylum applications and consequently the numbers of asylum seekers on EU territory.

### DOWNSIDERS OF THE DEAL

EU's and Italy's deals with Libya are most likely responsible for the decline in the numbers of migrants: numbers fell soon after Italy stepped up its support for the Libyan Coast Guard in the summer of 2017.<sup>41</sup> But the deals also trampled on the human rights of migrants that are being returned to Libya. Militias that patrol the coast have been involved in people-smuggling.<sup>42</sup> Many migrants have suffered horrific abuses including forced labour, torture, and sexual violence at the hands of smugglers.<sup>43</sup> The many Libyan authorities are unable to deal with migrants in a humane and effective manner. By the EU's own admission, "*conditions in the centres where migrants are held are unacceptable and fall short of international human rights standards*".<sup>44</sup> These conditions put people's safety and lives at risk. The situation is also exacerbated by the fact that the EU has no presence on the ground in Libya and is leaving the necessary improvements of migrant centres to the UNHCR and IOM. Since the centres are managed by Libyan staff, the two international organisations are prevented from having full access to the centres and from sending there international staff on a permanent basis.<sup>45</sup>

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<sup>39</sup> "Mediterranean Migrant Arrivals Reach 77,004 in 2017; 1,828 Deaths," International Organization for Migration, June 16, 2017, Accessed January 3, 2020, <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-77004-2017-1828-deaths>.

<sup>40</sup> Mariagiulia Giuffr , "From Turkey to Libya: The EU Migration Partnership from Bad to Worse," Eurojus, March 20, 2017, 7, Accessed January 3, 2020, <http://rivista.eurojus.it/from-turkey-to-libya-the-eu-migration-partnership-from-badto-worse/>.

<sup>41</sup> Scazzieri and Springford, "How the EU," 3; Micallef and Reitano, "Human smuggling," 3.

<sup>42</sup> Micallef and Reitano, "Human smuggling," 3.

<sup>43</sup> "Libya's Dark Web of Collusion Abuses against Europe-Bound Refugees and Migrants," Amnesty International, Report, 2017, 6.

<sup>44</sup> "Migration on the central Mediterranean route: Managing flows, saving lives," European Commission, High Representative of the Union for Foreign Affairs and Security Policy, January 25, 2017, 10.

<sup>45</sup> "IOM and UNHCR Pledge Increased Support for Libya," International Organization for Migration, Press Release, May 30, 2017, Accessed January 3, 2020, <https://www.iom.int/news/iom-unhcr-pledge-increased-support-libya>.

## CONCLUSIONS

In view of the developments referred to above, including the UN condemnation of the EU-Libya Deal, and the alleged Slave Trade Market connection, it is difficult to predict whether the deal will perdure. The Libya case clearly demonstrates the difficulties that the EU faces in its attempts to externalise its migration policy by signing agreements with countries of origin and transit outside Europe. These difficulties largely arise because countries of origin and transit are mostly weak states that lack adequate institutions and infrastructures and sufficient numbers of trained personnel such as border staff or ways and means to effectively control movements of people. Additionally, officials in countries of transit are often bribed by people-smuggling gangs which are more powerful than state officials. Moreover, governments of origin and voters in those countries do not necessarily want to reduce migration flows. Remittances from migrants living in richer countries are a valuable source of revenue in many poor countries.

This unsatisfactory situation, however, does not mean that human rights standards are not being implemented as much as feasible. In fact, it is in the name of the observance of human rights and international standards, that organizations such as IOM and UNHCR are currently part of the EU-Libya Migration Deal, and “assisting” migrants that are being intercepted and taken back to Libya by the Libyan Coast Guard, before being deported to Niger or transferred to prisons/detention centres. However, as mentioned earlier, these international organizations are unable to carry out their mission satisfactorily due to the lack of security in the host countries. “Proportionality”, that is: striking a balance between human rights obligations on the one hand, and the interests of the State and safety of its citizens on the other, should be the guiding principle of any “deal”. The EU and especially Italy may have to rethink their containment strategy in view of the necessity to safeguard the basic human rights of the “beneficiaries” covered by the “Deal”, and of reducing to the maximum extent possible loss of life, inhuman treatment and other attacks on human dignity.