



BETWEEN THE DEVIL AND THE DEEP BLUE SEA

EUROPE FAILS REFUGEES AND MIGRANTS IN THE CENTRAL
MEDITERRANEAN

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Cover photo: Migrants look at the sea from the deck of the NGO Proactiva Open Arms boat on July 2, 2018. - The NGO Proactiva Open Arms boat, that had rescued 59 migrants as they tried to cross the Mediterranean from Libya, docked in Barcelona on July 4, 2018 after Italy and Malta refused access.
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EXECUTIVE SUMMARY

In June and July 2018, as people continued to embark on unsafe boats, including to flee torture, rape, labour exploitation, arbitrary detention and other abuses in Libya, deaths of refugees and migrants at sea surged to a combined total of over 721 along the central Mediterranean route – with 564 people found dead or reported missing in June and 157 in July.¹ In only two days, between 19 and 20 June, approximately 220 people reportedly drowned in three separate incidents off the coasts of Libya.² In the first seven months of 2018, a total of 1,111 people were reported dead or missing along the central Mediterranean route.³ The death rate among those attempting the crossing from Libya has surged to 1 in 16 in the period June-July, four times higher than the rate recorded in the first five months of the year, which was 1 in 64.⁴ This is in stark contrast with the overall decrease in the number of arrivals to Italy. With 18,645 people arrived in Italy by the end of July 2018, this was the lowest number of arrivals registered in the last five years, a decrease of about 80 percent in comparison to the same period in 2017 and 2016.⁵

Some deaths at sea along this perilous route are unavoidable, as long as smugglers force people to travel in unseaworthy and overcrowded boats, with no food, water, safety equipment, or sufficient fuel on board. The recent surge in deaths at sea, however, cannot be dismissed as an inescapable misfortune.

Since the beginning of June 2018, Italy's withdrawal from its leading role in coordinating rescues at sea in the central Mediterranean and its new policy of refusing disembarkation to vessels carrying rescued refugees and migrants, have rendered the search and rescue system unreliable, unpredictable, and punitive. Rescuers and frail and exhausted rescued people are left stranded at sea for days, even weeks, as each disembarkation is negotiated individually. There is the concrete risk that shipmasters, faced with uncertainty over the place and time of disembarkation, refrain from responding to distress calls, at a time when fewer dedicated resources are available for search and rescue. There is also a real risk that shipmasters start to comply with the Libyan Coast Guard's instructions to disembark people rescued at sea in Libya, thus sending refugees and migrants back to a country where they are at risk of torture or ill-treatment – a so-called "pushback" – in breach of international and European law. On 30 July, the Italian supply vessel *Asso Ventotto* has done exactly that, setting a dangerous precedent.

The increasingly hostile treatment by Italian and Maltese authorities of non-governmental organizations (NGOs) dedicated to saving lives at sea is depleting the central Mediterranean of vital rescue assets. Instead of being applauded, NGOs, which in 2017 and until May 2018 had carried out about 40 percent of rescues,⁶ now face slander, intimidation and court cases. The authorities have recently impounded a number of NGO-owned vessels. Those still operating are confronted with refusals and delays before being allowed to disembark. Increasingly, they have to travel long distances to disembark people rescued at sea, in

¹ IOM data, www.missingmigrants.iom.int/region/mediterranean. Figures indicated include departures from both Libya and Tunisia.

² UNHCR, *UNHCR shocked by mass drownings off Libya, calls for urgent action*, 21 June 2018, www.unhcr.org/uk/news/press/2018/6/5b2bf4d24/unhcr-shocked-mass-drownings-libya-calls-urgent-action.html

³ IOM data, www.missingmigrants.iom.int/region/mediterranean.

⁴ Amnesty International elaboration on dataset by ISPI (Italian Institute for International Political Studies), <https://docs.google.com/spreadsheets/d/1ncHxOHlx4ptt4YFXgGi9TlBwd53HaR3oFbrfBm67ak4/edit#gid=0> (sources: UNHCR, IOM, other)

⁵ Italian Ministry of Interior, www.libertacivilimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/cruscotto-statistico-giornaliero. The number of arrivals refers to the whole central Mediterranean route and includes 12,088 people departed from Libya.

⁶ Amnesty International elaboration on data by Italian Coast Guard, www.guardiacostiera.gov.it/attivita/Documents/attivita-sar-immigrazione-2017/Rapporto_annuale_2017_ITA.pdf; www.guardiacostiera.gov.it/attivita/Pages/Ricerca.aspx

contravention of the law of the sea, or to load essential supplies, at the cost of not being present for long periods in the area off Libyan coasts where people usually need assistance.

Longstanding, unresolved tensions in coordinating rescues at sea between Italy and Malta, which had been set aside in recent years as Italy was accepting nearly all disembarkations, have re-emerged, adding to the unpredictability of the rescue system.

Unnecessary delays in disembarkation forced people in need of urgent and essential assistance – including injured people, pregnant women, torture survivors, people traumatized by shipwrecks or other experiences, and unaccompanied minors – to remain stranded for days on board vessels that had little capacity to meet their needs. Some of the people disembarked in Italy were severely dehydrated and malnourished, having endured months of food deprivation and other abuses in captivity in Libya before departing on a perilous journey.⁷ This testifies to the extremely harsh conditions and inhumane treatment refugees and migrants continue to endure in Libya, often constituting the very reason why people attempt to flee the country.

Despite this, Italy and the European Union (EU) are bolstering their policy of supporting the Libyan Coast Guard to ensure it prevents departures and carries out interceptions of refugees and migrants on the high seas in order to pull them back to Libya. This is also contributing to rendering the central Mediterranean route more dangerous for refugees and migrants, and rescue at sea unreliable.

A surge in interceptions by the EU-supported Libyan Coast Guard has resulted in a dramatic rise in the number of people returned to Libya and arbitrarily held in detention centres run by the General Directorate for Combating Illegal Migration (DCIM) within the Ministry of Interior. According to DCIM, the number of detainees has more than doubled in recent months, from around 4,400 in March to more than 10,000 – including around 2,000 women and children – at the end of July. Virtually all those in these centres have been intercepted at sea and returned by the Libyan Coast Guard, who are equipped, trained and supported by European governments.

The EU and Italy continue to pursue this policy disregarding the fate of those taken back to Libya, where violence is rife, or the Libyan Coast Guard's track-record of human rights violations and its incapacity to ensure effective and timely rescues in international waters. While increasingly relying on the Libyan Coast Guard, the EU and Italy have not demanded accountability for the Libyan Coast Guard's actions or sufficient safeguards for those disembarked back in Libya. As such, they have become complicit in the human rights violations refugees and migrants are almost certain to face once back in Libya.⁸

Italy, European states and institutions must act urgently to prevent further avoidable loss of life at sea in the central Mediterranean by ensuring that all shipmasters able to undertake search and rescue operations feel encouraged and supported in doing so and are allowed to disembark swiftly at a place of safety, where those rescued can access assistance and protection. They must also reform the Dublin system by overhauling the rationale which assigns responsibility to the state of first entry and replacing it with a mandatory distribution mechanism of asylum-seekers. Finally, they must reset cooperation with Libya, focusing on the priority of protecting the human rights of refugees, asylum-seekers and migrants in the country, and ensuring that people rescued in the central Mediterranean are not disembarked back in Libya, where they are at real risk of torture and ill-treatment.

⁷ Amnesty International, *How Italy's seizure of an NGO ship exposes Europe's dangerous policy*, 29 March 2018, www.amnesty.org/en/latest/news/2018/03/how-italys-seizure-of-an-ngo-ship-exposes-europes-dangerous-policy/

⁸ Amnesty International, *Libya's dark web of collusion: Abuses against Europe-bound refugees and migrants*, December 2017, www.amnesty.org/en/documents/eur30/7241/2017/en/

1. ITALY'S DANGEROUS NEW POLICY: REFUSING DISEMBARKATION

On 10 June, the newly appointed Italian government, led by Prime Minister Giuseppe Conte, started the implementation of a new policy on disembarkation; it refused to authorize the *Aquarius*, a rescue vessel jointly operated by NGOs SOS Méditerranée and Médecins Sans Frontières (MSF), to disembark people recently rescued at sea in Italy. At that point, the *Aquarius* was carrying 630 people – nearly 80 beyond its maximum capacity – including many children, some pregnant women and several injured people suffering from chemical burns and hypothermia.⁹

In the weeks that followed, Italy escalated its stance and refused or delayed the disembarkation not only of NGO rescue vessels, such as the *Lifeline* of the German NGO Mission Lifeline and the *Open Arms* of the Spanish NGO Proactiva, but also of two foreign navy ships, the US *Trenton* and the Irish *Samuel Beckett* (the latter operating as part of operation EUNAVFOR Med Sophia, which is under Italian command), the Danish commercial ship *Maersk*, the Italian commercial ship *Vos Thalassa*, and even the Italian Coast Guard ship *Diciotti*.

The law of the sea does not offer criteria to identify unequivocally which state has the obligation to accept the disembarkation of people rescued at sea. Yet, Italy's new policy of refusing the disembarkation of refugees and migrants regardless of the circumstances of the rescue contravenes some of the core principles underpinning the law of the sea and breaches obligations under international human rights law and refugee law.

INTERNATIONAL LAW OBLIGATIONS

It is a longstanding maritime tradition, accepted as customary law and codified in treaties, that shipmasters must render assistance to those in distress at sea, regardless of their status or circumstances.¹⁰ Compliance with this obligation is described in relevant guidelines issued by the International Maritime Organization (IMO), the UN Refugee Agency (UNHCR) and the International Organization of Migration (IOM) as “essential to preserve the integrity of maritime search-and-rescue services”.¹¹ To this end, states are required to cooperate with their neighbours with the aim of reducing the risk of non-rescue.¹² Masters of ships providing

⁹ MSF, *MSF urges immediate disembarkation of 629 people on board Aquarius at nearest port of safety*, 12 June 2018, www.msf.org/msf-urges-immediate-disembarkation-629-people-board-aquarius-nearest-port-safety; SOS Méditerranée, *Aquarius instructed to sail to Spain to reach a port of safety: 629 people rescued in the Mediterranean to be disembarked in Valencia*, 12 June 2018, www.sosmediterranee.com/aquarius-instructed-to-sail-to-spain-to-reach-a-port-of-safety-629-people-rescued-in-the-mediterranean-to-be-disembarked-in-valencia/

¹⁰ UNCLOS Art. 98 (1); SOLAS Chapter V, Regulation 33 (1); SAR Chapter 2.1.10

¹¹ IMO-UNHCR-ICS, *Rescue at sea: A guide to principles and practice as applied to refugees and migrants*, January 2015, www.imo.org/en/MediaCentre/HotTopics/seamigration/Documents/UNHCR-Rescue_at_Sea-Guide-ENG-screen.pdf

¹² UNCLOS Art. 98(2); SOLAS Chapter V, Regulation 7; SAR Chapter 3

assistance by embarking people in distress at sea should be released from their obligations with minimum further deviation from the ship's intended voyage, and disembarkation should be arranged as soon as it is reasonably practicable.¹³ Releasing shipmasters of their obligations quickly, minimizing any economic loss, is key to avoid discouraging them from upholding their obligation to render assistance to boats in distress at sea. It is also in the best interest of those rescued and of the crew of the vessel who carried out the rescue, that rescued people are delivered to a place of safety as soon as possible, including for health and safety reasons.

Furthermore, keeping at sea frail and traumatized people, including children and other vulnerable individuals, for protracted periods could lead to violations of the right to life, of the prohibition of torture and other cruel, inhuman and degrading treatment and to violations of the right to liberty and security of the person, under the European Convention of Human Rights.¹⁴ It could also breach obligations to ensure access to international protection for refugees and asylum-seekers.

In the case of the *Aquarius*, some of the refugees and migrants on board had been rescued by the *Aquarius* under the coordination of the Italian Maritime Rescue and Coordination Centre (IMRCC), managed by the Italian Coast Guard, and some had been transferred on board upon a request from Italian authorities after being rescued by an Italian Coast Guard's vessel and an Italian Navy vessel. Italy, as the state coordinating the rescue, the state through whose jurisdiction hundreds of those rescued had passed (in the case of those rescued by the Italian Navy and Coast Guard vessels) and as the coastal state whose territorial waters the *Aquarius* was approaching, had a responsibility under the law of the sea to ensure the swift disembarkation of the people on board in a place of safety.¹⁵

Requested by the Italian government to allow the docking of the *Aquarius*, Malta, in whose vast Search and Rescue (SAR) region the *Aquarius* was transiting, also refused, arguing that Italy had coordinated the rescues and therefore had the responsibility to identify a safe port for disembarkation.¹⁶ A standoff ensued between the two countries, with both failing to prioritize the humanitarian needs of the people on board. Malta accepted, however, to take in people with urgent medical conditions and provided the *Aquarius* with food supplies. On 11 June, the newly sworn in Spanish government offered to allow the *Aquarius* to disembark in the port of Valencia, over 1,500 kilometres away. Two vessels of the Italian Coast Guard and Navy ensured provision of supplies and medical assistance and accompanied the *Aquarius* to Valencia after taking on board some of the rescued people to ensure safe navigation. Over the following days, bad weather conditions and high waves rendered the journey to Valencia particularly trying for children, women and men who were already exhausted and weak. On 17 June, the *Aquarius* and the accompanying Italian vessels reached Valencia, where the rescued people were allowed to disembark and given special permits to stay and claim asylum in Spain.¹⁷

On 29 June, the *Open Arms* rescue vessel operated by the NGO Proactiva announced that Malta and Italy had both refused it permission to dock for a technical stop with only the crew on board. The refusal was confirmed to the media by the Italian Minister for Transport, Danilo Toninelli, who stated he had refused the docking in compliance with Article 83 of the Italian Code of Navigation and in light of a note from the Minister of Interior, Matteo Salvini, alleging risks to public order.¹⁸ According to the Italian magazine

¹³ May 2004 Amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and to the 1979 International Convention on Maritime Search and Rescue (SAR Convention) adopted by the Maritime Safety Committee of the International Maritime Organization (IMO) in May 2004 and entered into force for the states who have ratified them in July 2006 (Amending SOLAS Regulation 33 and SAR Chapter 3.1.9)

¹⁴ Garante Nazionale dei diritti delle persone detenute o private della libertà personale, *Richieste informazioni urgenti su ordini impartiti e su situazione 113 migranti private di fatto della libertà in acque italiane su nave container Alexander Maersk*, 25 June 2018, www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/27b8c3bcb784495be10adaddff8fe7f0.pdf

¹⁵ SOLAS, Chapter V, Regulation 33, SAR, Chapter 3, para. 3.1.9 as amended by the 20 MAY 200 Maritime Safety Committee of the IMO Amendments, which Italy has ratified, and integral IMO Guidelines on the Treatment of Persons Rescued at Sea.

¹⁶ Government of Malta, Statement by Prime Minister Joseph Muscat on the latest developments involving MV Aquarius, 11 June 2018, www.gov.mt/en/Government/Press%20Releases/Pages/2018/June/11/PR181330en.aspx

¹⁷ Part of the people were subsequently transferred to France and offered international protection there. See: Office français de protection des réfugiés et apatrides, *Accueil des réfugiés de l'Aquarius*, 3 August 2018, www.ofpra.gouv.fr/fr/l-ofpra/actualites/accueil-des-refugies-de-l-aquarius

¹⁸ Article 83 of the Italian Code of Navigation states that the Minister for transport (responsible for ports and the Italian Coast Guard) can refuse permission to transit and stop in territorial waters to foreign commercial vessels for public order reasons, determining which zones are covered by the refusal. See: www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-30;327. The law of the sea (UNCLOS

L'Espresso, following a request by Proactiva to access the relevant administrative decision formally forbidding the ship to dock, the Italian Coast Guard denied that any such decision was ever signed.¹⁹ In light of these claims, it is unclear whether any formal decision has ever been adopted to refuse the disembarkation of refugees and migrants in any other case, beyond the mere communication of such refusal via radio, media or social media. The apparent absence of formal decisions, providing the legal and factual basis for a refusal to disembark people, adds to the arbitrary nature of decisions resulting in human rights violations as outlined above.

The Italian Minister of Interior has attempted to extend the policy of denying disembarkation also to commercial vessels that had rescued refugees and migrants, sending an especially worrying signal to commercial shipmasters who must uphold their obligation to save lives at sea, but cannot afford to be caught in diplomatic wrangling over disembarkation for days and with an uncertain outcome. The Danish cargo *Alexander Maersk*, which on 22 June carried out rescues under the coordination of the Italian Coast Guard and cooperated in a rescue with the vessel *Lifeline* of the German NGO Mission Lifeline, was left stranded with over 100 people on board and without an assigned place of safety to disembark until 26 June (although supplies of food, water and blankets were provided in the meantime by Italian authorities). It took the repeated requests of the Italian Coast Guard that a port be assigned because the rescue had been conducted under their coordination in compliance with the law of the sea; a letter by the Prisons' Ombudsperson raising concern over the potentially arbitrary deprivation of liberty and conditions of the rescued people on board;²⁰ and an appeal from the Mayor of Pozzallo stating that the town was ready to welcome the refugees and migrants,²¹ to persuade the Ministry of Interior to authorize the *Maersk* to disembark the people rescued at sea in Pozzallo.

On 9 July, even an Italian commercial vessel, the *Vos Thalassa*, was refused disembarkation after rescuing over 60 people in international waters the previous day. Following reports that some of the rescued people had threatened the crew when they realized that they were about to be handed over to a Libyan Coast Guard vessel, the Italian Coast Guard sent its own vessel *Diciotti* and took on board the refugees and migrants. In this case, it took until the evening of 12 July and the intervention of Italy's Head of State, Sergio Mattarella, to ensure that those rescued could be disembarked in Trapani, Sicily. The intervention followed the Ministry of Interior's attempt to block the docking of the Italian Coast Guard vessel and statements in the media demanding that those potentially responsible for alleged disorders on the ship – which were still unverified – disembark under arrest and be handcuffed, thereby putting undue pressure on the competent judicial authorities. The Italian Minister of Interior also attempted to prevent the disembarkation of some 40 survivors rescued on 12 June from the waters about 20 nautical miles off Libyan coasts by the US Navy ship *Trenton*, and of the Irish Navy vessel *Samuel Beckett*. The latter rescued 106 people in the Maltese SAR region on 6 July.²² Disembarkation from both military ships was eventually granted by Italy, also in view of the need to uphold its commitments to allow the docking of foreign navy ships involved in joint military operations such as EUNAVFOR Med Sophia. Nevertheless, representatives of the Italian government later insisted that vessels operating under EUNAVFOR Med Sophia would be allowed to dock in Italy for a few weeks only. After this time, Italy expected EU governments to modify the operation's rules of procedure to allow for disembarkation in countries other than Italy.²³

Italy has rightly demanded for a long time a fair sharing of the responsibilities associated with the rescue of people in the central Mediterranean, including reception, processing of protection claims, as well as management of the presence of irregular migrants and their return. However, denying disembarkation as a pressure tool to achieve responsibility sharing in the area of asylum and migration is at best irresponsible. At worst, it might be considered as a conscious, callous attempt to undermine the very nature of search and

Article 19) allows states to stop foreign ships from entering territorial waters if their passage could be prejudicial to the peace, order and security of the coastal state.

¹⁹ *L'Espresso*, *Così il ministro Toninelli ha mentito sulla chiusura dei porti*, 25 July 2018,

<http://espresso.repubblica.it/palazzo/2018/07/25/news/cosi-il-ministro-toninelli-ha-mentito-sulla-chiusura-dei-porti-1.325212>

²⁰ Garante Nazionale dei diritti delle persone detenute o private della libertà personale, *Richieste informazioni urgenti su ordini impartiti e su situazione 113 migranti private di fatto della libertà in acque italiane su nave container Alexander Maersk*, 25 June 2018, www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/27b8c3bcb784495be10adaddff8fe7f0.pdf

²¹ *Corriere della Sera*, *Migranti, la nave Maersk attracca a Pozzallo*, 25 June 2018, https://www.corriere.it/cronache/18_giugno_25/immigrazione-maersk-puo-appordare-pozzallo-3fd5e582-78ac-11e8-a34f-88cbebf7b4e2.shtml

²² https://twitter.com/DF_COS/status/1015673523510145026

²³ *Il sole 24 ore*, *Migranti, Moavero: nostri porti aperti fino a modifica missione Sophia*, 23 July 2018, www.ilssole24ore.com/art/notizie/2018-07-23/migranti-moavero-nostri-porti-aperti-fino-modifica-missione-sophia-164114.shtml?uuid=AE4Bd7QF

rescue at sea for political purposes. The policy is inflicting unnecessary suffering on already vulnerable women, men and children, depleting the central Mediterranean of precious NGO resources that save lives and discouraging rescue by commercial vessels, in addition to hindering military operations.

2. LONGSTANDING DIFFERENCES WITH MALTA THREATEN EFFECTIVE RESCUES

Italy's no-disembarkation policy has revealed and brought back into play old problems which had hindered the effectiveness of the SAR system in the central Mediterranean for some time, but remained dormant in recent years as Italy singlehandedly shouldered responsibility for rescuing refugees and migrants in the central Mediterranean, from Operation Mare Nostrum in October 2013 onwards.

Malta and Italy have been unable to reach an agreement over the extension of their respective SAR regions, which partially overlap. Malta's SAR region is disproportionately vast compared to its resources. Although the SAR system only requires that states *coordinate* rescues in their SAR regions, even without carrying them out directly, in the case of Malta, this has meant that it has heavily relied on Italy to practically discharge its SAR obligations.

Furthermore, because Malta has not ratified the 2004 Amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and the 1979 International Convention on Maritime Search and Rescue (SAR Convention), the two countries are bound by different versions of the two conventions. The amended relevant provisions and integral International Maritime Organisation (IMO) Guidelines require that the state in charge of the SAR region where people are rescued provide a place of safety in its own territory or ensure that one is granted in another country.²⁴ Malta does not regard itself as bound to offer disembarkation in its ports or ensure that a place of safety is provided, even when a rescue takes place within its SAR region. Instead, it considers that people should be disembarked at the closest safe port, often in Italy. Furthermore, the amended provisions and IMO Guidelines regard a place of safety as a place where the lives and freedom of rescued persons would not be at risk.²⁵ Historically, Malta has rejected the link between SAR obligations and humanitarian obligations and has regarded as a safe place for disembarkation any place where the basic needs of those rescued can be met, irrespective of whether the persons rescued may be in need of international protection.²⁶ Such an interpretation is out of step with the 2012 judgement of the European Court of Human Rights in the case of *Hirsi Jamaa*, that found Italy in violation of the European Convention on Human Rights for pushing people rescued at sea back in Libya,²⁷ and is in breach of Malta's

²⁴ SOLAS Convention, Chapter V, Regulation 33, 1.1.1, as amended; and SAR Convention, Chapter 3, paragraph 3.1.9

²⁵ IMO Guidelines, Para. 6.17

²⁶ Amnesty International, *Lives Adrift: Refugees and migrants in peril in the central Mediterranean*, September 2014, www.amnesty.org/en/documents/EUR05/006/2014/en/

²⁷ *Case of Hirsi Jamaa and Others v. Italy*, (Application no. 27765/09), European Court of Human Rights, Grand Chamber, Judgment, Strasbourg, 23 February 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>

obligations under international law. Indeed, although Malta did not ratify the above-mentioned Amendments to the SOLAS and SAR Conventions, an obligation to assist people rescued at sea in identifying a place of safety where their human rights are respected and where they have an opportunity to seek asylum can be derived from both international and European human rights law.

The recent case of 40 people stranded at sea for over two weeks, from 13 July to 1 August 2018, on board a Tunisian supply ship, the *Sarost 5*, after being rescued in the Maltese SAR region at about 90 nautical miles from Lampedusa, shows how Malta's restrictive interpretation of its obligations under the law of the sea is at odds with the full range and extent of its obligations under international law, including the principle of non-refoulement. According to allegations by the NGO Watch the Med – Alarm Phone, Maltese authorities would have unlawfully directed rescuers to exit the Maltese SAR region and to sail towards Tunisia, a country that according to the NGO should not be generally regarded as safe for disembarkation.²⁸ After the initial refusal by Tunisian authorities, Italy, France and Malta also refused disembarkation of the people on board the *Sarost 5*. In a statement, the Maltese government confirmed having directed the rescue ship to disembark in Tunisia, but rejected claims that this may have involved a breach of international law, as Tunisia could be regarded as the nearest place of safety that satisfied international law requirements.²⁹ With the humanitarian situation on board deteriorating for the rescued, including two pregnant women, and for the crew, Tunisia eventually relented and allowed the disembarkation of the refugees and migrants on 30 July. The Tunisian government emphasized that it took the decision for solely humanitarian reasons, thus the incident should not be used as a means of putting further pressure on Tunisia to open reception facilities for refugees and migrants, something that the country had refused to do in recent years.³⁰ The rescued people disembarked in Zarzis, Tunisia, on 1 August.³¹

Amnesty International believes that, in this recent case, Malta, which coordinated the rescue, failed to ensure the safe disembarkation of the 40 women and men and caused them to be stranded at sea for two weeks in a ship not equipped for rescuing people, at great risk to their health and safety and to that of the crew of the *Sarost 5*. Malta also failed to ensure that those willing to seek international protection could access an opportunity to do so. Tunisia cannot be considered a safe place of disembarkation for all people, in part because it lacks a national asylum framework and certain groups can be exposed to serious human rights violations if disembarked there.

Malta and Italy also follow two different interpretations of the key concept of “distress at sea”, which triggers a rescue operation. Italy, rightly aiming to maximize security of navigation and life-protecting measures, regards refugees and migrants' boats as in distress from the moment they set sail because they are invariably overcrowded, unseaworthy and lacking a professional crew, safety equipment, and adequate supplies of fuel and provisions.³² Instead, Malta takes the view that in order for there to be a situation of distress, there needs to be a request of assistance and an immediate danger of loss of life. In this way, if a boat can still float and the people on board do not expressly ask for rescue by Maltese authorities, Malta's practice has been to let the boat continue navigation without providing assistance. Because most refugees and migrants want to reach continental Europe and do not wish to be taken to Malta, Malta has been able to avoid intervening in many cases, even though those travelling were crossing Malta's SAR region while sailing in evidently unsafe conditions.

Before the Operation Mare Nostrum was launched in October 2013, these differences between the two countries had undermined the timely and effective delivery of rescue services on several occasions, sometimes with tragic consequences. Indeed, Operation Mare Nostrum itself was launched immediately

²⁸ Watch the Med – Alarm Phone, *Press Release on the Sarost 5 Disembarkation Announcement*, 29 July 2018, www.alarmphone.org/en/2018/07/29/press-release-on-the-sarost-5-disembarkation-announcement/; *Press Release: Migrants rescued in Distress in Maltese Search and Rescue Zone illegally transferred to Tunisian territorial waters*, 18 July 2018, www.alarmphone.org/en/2018/07/18/press-release-migrants-rescued-in-distress-in-maltese-search-and-rescue-zone-illegally-transferred-to-tunisian-territorial-waters/?post_type_release_type=post

²⁹ Government of Malta, *Statement by the Government of Malta*, 19 July 2018, www.gov.mt/en/Government/Press%20Releases/Pages/2018/July/19/PR181615.aspx

³⁰ The New York Times, *Tunisia Gives Boat With 40 Migrants Greenlight After 2 Weeks*, 29 July 2018, www.nytimes.com/aponline/2018/07/29/world/middleeast/ap-mi-tunisia-migrant-boat.html

³¹ IFRC, *Tunisia: At end of two-week ordeal, IFRC welcomes decision by authorities to allow migrants to disembark from Sarost 5*, 1 August 2018, <http://media.ifrc.org/ifrc/press-release/tunisia-end-two-week-ordeal-ifrc-welcomes-decision-authorities-allow-migrants-disembark-sarost-5/>

³² This interpretation is consistent with EU Regulation 656/2014, detailing the rules EU states should respect during a SAR operation when acting within joint Frontex operations at sea, <https://eur-lex.europa.eu/legal-content/FRF/TXT/?uri=celex:32014R0656>

after one such incident, which had led to the death of about 200 people on 11 October 2013.³³ After Operation Mare Nostrum was ended in 2014, the IMRCC continued to play a leading role in ensuring the rescue of refugees and migrants in the central Mediterranean, including outside the Italian SAR region.

Now that Italy has decided to withdraw from such a leading role, there is a risk that these longstanding differences may come to a head, leading to delays in rescues with potentially fatal consequences.

³³ Amnesty International, *Lives Adrift: Refugees and migrants in peril in the central Mediterranean*, September 2014, <https://www.amnesty.org/en/documents/EUR05/006/2014/en/>

3. THE DEMONIZATION OF NGOS AND THE CRIMINALIZATION OF SOLIDARITY

Italy's Minister of Interior accompanied his decision to refuse disembarkation to the *Aquarius* with a statement to the Italian Senate in which he put into question the generosity of the motives of rescue NGOs, due to alleged links to the financier George Soros and The Open Society Foundations. No explanation was offered as to why and how such links would be objectionable.³⁴ The Minister has since continued to accompany the new policy of no disembarkations with the use of demeaning language to describe people rescued at sea, including belittling the enormous human suffering they endured, describing refugees and migrants' desperate journeys as "cruises",³⁵ announcing that "the gravy is over" for them under his tenure,³⁶ and promising that NGOs as well as refugees and migrants will only see Italian ports "in a postcard".³⁷

Since the beginning of 2017, Italian and other European politicians, officials and commentators have unfairly targeted rescue NGOs. Allegations against them have included claims that they colluded with smugglers; that they constituted a pull factor attracting refugees and migrants and thus contributing to deaths at sea; and that their sources of funding were obscure. Two parliamentary inquiries in Italy failed to uncover any wrongdoing by NGOs dedicated to rescues at sea.³⁸ Accusations of contributing to loss of life at sea have been disproved by data analysis comparing departures, death rates and the presence of NGOs at sea.³⁹ The NGOs have also repeatedly clarified that their financial accounts were publicly available for scrutiny. Nevertheless, supported by the EU, Italy has continued to attempt to restrict their activities. In 2017, it imposed a largely redundant code of conduct to regulate NGO operations. Furthermore, judicial authorities in Italy and Malta have opened investigations against rescue NGOs, while the Italian police has invested

³⁴ Italian Senate, Hearing of the Minister of Interior, 13 June 2018, www.senato.it/leg18/3818?seduta_assemblea=11

³⁵ Repubblica, *Aquarius*, Conte-Macron: "Caso chiuso". La nave in difficoltà per il maltempo. Salvini: "Non possono decidere dove finire la crociera", 14 June 2018, www.repubblica.it/politica/2018/06/14/news/aquarius_telefonata_tra_cont_e_macron_parigi_toni_cordiali_speriamo_confermi_visita_-198966110/

³⁶ La Stampa, *Salvini: "È finita la pacchia per i clandestini, preparatevi a fare le valige"*, 3 June 2018, www.lastampa.it/2018/06/03/italia/salvini-finita-la-pacchia-per-i-clandestini-preparatevi-a-fare-le-valige-fzAQgZ1XoOwyfFCdy1oj2N/pagina.html

³⁷ TG La7, *Migranti*, Salvini: 'Ong vedranno l'Italia solo in cartolina', 29 June 2018, www.tg.la7.it/politica/migranti-salvini-ong-vedranno-litalia-solo-in-cartolina-29-06-2018-129029

³⁸ Amnesty International, *Italy: Losing the moral compass: Innuendoes against NGOs which rescue lives in the central Mediterranean*, 28 April 2017, www.amnesty.org/en/documents/eur30/6152/2017/en/

³⁹ Charles Heller and Lorenzo Pezzani, *Blaming the rescuers: Criminalizing solidarity, re-enforcing deterrence*, 9 June 2017, <https://blamingtherescuers.org/>; Matteo Villa, Elena Corradi, Antonio Villafranca, *Fact checking: Migrazioni 2018*, 7 May 2018, www.ispionline.it/it/pubblicazione/fact-checking-migrazioni-2018-20415; Amnesty International, *Europe's sinking shame: The failure to save refugees and migrants at sea*, April 2015, <https://www.amnesty.org/en/documents/eur03/1434/2015/en/>

significant resources to undertake complex investigations, including undercover operations and phone tapping, which have not revealed any conclusive evidence to support accusations against NGOs. In August 2017, prosecutors in Trapani, Sicily, seized the vessel *Iuventa* of the German NGO Jugend Rettet, which remains impounded to date. In June 2018, they notified that they had opened investigations on ten former crew members of *Iuventa* and another 12 people of the NGOs MSF and Save the Children, on allegations of aiding irregular immigration into Italy, though no charges have yet been brought. An Eritrean priest, Father Mussie Zerai, is also under investigation for similar allegations.

THE CASE OF THE *LIFELINE*

In June 2018, as the rescue vessel *Lifeline*, of the German NGO Mission Lifeline, remained stranded at sea for five days with no country authorizing it to dock, Italy's Minister of Interior described it as an "outlaw",⁴⁰ the French President stated that it had "defied all rules"⁴¹ and the Maltese Prime Minister alluded to possible collusion with smugglers.⁴² On 22 June, the vessel had rescued 234 people in distress at sea in two rubber boats, at about 15 nautical miles from Libyan coasts in international waters, but within the Libyan SAR region, after ignoring instructions, issued by the Libyan Coast Guard and relayed to them by IMRCC, to keep away and let the Libyan Coast Guard operate. After the *Lifeline* completed the rescue, a Libyan Coast Guard ship approached it and, according to the *Lifeline* captain's account, asked that the people who had just been rescued be handed over in order to be brought back to Libya. The captain refused to comply, wanting to prevent the disembarkation of people in Libya, which cannot be considered as a place of safety.⁴³ The *Lifeline* then contacted the IMRCC to request to be assigned a place of safety for disembarkation. However the IMRCC replied that because it had not coordinated the rescue, it was not in a position to indicate a place of safety and suggested that the *Lifeline* contact its flag state, the Netherlands, to receive further instructions. The Netherlands declined being in a position to give instructions to the *Lifeline*, disputing that the ship was sailing under a regular Dutch flag.⁴⁴ The *Lifeline* was at this point stranded with no state authority accepting responsibility to grant disembarkation to those rescued, in a precarious humanitarian situation. Eventually, on 27 June, Malta granted the *Lifeline* permission to disembark the 234 survivors, after an agreement was reached among several European governments to receive some of the rescued refugees and migrants for processing. Shortly after, however, Maltese authorities brought criminal charges against the captain, accused him of irregularities regarding the registration of the ship, and impounded the ship.⁴⁵

Subsequently, Maltese authorities also announced investigations to ascertain that the operations of other similar "entities" using Maltese ports and operating within its waters were being conducted in accordance with international and national rules, including as to the registration of vessels.⁴⁶ On this basis, Malta prevented the vessels of NGOs Sea-Watch and Seafuchs from leaving its ports.⁴⁷ The reconnaissance aircraft *Moonbird* was also prevented from flying at several points since May, in relation to the purported need to verify compliance with minor administrative rules, and then a firm decision came in July.⁴⁸

⁴⁰ ANSA, Migranti, Salvini contro Lifeline: 'E' fuorilegge, è nelle acque di Malta', 22 June 2018, www.ansa.it/sito/notizie/cronaca/2018/06/21/lifeline-la-nostra-nave-ha-bandiera-olandese_54963915-ddd9-41b6-a8b5-bad9234be673.html

⁴¹ Le Figaro, *Lifeline : Macron accuse l'ONG de «faire le jeu des passeurs»*, 27 June 2018, www.lefigaro.fr/politique/le-scan/2018/06/27/25001-20180627ARTFIG00095--lifeline-macron-accuse-l-ong-de-faire-le-jeu-des-passeurs.php

⁴² Al Jazeera, *Lifeline reaches Malta, but Europe heads into migration storm*, 28 June 2018, www.aljazeera.com/indepth/features/lifeline-reaches-malta-europe-heads-migration-storm-180628074507818.html

⁴³ Times of Malta, *Handing the migrants to the Libyans was not an option: Lifeline captain interviewed*, 8 July 2018, www.timesofmalta.com/articles/view/20180708/local/handing-the-migrants-to-the-libyans-was-not-an-option-lifeline-captain.683812

⁴⁴ <https://twitter.com/nlateu/status/1009805031904772096>

⁴⁵ The New York Times, *Malta cracks down on a humanitarian ship that carried migrants*, 2 July 2018, www.nytimes.com/2018/07/02/world/europe/malta-migrant-ships-crackdown.html

⁴⁶ Government of Malta, Press release, 28 June 2018, www.gov.mt/en/Government/Press%20Releases/Pages/2018/June/28/PR181480.aspx

⁴⁷ Sea-Watch, *Dutch government confirms correct registration and flag of Sea-Watch 3, ship still blocked in Malta*, 1 August 2018, www.sea-watch.org/en/dutch-government-confirms-correct-registration-and-flag-of-sea-watch-3-ship-still-blocked-in-malta/; *Sea-Watch hindered from leaving port while people drown at sea*, 2 July 2018, www.sea-watch.org/en/321/

⁴⁸ Independent, *Malta blocks migrant search plane from operating in Mediterranean as EU toughens stance on refugee rescues*, 4 July 2018, www.independent.co.uk/news/world/europe/malta-blocks-moonbird-plane-mediterranean-refugee-crisis-ngo-sea-watch-italy-libya-eu-a8430756.html

In Ragusa, Sicily, investigations remained open against two members of the Spanish NGO Proactiva, for aiding irregular immigration, although the impounding of the NGO vessel *Open Arms* was lifted in April.⁴⁹ On 18 March, the Italian authorities had seized the *Open Arms*, after the vessel, which had rescued 218 people at sea on 15 March and subsequently refused to hand them over to the Libyan Coast Guard, brought them instead to a port in Italy – an act the authorities considered to constitute a criminal activity.⁵⁰ In April, the competent judge for preliminary investigations ordered the release of the ship, recognizing that Libya could not be considered as a safe place for disembarkation and stating that the crew's refusal to hand the people they had rescued to the Libyan Coast Guard was justified under "state of necessity".⁵¹

The proliferation of legal cases against NGOs has contributed to a drop in dedicated and effective rescue assets in the central Mediterranean at a time of rising deaths at sea. Indeed, the NGOs Proactiva and SOS Mediterranée are currently the only operating rescue ships in the central Mediterranean.⁵² The legal challenges, and consequently diminished presence of NGOs at sea, have also resulted in the removal of potentially uncomfortable witnesses to the ways in which the Libyan Coast Guard carries out interceptions at sea. On 29 June, European leaders meeting at the European Council reinforced this message, by including in their Conclusions a request that vessels operating in the Mediterranean refrain from obstructing the operations of the Libyan Coast Guard.⁵³

The Italian and other European governments' hostility against rescue NGOs – meted out through the continued slanderous campaign in the media, numerous legal cases against them and the imposition of bureaucratic restrictions to their operations – is inconsistent with states' duties as described in the provisions of the UN Declaration on Human Rights Defenders.⁵⁴ From the Declaration stems the responsibility of states to explicitly recognize the legitimacy of human rights defenders, facilitate, and publicly support their work, acknowledging their contribution to the advancement of human rights. The Declaration also reaffirms the duty of states to ensure a safe and enabling environment in which it is possible to defend and promote human rights without fear of punishment, reprisal or intimidation; effectively address threats, attacks, harassment and intimidation against human rights defenders; ensure that the criminal justice system or civil litigation is not misused to target or harass human rights defenders; and refrain from bringing criminal charges or any other proceedings or taking administrative measures against human rights defenders that stem solely from the peaceful exercise of their rights. In light of the life-saving activities courageously undertaken by rescue NGOs in the central Mediterranean in compliance with international law, Amnesty International considers they are defending human rights and fall squarely under the provisions of the Declaration. It is essential that public officials and representatives of institutions refrain from hindering and undermining rescue NGOs' operations and instead applaud them and take urgent measures to facilitate and protect their work.

⁴⁹ Tribunale di Ragusa, Ufficio del Giudice per le indagini preliminari, *Decreto di rigetto di richiesta di sequestro preventivo*, 16 April 2018, www.questionegiustizia.it/doc/decreto_rigetto_sequestro_preventivo_tribunale_Ragusa_gip.pdf. The decision was confirmed in May, see: *Giornale di Sicilia, Il Tribunale del Riesame di Ragusa conferma il dissequestro dell'Ong Open Arms*, 17 May 2018, http://ragusa.gds.it/2018/05/17/il-tribunale-del-riesame-di-ragusa-conferma-il-dissequestro-dellong-open-arms_852660/

⁵⁰ Tribunale di Catania, Sezione del Giudice per le indagini preliminari, *Decreto di convalida e di sequestro preventivo*, 27 March 2018, www.questionegiustizia.it/doc/decreto_convalida_sequestro_preventivo_tribunale_catania.pdf. The judicial order was remarkable as it acknowledged the significant role played by the Italian Navy in Libyan territorial waters to assist Libyan authorities in the coordination of rescue operations. See also: Amnesty International, *How Italy's seizure of an NGO ship exposes Europe's dangerous policy*, 29 March 2018, www.amnesty.org/en/latest/news/2018/03/how-italys-seizure-of-an-ngo-ship-exposes-europes-dangerous-policy/

⁵¹ Tribunale di Ragusa, Ufficio del Giudice per le indagini preliminari, *Decreto di rigetto di richiesta di sequestro preventivo*, 16 April 2018, www.questionegiustizia.it/doc/decreto_rigetto_sequestro_preventivo_tribunale_Ragusa_gip.pdf.

⁵² Proactiva is currently active in the central Mediterranean with two ships, *Astral* and *Open Arms*. SOS Mediterranée operates the vessel *Aquarius*, in partnership with MSF. See: SOS Mediterranée, *The Aquarius returns to sea, ready to save lives after technical and strategic upgrades in Marseille*, www.sosmediterranee.com/press/the-aquarius-returns-to-sea-ready-to-save-lives-after-technical-and-strategic-upgrades-in-marseille/

⁵³ European Council, *Conclusions*, 28 June 2018, www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/

⁵⁴ Commonly known as the "Declaration on Human Rights Defenders", the full text of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998, A/RES/53/144, can be consulted at: www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf

4. INTERCEPTIONS BY THE LIBYAN COAST GUARD AND THEIR CONSEQUENCES FOR REFUGEES AND MIGRANTS

Libya remains an extremely dangerous place for women, men and children of foreign origin, who cannot avail themselves of the protection of the law or seek international protection, and who are made particularly vulnerable by their lack of documentation and rampant racism. In a country where institutions have been weakened by years of conflict and political division, refugees and migrants are routinely exposed to horrendous abuses by Libyan officials, armed groups and criminal gangs. They suffer torture and other ill-treatment and arbitrary detention in appalling conditions, extortion, forced labour and killings – inflicted with total impunity. Over 10,000 people are estimated to be held currently in DCIM detention centres. Many more are held captive by various non-state actors, including unscrupulous employers exploiting them for labour, traffickers and smugglers holding refugees and migrants while awaiting to receive a payment for transporting them, and criminals kidnapping people for ransom.

As violence and abuse against refugees and migrants continue unabated in Libya, the country remains, without question, an unsafe place for disembarking people rescued at sea.

In these circumstances, cooperation with the Libyan Coast Guard and other Libyan actors, which Italy and the EU continue to pursue, is problematic on several counts, as Amnesty International has repeatedly stated.⁵⁵

First of all, interceptions by the Libyan Coast Guard end with disembarkation in Libya for those rescued, and with their automatic transfer to DCIM detention centres to face arbitrary detention, torture and other ill-treatment. By strengthening the Libyan authorities' capacity and commitment to intercept refugee and

⁵⁵ Amnesty International, *Libya's dark web of collusion: Abuses against Europe-bound refugees and migrants*, December 2017, www.amnesty.org/en/documents/eur30/7241/2017/en/; and *Italy: Submission to the United Nations Committee Against Torture*, 10 October 2017, www.amnesty.org/en/documents/eur30/7241/2017/en/

migrant boats attempting the sea crossing, European governments are therefore reducing the number of arrivals in Europe by trapping women, men, and children in a cycle of abuse.



A SURGE IN DETENTION OF MIGRANTS AND REFUGEES IN LIBYA

The number of people arbitrarily held in DCIM detention centres has consequently increased, according to DCIM, from about 4,400 in March to over 10,000 (including about 2,000 women and children) at the end of July – and the figure is steadily rising.⁵⁶ Virtually all the people in DCIM detention centres have been brought there as a result of their interception at sea and disembarkation in Libya. According to UNHCR, the Libyan Coast Guard has rescued or intercepted 12,152 refugees and migrants at sea during 88 operations, as of 3 August 2018. The agency reports an increase in such operations since June, with 5,684 people intercepted and taken back to Libya between June and July alone.⁵⁷ Due to the near daily interceptions at sea, the DCIM centres are well beyond their capacity, making overcrowding and critical conditions prevalent.⁵⁸

Secondly, human rights organizations have documented repeated violations of human rights by the Libyan Coast Guard – including against refugees and migrants, as well as NGO crews – and their conduct at sea has been frequently documented to be reckless.⁵⁹

THE CASE OF JOSEFA

Concerns about the Libyan Coast Guard's methods of operating during interceptions deepened even further following the rescue of a woman from Cameroon, Josefa, on 17 July 2018, carried out jointly by the ships *Astral* and *Open Arms* of the NGO Proactiva. Josefa was the sole survivor found by the NGO crew in a rubber boat which appeared to have been cut, as is common practice following a rescue to prevent smugglers from reusing the boats. The bodies of another woman and of a small child were also retrieved from the water. According to Proactiva's account, confirmed by an Italian journalist and an Italian member of parliament who were on board the *Astral* at the time of the rescue,⁶⁰ the day before Josefa was found, the *Astral's* crew had heard on the ship's radio several exchanges between the commercial vessel *Triades*, which had spotted a rubber boat full of people in distress, and the Libyan Coast Guard. The *Triades* was apparently reluctant to carry out the rescue and was eventually allowed by the Libyan Coast Guard to leave the scene and proceed towards its destination. The following day the *Astral* and the *Open Arms* found Josefa in a rubber boat very near the coordinates which the *Triades* had provided to the Libyan Coast Guard for the rubber boat in distress the day before. Although in a state of shock and suffering from serious hypothermia, Josefa told her rescuers that the "Libyan policemen" arrived during the night, hit her and took on board their ship the other people on the rubber boat.⁶¹ The Libyan Coast Guard denied any responsibility, in a statement by the spokesman of the Libyan Navy in Tripoli, Ayoub Qasem, and referred to the presence of a German journalist on board their ship who could confirm their version.⁶² However, it later emerged that the Libyan Coast Guard of Misurata had carried out a separate interception that night, as confirmed to an Italian newspaper by Colonel Tofag Scare, who stated that during that interception two bodies were left in the water, following a failed attempt to resuscitate them, but denied that anybody still alive was abandoned.⁶³ Medical

⁵⁶ See data on people brought back to Libya published by ISPI (Italian Institute for International Political Studies) in the dataset <https://docs.google.com/spreadsheets/d/1ncHxOHlx4ptt4YFXgGi9Tlbwd53HaR3oFbrfBm67ak4/edit#gid=0> (sources: UNHCR, IOM, other)

⁵⁷ UNHCR, *Flash update Libya*, 27 July – 3 August 2018, <https://data2.unhcr.org/en/documents/download/65029>

⁵⁸ MSF, *Stop arbitrary detention of refugees and migrants disembarked in Libya*, 25 July 2018, www.msf.org/stop-arbitrary-detention-refugees-and-migrants-disembarked-libya; see also: Human Rights Watch, *EU/Italy/Libya: Disputes Over Rescues Put Lives at Risk*, 25 July 2018, <https://www.hrw.org/news/2018/07/25/eu/italy/libya-disputes-over-rescues-put-lives-risk>

⁵⁹ Amnesty International, *A perfect storm: The failure of European policies in the central Mediterranean*, July 2017, www.amnesty.org/en/documents/eur03/6655/2017/en/; *Libya's dark web of collusion: Abuses against Europe-bound refugees and migrants*, December 2017, www.amnesty.org/en/documents/eur30/7241/2017/en/

⁶⁰ Internazionale, *Abbandonati in mare*, 24 July 2018, www.internazionale.it/reportage/annalisa-camilli/2018/07/24/open-arms-josefa-guardia-costiera-libica

⁶¹ Information shared with Amnesty International by representatives of Proactiva. See also: Internazionale, *I libici ci hanno picchiato, parla la donna sopravvissuta*, 17 July 2018, www.internazionale.it/bloc-notes/annalisa-camilli/2018/07/17/donna-sopavvissuta-naufragio

⁶² www.facebook.com/libyan.navy/photos/a.2010191305890811.1073741830.1790218757888068/2116942938548980/?type=3&theater

⁶³ La Stampa, *"Abbiamo lasciato in mare solo due morti". I libici raccontano l'ultimo naufragio*, 20 July 2018, www.lastampa.it/2018/07/20/esteri/abbiamo-lasciato-in-mare-solo-due-morti-i-libici-raccontano-lultimo-naufragio-XEt3l6tUdJPZwqA4UOQ6l/premium.html?zanpid=2456786931947074560

examinations on the two bodies retrieved by Proactiva indicated that, while the woman had died many hours before their arrival, the child died only shortly beforehand.⁶⁴ As the news of Josefa's rescue spread, the Italian Minister of Interior accused Proactiva of fabricating the account of the event and promised to provide evidence that Proactiva's version was "fake news".⁶⁵ No evidence to this effect has so far emerged from Italian or other authorities. Proactiva disembarked Josefa and the two bodies in Palma de Mallorca, Spain, on 21 July.⁶⁶ The NGO has requested prosecutors in Spain to investigate the Libyan Coast Guard and the *Triades* for failure to provide assistance.⁶⁷

Despite having full knowledge of such violations and misconduct, European governments and institutions have decided to continue and even enhance cooperation with Libyan border control authorities. Furthermore, such cooperation is being provided in the absence of effective monitoring and accountability mechanisms. The only monitoring mechanism in place, set up by EUNAVFOR Med Sophia and only focusing on activities by the Libyan Coast Guard, is not a transparent mechanism; however, on the basis of the scarce information made available to NGOs, it appears to be profoundly inadequate. No serious investigation has taken place into reports of human rights violations and misconduct, nor have those accused been removed from their posts until an investigation is concluded and those identified to have carried out violations are held accountable.⁶⁸

Nonetheless, European governments keep providing their unconditional assistance to Libyan authorities. On 10 July, the Italian government approved the donation to Libya of 12 speedboats,⁶⁹ in addition to boats already delivered in 2017, while the Italian Navy continues to support Libyan authorities in Libya in the coordination of sea operations within the newly established Libyan SAR region.⁷⁰ Meanwhile, EUNAVFOR Med Sophia continues to train Libyan Coast Guard officials.

Increasingly, European governments are relying on the Libyan Coast Guard not only to carry out interceptions in both territorial and international waters, but also to coordinate rescue operations by private vessels. Indeed, although Libya does not yet have a fully operational Maritime Rescue Coordination Centre, which would be necessary in order to coordinate sea operations in line with the SAR Convention, in the first semester of 2018 Italy has increasingly transferred to the Libyan authorities the coordination of rescue operations.

Such enhanced cooperation with the Libyan Coast Guard, and reliance on it to coordinate search and rescue operations at sea, implies that Italy is accepting operating procedures during rescues which are inconsistent with international obligations, as the case of the *Lifeline*, described above, illustrates. According to Italian authorities, the *Lifeline* carried out the rescue autonomously, contravening instructions by the Libyan Coast Guard. The instructions stated that the Libyan Coast Guard had assumed the coordination of the operations, and requested all vessels in the area not to interfere with rescue activities and remain at a distance of 8 nautical miles, to allow for rescue activities to be carried out in safety.⁷¹

It is of great concern that Italian authorities and other European states would have expected the *Lifeline* shipmaster not to proceed with a rescue, in breach of his obligation under the law of the sea to do so. All boats carrying refugees and migrants leaving from Libya are technically in distress from the very moment

⁶⁴ Internazionale, *I libici ci hanno picchiato, parla la donna sopravvissuta*, 17 July 2018, www.internazionale.it/bloc-notes/annalisa-camilli/2018/07/17/donna-sopravvissuta-naufragio

⁶⁵ Fanpage, *Il Viminale contro la Open Arms: "Ricostruzione è fake news, smentiremo versione della Ong"*, 17 July 2018, www.fanpage.it/il-viminale-contro-la-open-arms-ricostruzione-e-fake-news-smentiremo-versione-della-ong/. See also: www.facebook.com/salviniofficial/posts/10155922420738155

⁶⁶ https://twitter.com/openarms_fund/status/1019492636271443968

⁶⁷ Diario de Mallorca, *El 'Open Arms' denuncia en Palma al capitán del barco que embistió la patera de Josefa por "homicidio imprudente"*, 21 July 2018, www.diariodemallorca.es/mallorca/2018/07/21/open-arms-denuncia-palma-capitan/1332938.html

⁶⁸ The limitations of the EUNAVFOR Med Sophia monitoring mechanism are manifest – and to some extent even acknowledged by those running the operation – in a restricted internal report leaked in early 2018: EUNAVFOR MED Operation SOPHIA, *Monitoring mechanism Libyan Coast Guard and Navy: Monitoring report October 2017 – January 2018*, <https://assets.documentcloud.org/documents/4453058/NAVFOR-MED-First-Monitoring.pdf>

⁶⁹ Decreto Legge 10 luglio 2018, n. 84, recante disposizioni urgenti per la cessione di unità navali italiane a supporto della Guardia costiera del Ministero della difesa e degli organi per la sicurezza costiera del Ministero dell'Interno libici, www.senato.it/leg/18/BGT/Schede/Ddliter/testi/50139_testi.htm

⁷⁰ A SAR Region was declared by Libya in December 2017. Its establishment was confirmed by IMO in June 2018.

<https://gisis.imo.org/Public/COMSAR/NationalAuthority.aspx>

⁷¹ Information provided by a representative of the Italian Coast Guard, 25 June 2018.

they set off, because they are unseaworthy, overcrowded and lack all elements that could ensure safe navigation. In such circumstances, a delay to proceed with a rescue could have fatal consequences.

It is also of concern that Italian authorities would actively circulate and expect European shipmasters to abide by an instruction by another Coast Guard to keep a distance from a SAR event. Best practice in rescues at sea is that all available vessels should rapidly make for the boat requiring rescue and cooperate under the coordination of a competent MRCC (Maritime Rescue Coordination Centre) offering their assistance. In the current circumstances on the sea off Libyan coasts, such an instruction to European NGO vessels by the Libyan Coast Guard appears to be dictated by the need to prevent refugees and migrants from jumping in the sea when they have an option to be picked up by a European vessel rather than by a Libyan one. Yet, it is also clear that this could lead to catastrophic loss of life if the Libyan Coast Guard, whose resources and technical skills are modest at best, cannot reach all boats needing rescue before they sink or capsize.

Such an instruction to keep away from refugee and migrant boats in distress appears also to be in breach of the obligation of states to ensure that assistance is provided to any person in distress at sea regardless of the nationality or status of such person or of the circumstances in which the person is found.⁷² A discriminatory and dangerous practice is being applied only to the rescue of refugees and migrants fleeing from Libya with the aim of ensuring that they are sent back there. As non-Libyan vessels, including NGO ships, cannot lawfully disembark in Libya anyone rescued at sea because Libya cannot be considered a place of safety, Italian and Libyan authorities, with the support of other European governments and institutions, have thus deliberately set up a system which minimizes the chances for European vessels to become involved in rescue operations, even at the cost of increasing the risk of delays and, ultimately, of loss of life at sea. All this to ensure that those rescued and intercepted are then disembarked in Libya rather than Europe.

The increasing reliance on the Libyan Coast Guard to coordinate rescues carried out by private vessels is also problematic precisely because, while Libyan authorities would routinely instruct ships to disembark any survivors in Libya, non-Libyan vessels cannot lawfully disembark in Libya people rescued at sea, as this would breach the obligations of their flag state, under international and European law, not to return anyone to a country where they would be exposed to serious human rights violations (known as the *non-refoulement* principle). This appears to have happened in the case of *Asso Ventotto*.

THE CASE OF ASSO VENTOTTO

On 30 July the commercial supply vessel *Asso Ventotto*, operating under Italian flag to assist operations at an oil rig some 57 nautical miles off Tripoli, disembarked in Libya 101 people it had rescued in international waters near the oil rig earlier on the same day. As declared by the private company operating the ship, the vessel's captain acted upon instructions of the Libyan Coast Guard, as a Libyan official present on the oil rig boarded the *Asso Ventotto* and guided the operation, and a Libyan Coast Guard vessel later approached the *Asso Ventotto* and accompanied it to the port of Tripoli.⁷³ According to information Amnesty International received from the Italian Coast Guard, the IMRCC did not coordinate the rescue and was only informed about the situation while the *Asso Ventotto* was already directing towards Tripoli, though at that point it failed to instruct the shipmaster to avoid carrying out the disembarkation in Libya.⁷⁴ According to the Libyan Coast Guard, the Italian-owned vessel is rented by Libyan authorities, and the practice of using merchant vessels to take people back to Libya had been already implemented in the past by Libyan authorities.⁷⁵

This incident constitutes a violation of Italy's obligations under the European Convention on Human Rights, which appears especially grave in light of the previously mentioned 2012 European Court of Human Rights judgement against Italy in the case of *Hirsi Jamaa*, precisely for pushing people rescued at sea back to Libya.⁷⁶ Just a few weeks earlier, on 8 July, the *Vos Thalassa*, in the case described above, had also been on

⁷² SAR Convention, Chapter 2.1.10

⁷³ Augusta Offshore, Salvataggio di 101 migranti – Chiarimenti dell'azienda armatrice dell'Asso Ventotto, press release, 31 July 2018.

⁷⁴ Phone conversation with representative of Italian Coast Guard, 31 July 2018.

⁷⁵ Phone conversation with representative of Libyan Coast Guard, 1 August 2018.

⁷⁶ *Case of Hirsi Jamaa and Others v. Italy*, (Application no. 27765/09), European Court of Human Rights, Grand Chamber Judgment, Strasbourg, 23 February 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>

the verge of disembarking people in Libya, an action which was averted only as a result of the protests of those rescued.

Amnesty International calls on Italy to investigate the incident and establish responsibility for any wrongdoing at all levels; and to take measures to ensure that the people disembarked in Libya by the *Asso Ventotto* are traced and provided with protection and reparation. It also calls on all European governments to take measures to ensure that European commercial vessels are clear about their obligation not to disembark people in Libya.

The *Asso Ventotto* incident is the foreseeable by-product of a situation deliberately created by European governments, with Italy having special responsibility in it. The policy of “closing ports”; the criminalization of NGOs and consequent reduction in their presence at sea, which makes merchant vessels more likely to be called to carry out rescues; the long delays in the disembarkation in Europe of people rescued at sea, with the serious financial costs carried by merchant vessels; the public statements by the Italian Minister of Interior suggesting that Libya should be considered as a safe place of disembarkation;⁷⁷ the Europe-led creation of a Libyan SAR Region and building up of the Libyan Coast Guard; and Europe’s increasing reliance on the Libyan Coast Guard to coordinate rescues in the central Mediterranean: all these factors explain why 101 people – including five children and five pregnant women – were sent back to Libya, where they are almost certainly facing serious human rights violations. The fact that they had set foot on an Italian-flagged vessel, i.e. on Italian and European soil, should have protected them from that.

⁷⁷ ANSA, *EU shd recognise Libya as safe port* – Salvini, 16 July 2018, www.ansa.it/english/news/2018/07/16/eu-shd-recognise-libya-as-safe-port-salvini-3_94375d35-b87f-4aa7-a5da-7218d51fc956.html

5. THE FLAWS IN RECENT EU PROPOSALS ON DISEMBARKATION AND WHAT IS NEEDED TO SAVE LIVES

If over a million people crossed the Mediterranean into Europe in 2015, the number of refugees and migrants engaging in the crossing has been in sharp decline since. This year, with a total of 58,475 arrivals registered as of 2 August, is in line with this trend.⁷⁸ Such a decrease is particularly marked in the central Mediterranean, as arrivals in Italy by the end of July, amounting to 18,645, are about 80 percent lower than they were in the same period in both 2017 and 2016.⁷⁹ So much so, that the number of people crossing the central Mediterranean route has dropped below the number of those who reach Spain via the West African route.⁸⁰

The drastic reduction in crossings means that the task of adequately assisting those at risk of drowning in the Mediterranean and arriving in Europe should be even more manageable, in light of Europe's size, population and resources.

Despite this, EU governments continue to treat the phenomenon as an emergency of unmanageable proportions, stoking unsubstantiated fears and pushing for the adoption of policies that prioritize borders over human life and dignity. In so doing, they fail to acknowledge that many of the critical issues currently experienced in the central Mediterranean are problems of Europe's own making: by attempting to contain refugees and migrants in neighbouring countries, rather than addressing migration with joint, fair and humane policies, EU governments have triggered a vicious cycle of closure and externalization that is exacerbating rather than solving problems. The collective failure of EU governments to reform the Dublin system in a way that avoids the penalization of countries who disembark people on their territory, has encouraged Italy and Malta to take unilateral decisions, including the refusal to offer disembarkation and the disengagement from rescue operations, that are making sea crossings more dangerous. The consequences

⁷⁸ UNHCR, <https://data2.unhcr.org/en/situations/mediterranean>. The figure represents the total number of refugees and migrants arrived by sea to Italy, Greece, Spain and Cyprus.

⁷⁹ Italian Ministry of Interior, www.libertacivilimmigrazione.dlci.interno.gov.it/it/documentazione/statistica/cruscotto-statistico-giornaliero. The number of arrivals in Italy refers to the whole central Mediterranean route and includes 12,088 people departed from Libya. This figure does not obviously include undetected arrivals on the Italian coasts, which remain limited but appear to be on the rise.

⁸⁰ UNHCR, <https://data2.unhcr.org/en/situations/mediterranean>.

are being felt by those – including people fleeing conflict and persecution, victims of trafficking, pregnant women, torture survivors and children – who are left in peril at sea, at risk of drowning; abandoned in the hands of abusive Libyan authorities; or left stranded for days after rescue as no European country is willing to assist them.

Notwithstanding the obvious flaws of this approach, the European Council and Commission have decided to continue in the same direction, recently proposing policies that once more focus primarily on border control and its externalization: the creation of “controlled centres” where they intend to hold refugees and migrants disembarked in Europe; and the provision of assistance to North African and other countries outside Europe which may be available to disembark people rescued at sea on their territory.⁸¹ While crucial details are still missing, these proposals appear to represent a dangerous expansion of policies that Europe has already put in place and that have already resulted in human rights violations.

The creation in Europe of “controlled centres”, where both refugees and migrants could be held for weeks, and potentially months, is highly problematic. Under international law, any restriction on the right to liberty can only be imposed on a case by case basis, based on legality, necessity and proportionality assessments. The creation of such centres is also reminiscent of the “hotspot approach” implemented in Italy and Greece since 2016, which has generated serious human rights violations and reduced, rather than increased, solidarity among European countries.⁸²

The proposal to offer additional support to countries outside Europe, to ensure they intercept more people at sea and disembark them on their territory, is also concerning, particularly as beneficiaries would include countries with an appalling track record on human rights, where people rescued at sea should not be disembarked – as they would risk serious human rights violations and no adequate opportunity to seek asylum. Any cooperation with such countries on border control should be conditioned upon their adoption of the legislative and structural changes necessary to ensure that people disembarked there are not exposed to human rights violations and a lack of protection. The example of Libya, where the Libyan Coast Guard assisted by the EU and some member states is disembarking men, women and children intercepted at sea only to place them in indefinite arbitrary detention in centres where torture is rife, should push EU leaders to change approach, rather than to replicate it elsewhere.

While pursuing further border control and externalization, European leaders are completely overlooking the potential to reduce the number of people travelling irregularly by offering them safe and regular access to Europe. Out of 54,112 refugees registered in Libya, only 1,858 have been evacuated to Niger to find alternative third country options, and as of June only 203 of them were eventually able to depart to their country of resettlement. In addition, only 312 people were evacuated directly from Libya to Italy and 10 to Romania earlier this year. As of May, only 3,781 resettlement slots had been pledged for Libya, including in relation to the Niger emergency centre, where hundreds of refugees evacuated from Libya are currently awaiting an offer of resettlement. This bottleneck, and the scant number of resettlement pledges from European governments, mean that UNHCR is unable to evacuate vulnerable refugees stranded in Libya and in need of resettlement, or even to advocate for the release of refugees arbitrarily detained in DCIM centres, as Libyan authorities only allow the release of refugees accepted for evacuation. As a result, tens of thousands of refugees have no recourse to flee Libya, where they remain stuck in abhorrent conditions and without hope.

Amnesty International considers that Europe must urgently step out of the vicious cycle of closure and externalization, and instead invest in policies that bring order into the system by offering safe opportunities to travel to Europe for both refugees and migrants. Meanwhile, it is urgent that European leaders also go back to basics, urgently agree to the reform of the Dublin system, ensure there are sufficient rescue ships at sea, and offer them a place of safety where they can be disembarked – and where their human rights can be adequately protected.

⁸¹ European Council, *Conclusions*, 28 June 2018, www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/; European Commission, *Managing migration: Commission expands on disembarkation and controlled centre concepts*, 24 July 2018, http://europa.eu/rapid/press-release_IP-18-4629_en.htm

⁸² Amnesty International, *Greece: Asylum seekers in abysmal conditions on islands*, 23 October 2017, www.amnesty.org/en/latest/news/2017/10/greece-asylum-seekers-in-abysmal-conditions-on-islands/; *Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights*, November 2016, www.amnesty.org/en/documents/eur30/5004/2016/en/

6. RECOMMENDATIONS

TO EU MEMBER STATES AND INSTITUTIONS

- Ensure, including through a review of current naval operations, that an adequate number of vessels with search and rescue as their primary purpose are deployed along the routes taken by boats carrying refugees and migrants, including near Libyan territorial waters, for as long as departures of refugees and migrants from Libyan shores continue.
- Agree on regional disembarkation arrangements to render disembarkation predictable and ensure that people rescued at sea are promptly disembarked in an appropriate place of safety, where their human rights are adequately protected, where they are free from arbitrary detention and where they have a genuine opportunity to seek asylum.
- Urgently agree the reform of the Dublin system at the European Council meeting in September, by overhauling the logic which assigns responsibility to the state of first entry and replacing it with a mandatory distribution mechanism of asylum-seekers; and address the shortcomings of the Common European Asylum System through solutions based on promoting equivalent protection standards, fair sharing of responsibility, and stricter enforcement of family reunion rights.
- Pending the reform of the Dublin system, and to temporarily alleviate the pressure on frontline EU Member States, decouple the responsibility for disembarkation from responsibility for processing asylum applications, within Europe. Share the responsibility for the protection of asylum-seekers among EU Member States, including through discretionary relocation measures to other European countries where they can have prompt access to a fair and efficient asylum procedure, in full compliance with due process and human rights safeguards.
- Fully uphold their obligations under international maritime law, including by refraining from penalizing shipmasters for assisting people in distress at sea and minimizing any economic loss for private shipmasters.
- Issue clear guidelines to shipmasters to prevent the disembarkation in Libya of any people rescued at sea.
- Ensure that NGOs can continue to contribute to rescuing refugees and migrants at sea, in compliance with relevant international law and standards, and that, in line with the Declaration on Human Rights Defenders, they can operate in a safe and enabling environment.
- Reset all co-operation with Libya on migration – in the form of financial, institutional, material, policy and/or capacity support – to focus on the priority of protecting the human rights of refugees, asylum-seekers and migrants in the country.
- Make continuing cooperation with the Libyan authorities conditional on concrete and verifiable steps towards:
 - the prompt release of all refugees, asylum-seekers and migrants being arbitrarily detained, and the end of the system of automatic detention;

- the full and formal recognition of UNHCR, in the form of a memorandum of understanding that guarantees the organization's full access to people of concern across the country and the possibility to carry out its full mandate, irrespective of the nationality of beneficiaries;
- the adoption and enactment of new legislation and policies on migration and asylum, providing for the decriminalization of irregular entry, stay and exit; an end to automatic detention; and the creation of an asylum system.
- Ensure, as per EU law, that no EU funding results in human rights violations, and ensure full transparency on the use of EU funds to facilitate relevant assessments.
- Work jointly with Libya to ensure the establishment of an international, independent investigative mechanism for Libya with a mandate to investigate human rights violations, including those against refugees and migrants, as well as other breaches of international law, with the aim of identifying perpetrators of human rights violations and abuses and contributing to ending impunity; and promptly launch adequate investigations on serious incidents where breaches of international law have been reported, including the incidents of 16-17 July reported by NGO Proactiva, and the pushback by commercial vessel *Asso Ventotto* on 30 July.
- Limit any cooperation with the Libyan Coast Guard to cases where their intervention is essential to prevent immediate loss of life and make it conditional on measures to mitigate against the risks of disembarkation in Libya, including by asking that the Libyan Coast Guard:
 - limit their search and rescue activities to Libyan waters;
 - allow search and rescue operations by civilian vessels, including boats operated by NGOs, to take place unhindered, including in the proximity and, if necessary, inside Libyan territorial waters;
 - refrain from instructing vessels not to intervene in SAR operations, whenever those vessels may be able to intervene promptly and ensure effective rescues, and from instructing them to disembark those rescued in Libya or to transfer them onto Libyan ships;
 - guarantee the prompt transfer of any rescued person onto vessels able to ensure disembarkation in a place of safety, outside Libya.
 - accept the immediate establishment of a mechanism to ensure solid monitoring of their conduct and operations at sea, and of an accountability process in case of breaches of international law rules.
- Refrain from setting policies that expand the use of detention for refugees and migrants and outsource border control responsibilities to countries outside Europe.
- Open safe and legal routes into Europe, in particular by offering a meaningful number of places for resettlement and alternative pathways to protection to people in need of international protection, including refugees currently stranded in Libya and neighbouring countries, and by reviewing migration policies with a view to facilitate regular pathways for would-be migrants.

TO THE ITALIAN AND MALTESE GOVERNMENTS (IN ADDITION TO THE ABOVE):

- Refrain from misusing criminal law against NGOs rescuing people in the Mediterranean, stop the campaign of innuendo and insinuation against them, engage in responsible public communication on life and death issues such as search and rescue at sea, and applaud the work of human rights defenders engaged in saving lives.
- Refrain from transferring to Libyan authorities the coordination of SAR operations in the central Mediterranean, to instruct vessels carrying out rescues to seek instructions from the Libyan Coast Guard, and to circulate messages originated by the Libyan Coast Guard which may lead to delays in rescue operations.

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BETWEEN THE DEVIL AND THE DEEP BLUE SEA

EUROPE FAILS REFUGEES AND MIGRANTS IN THE CENTRAL MEDITERRANEAN

During the past year, the number of people engaging in the dangerous crossing of the central Mediterranean has dropped. The task of assisting those at risk of drowning or arriving in Europe should be therefore even more manageable than before, in light of Europe's size, population and resources.

However, EU governments continue to treat the phenomenon as an emergency of unmanageable proportions, stoking fears and adopting policies that prioritize borders over human life. In so doing, rather than addressing migration with joint, fair and humane policies, EU governments are exacerbating rather than solving problems. Their collective failure to reform the Dublin system, in a way that avoids the penalization of countries who disembark people on their territory, has encouraged Italy and Malta to take unilateral decisions, including the refusal to offer disembarkation, the disengagement from rescue operations, the criminalization of NGOs rescuing refugees and migrants at sea, and the outsourcing of sea operations to the Libyan Coast Guard, that are making sea crossings more dangerous.

The consequences are being felt by those – including people fleeing conflict and persecution, victims of trafficking, pregnant women, torture survivors and children – who are left in peril at sea, at risk of drowning; abandoned in the hands of abusive Libyan authorities intercepting them at sea and taking them back to detention centres where torture is rife; or left stranded for days after rescue as no European country is willing to assist them.

Europe must urgently invest in policies that offer safe opportunities to travel to Europe for both refugees and migrants, approve the Dublin reform, put an adequate number of ships at sea to rescue people, and offer them a place of safety where they can be disembarked – and where their human rights can be adequately protected.