



Resolution on European border control in the Mediterranean Sea

IADL, AED and ELDH condemn the tactics employed by the European Union and other European countries member to the Schengen/Dublin Area through their agents and agencies, particularly Frontex, to repel and collectively expulse migrants seeking to enter Europe by sea from Turkey and North Africa. IADL, AED and ELDH call for a radical defunding of Frontex; an end to cooperation with the Libyan Coast Guard (“LYCG”); respect for the principle of *non-refoulement* and the prohibition on collective expulsions; and for Search and Rescue operations to be adequately resourced and carried out within European and international waters.

1. Border control in Libyan waters

The European Union – and its “associated States” –, via the European Border and Coast Guard Agency Frontex, provides training, equipment and funds to Libyan coast guard forces (“LYCG”) to enable them to intercept boats in both Libyan coastal waters and international waters, including via aerial surveillance.ⁱ Frontex officers engage in a systematic praxis of interpretation of the international law of the sea by alerting only the “competent” Rescue Coordination Centre of the detection of a migrant boat, which means that, when boats are intercepted in the disputed Libyan Search and Rescue (“SAR”) region, they will only alert the LYCG and not any other ships, including those of NGOs, that might have assisted faster.

Libya does not meet “the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea” under international law.ⁱⁱ Migrants who are returned to Libya are frequently detained indefinitely in inhuman and degrading conditions leading to high rates of death from disease and where torture is reported to be widespread.ⁱⁱⁱ Crimes of deportation, murder, imprisonment, enslavement, torture, rape, persecution and other inhuman acts are being committed against migrants in Libyan detention camps and torture houses.^{iv} Immigration detention centres are frequently located near to active conflict zones which has led to the deaths of migrants held in them due to both indiscriminate and targeted attacks.^v The UN Special Rapporteur on Extrajudicial or Arbitrary Executions has found the gravity of the situation to be such that; “the International Criminal Court should consider preliminary investigation into atrocity crimes against refugees and migrants”.^{vi}

The EU’s assistance to LYCG is motivated by a desire to reduce arrivals in Europe and to avoid triggering EU non refoulement obligations through an illegitimate interpretation of international law.^{vii} Through progressive reduction of European coast guard and maritime rescue activities, criminalisation of NGOs carrying out Search and Rescue operations, and the outsourcing of SAR and border policing to the Libyan coastguard, EU actors have violated their SAR obligations and are as a minimum complicit in the systematic violation of human rights including Articles 2 and 3 of the ECHR through forcing return to Libya.^{viii} A convincing case has been made that EU officials and their agents are liable for crimes against humanity committed as part of a premeditated policy to stem migration flows from Africa via the Central Mediterranean route, which is currently under examination in the Office of the Prosecutor of the International Criminal Court.^{ix}

2. Border control in the Aegean Sea

Since early this year, organisations active in the Aegean Sea^x have been recording an increased number of illegal expulsions of migrants, both from Greek waters and from the Aegean islands and mainland, by European actors including the Greek Coast Guard and Frontex. In carrying out such expulsions, these authorities make use of aerial surveillance in the place of search and rescue operations.

Aggressive deterrence tactics employed to push back boats in Greek waters include the confiscation of fuel and destruction of engines, the firing of shots into the sea next to boats, and vessels circling migrant boats to create dangerous waves, with reports identifying perpetrators as Greek Coast Guard.^{xi} Such incidents are ongoing: on 29 June 2020, four individuals are believed to have drowned, after the Greek coast guard confiscated their boat's engine and fuel, towed the boat into Turkish waters, and punctured the hull as part of a pushback.^{xii} A Danish Frontex ship declared on 6 March 2020 that they had received and refused orders from headquarters to forcibly return the 33 people they had just rescued to their dinghy, and tow them out of Greek waters back towards Turkey.^{xiii}

There have also been dozens of reports of people being returned to Turkey after landing on the Aegean islands, without being given the chance to apply for asylum.^{xiv} While pushbacks at the Greek-Turkish land border are now a regular occurrence, there have been recent accounts of hundreds of people being removed illegally from closed inland detention spaces, again before their asylum procedure has been exhausted.^{xv}

The foregoing actions, both direct push backs and unfair and illegal asylum and return procedures, are a clear breach of the principle of *non-refoulement*, the cornerstone of international refugee protection as enshrined in the 1951 Geneva Convention and the European Convention on Human Rights. Article 19(1) of The EU Charter of Fundamental Rights explicitly prohibits collective expulsions, such as these, and rescue of people at sea is a fundamental duty under the law of the sea and violates international and EU refugee law. The right to seek asylum requires that individuals have access to a fair and efficient procedure for the examination of their claims upon established procedures applicable to any actor involved in the decision making process.

The tolerance or involvement of Frontex and EU member states NATO boats operating in the area should be independently and efficiently investigated. All boats operating in the Aegean sea seem to have knowledge of boats in distress and push back incidents through their radars.^{xvi} Therefore, the internal investigations of Frontex do not qualify as fair and effective rather add to the lack of transparency. The same stands for the complaints about illegal actions by Frontex in relation to Frontex officer's actions in the asylum procedure in the Greek hotspots (initial registration and identification, age and nationality assessment of newcomers) and return procedures (Frontex readmission procedures from Greek hotspots to Turkey for the implementation of the EU Turkey Statement). Up to now, no complaint has been effectively investigated. Participation of EU Agencies in national administrative procedures must promote transparency and apply fully the EU's 'acquis' and international and national procedural standards.

EU and other European actors, some in silent complicity and some in active engagement with these processes, are failing to rescue people in distress, and violating their obligations under international law.

3. Demands

IADL, AED and ELDH therefore call for:

1. A radical defunding of Frontex, which is not conducting search and rescue but instead causing deaths at sea and perpetuating border violence, and an end to the violent militarisation of European borders;
2. An immediate end to EU assistance to the LYCG, whether through funding, training, equipment or intelligence;
3. European actors to carry out their obligations to rescue people in distress at sea and not to violate the principle of *non-refoulement*, whether by returning individuals or through collective expulsions and whether directly or through their agents;
4. An end to the use of aerial surveillance in place of adequate search and rescue operations.
5. An end to the criminalisation of individuals and organisations seeking to assist migrants at sea;
6. The implementation of legal pathways to allow safe migration to Europe.
7. An end to the externalisation of EU and EU member states protection responsibilities through cooperation with third countries such as Turkey and Libya
8. An end to unofficial political solutions such as the EU – Turkey Statement and immediate implementation of established EU law and procedures.

To this end IADL, AED and ELDH will:

1. Hold EU and other European officials and their agents accountable by supporting strategic legal challenges and campaigns against the current widespread breaches of international legal obligations to migrants;
2. Call for a recommitment by member states to the principles of the Geneva Convention;
3. Call for a commitment from Greece that there will be no further suspension of the right to claim asylum (as happened in March 2020);
4. Support NGO rescue and monitoring operations in the Mediterranean particularly where individuals are charged with criminal offences in respect of their humanitarian actions in solidarity with migrants;
5. Request an investigation and report by the UN Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced into conditions in the closed detention centres in Greece.

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- ⁱ Alarm Phone, Borderline Europe, Mediterranean – Saving Humans, Sea-Watch, “Remote control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean”, 17 June 2020, accessible at: <https://alarmphone.org/en/2020/06/17/new-report-aerial-collaboration-between-the-eu-and-libya-facilitates-mass-interceptions-of-migrants/> p. 2
- ⁱⁱ UNHCR Position on Returns to Libya (Update II), September 2018. Available at: <https://www.refworld.org/pdfid/5b8d02314.pdf>
- ⁱⁱⁱ Amnesty International Libya 2019 report, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>
- Médecins Sans Frontières, “Out of sight, out of mind: refugees in Libya's detention centres”, 12 July 2019 <https://www.msf.org/out-sight-out-mind-refugees-libyas-detention-centres-libya>
- ^{iv} International Criminal Court, 2017, “Statement of the ICC Prosecutor to the UNSC on the Situation in Libya,” available at: <https://www.icc-cpi.int/pages/item.aspx?name=170509-otp-stat-lib>; German diplomat in an internal cable to Angela Merkel, 29 January 2017 quoted in: Deutsche Welle, 2017, “Libyan Trafficking camps are hell for refugees, diplomats say”, available at: <https://p.dw.com/p/2WaEd>
- ^v Amnesty International Libya 2019 report, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>
- ^{vi} Agnes Callamard, Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, in her Report to the UN General Assembly, on the “Unlawful Death of Refugees and Migrants”, 15 August 2017. United Nations General Assembly, A/72/335. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1725806.pdf>
- ^{vii} Human Rights Watch World Report 2020, <https://www.hrw.org/world-report/2020/country-chapters/libya>
- ^{viii} *“As a systematic praxis, Frontex officers engage in an illegitimate and formal interpretation of international law of the sea by alerting only the “competent” RCC according to the geographical position of the SAR event. This means that if the distress event happens to take place in the disputed Libyan SAR region, only the Libyans will be asked to intervene, even when NGO ships or other ships could help in a faster and more appropriate way. When the Libyans intervene in SAR operations it is very well known by all the EU authorities that shipwrecked people will be brought back to Libya, a place designated by many international organisations as generally unsafe (for migrants in particular) and which does not meet “the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea”. This formal interpretation of the coordination procedures for rescues, as defined in the international law of the sea therefore leads, concretely, to the violation of migrants’ fundamental rights.”*
- Alarm Phone, Borderline Europe, Mediterranean – Saving Humans, Sea-Watch, “Remote control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean”, 17 June 2020, available at: <https://alarmphone.org/en/2020/06/17/new-report-aerial-collaboration-between-the-eu-and-libya-facilitates-mass-interceptions-of-migrants/>
- ^{ix} Communication to the Office of the Prosecutor of the International Criminal Court, *Pursuant to Article 15 of the Rome Statute*, ‘EU Migration Policies in the Central Mediterranean and Libya (2014-2019)’, Omer Shatz and Dr. Juan Branco, available at: <https://www.statewatch.org/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>;
- The UN Special Rapporteur on Torture, Nils Melzer, has called on the Prosecutor of the International Criminal Court to: *“examine whether investigations for crimes against humanity or war crimes are warranted in view of the scale, gravity and increasingly systematic nature of torture, ill-treatment and other serious human rights abuses[...] as a direct or indirect consequence of deliberate State policies and practices of deterrence, criminalisation, arrival prevention and refoulement”* in his “Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment”, 26 February 2018, Human Rights Council, A/HRC/37/50
- ^x Alarm Phone, Aegean Boat Report, Mare Liberum
- ^{xi} Between the end of March 2020 and 25th May, at least 11 cases have been recorded of people being dragged back into Turkish waters. Facebook post from Mare Liberum: <https://www.facebook.com/MareLiberumOfficial/posts/635491837179723>

Bellingcat report, 'Masked Men On A Hellenic Coast Guard Boat Involved In Pushback Incident', available at: <https://www.bellingcat.com/news/uk-and-europe/2020/06/23/masked-men-on-a-hellenic-coast-guard-boat-involved-in-pushback-incident/>

^{xii} https://www.facebook.com/AegeanBoatReport/posts/864260654097040?_tn=-R

^{xiii} 'Danish boat in Aegean refused order to push back rescued migrants', news article available at: <https://www.politico.eu/article/danish-frontex-boat-refused-order-to-push-back-rescued-migrants-report/>

^{xiv} One investigation confirmed 39 people who were picked up from a drifting life raft by the Turkish Coast Guard on 29th April had landed on Samos the day before. Bellingcat report, 'Samos and the Anatomy of a Maritime Push-Back', available at: <https://www.bellingcat.com/news/uk-and-europe/2020/05/20/samos-and-the-anatomy-of-a-maritime-push-back/>

Eyewitness accounts suggest at least 200 people have been removed in this way since the end of April. Bordermonitoring Aegean report, available at: <https://dm-aegean.bordermonitoring.eu/2020/06/17/greece-carries-out-collective-expulsion-of-over-900-asylum-seekers-under-the-complicit-silence-of-the-european-union/>

^{xv} Border Violence Monitoring Network, 'Press Release: Collective Expulsion from Greek Centres', available at: https://www.borderviolence.eu/wp-content/uploads/Press-Release_Greek-Pushbacks.pdf

^{xvi} https://www.spiegel.de/international/europe/videos-and-eyewitness-accounts-greece-apparently-abandoning-refugees-at-sea-a-84c06c61-7f11-4e83-ae70-3905017b49d5-amp?_twitter_impression=true&fbclid=IwAR2hVI5Tqo3b3Bf3gXPMIbY967LD07rQ5i_IU_LAIT8pVfYmJDdYM27fjgU

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