



**Submission to the Secretary General
Report on the Human Rights of Migrants
Submitted by Sea-Watch e.V.**

12th of May 2023

I. Submitting organisation

Sea-Watch e.V. is a non-profit organisation which conducts civil search and rescue operations in the central Mediterranean since 2015,¹ documents human rights violations, and with the help of monitoring aircraft² reports people in distress to the responsible authorities and nearby vessels.

II. The continuous illegal European externalisation policies with Libya

Since Sea-Watch's last submissions,³ no illegal European policy measures have been stopped to prevent human rights violations. In fact, the EU and single member states continue to strengthen the Libyan authorities through various programmes. The aim is clear: European member states delegate their duty to render assistance to boats in distress at sea to the Libyan authorities, despite being aware of the fact that people pulled back to Libya will be brought to detention centres and their human rights will be violated.⁴

Since 2012 and the Hirsi judgement, the EU adjusted its strategy on managing its external borders in order to escape legal accountability. To avoid direct involvement, the EU and its member states established cooperation agreements with third parties based upon soft law instruments. First, the Libyan authorities received political and material support by Italy. Indeed, since February 2017⁵ and the signing of the Italy-Libya memorandum of understanding (MoU), which was automatically renewed in February 2020 and 2023,⁶ Italy provided the so-called Libyan Coast Guard with logistical, technical, political and financial assistance, as well as training and the donation of assets. In July 2022, the Italian parliament's foreign and defence commissions approved the final resolution on Italy's funding of military missions abroad, including an **increase of the budget devoted to the so-called Libyan coastguard to EUR 1.37 million, raising the yearly budget to EUR 11.85 million, for a total of roughly EUR 44.5 million since 2017.**⁸

Furthermore, within the framework of the EU project 'Support to Integrated Border and Migration Management in Libya' of December 2021, **Italy used the helicopter carrier San Giorgio to deliver a mobile and container-based Maritime Rescue Coordination Centre (MRCC) to Tripoli.**⁹ With the funding of the Emergency Trust Fund for Africa (EUTF), the

¹ Sea-Watch currently operates the rescue vessels, the Sea-Watch 5 and the small rescue asset, Aurora.

² The aircraft Seabird 1 and Seabird 2 are operated together with the NGO Humanitarian Pilots Initiative (HPI).

³ Sea-Watch submitted a report on pushback practices and their impact on the human rights of migrants in the Central Mediterranean, available at: https://www.ohchr.org/Documents/Issues/Migration/pushback/Sea-Watch_Submission.pdf. In 2022, Sea-Watch submitted another report on human rights violations at international borders: trends, prevention and accountability, available at: <https://www.ohchr.org/en/calls-for-input/2022/report-human-rights-violations-international-borders-trends-prevention-and>.

⁴ See Amnesty International, « No one will look for you », available at: <https://www.amnesty.org/fr/wp-content/uploads/2021/07/MDE1944392021ENGLISH.pdf>, Alarm Phone, borderline-europe, Mediterranean, Sea-Watch, 'Remote control' report: <https://www.eu-libya.info>. In March 2023, the Independent Fact-Finding Mission on Libya declared that 'there are reasonable grounds to believe that migrants across Libya are victims of crimes against humanity': <https://www.ohchr.org/en/hr-bodies/hrc/libya/index>.

⁵ In February 2017, Italy signed a memorandum of understanding with the Libyan Government of National Accord on cooperation regarding the fight against 'illegal immigration' and on 'reinforcing the security' of their borders. Even though it is not legally binding and was adopted without the formal approval of the Italian parliament, the EU endorsed the MoU in the Malta Declaration, declaring to continue to 'support to efforts and initiatives from individual member states directly engaged with Libya; in this respect, the EU welcomes and is ready to support Italy in its implementation of the memorandum of understanding'.

⁶ More information available here: <https://www.hrw.org/it/news/2023/02/01/italy-reups-funding-force-migrants-back-libya#:~:text=Dal%202017%20ad%20oggi%2C%20ulteriormente%20il%20sostegno%20alla%20Libia>.

⁷ More information available at: <https://www.lindipendente.online/2022/07/29/italia-approva-linvio-di-nuovi-fondi-alla-guardia-costiera-libica/>.

⁸ Moreover, in 2021 the parliament had revised the financial support given to the EUNAVFOR MED operation IRINI and the Italian military operation Mare Sicuro, further increasing the respective funding of 15 and 17 million Euro compared to 2020. More information available here: <https://www.oxfamitalia.org/aumentano-i-fondi-italiani-alla-guardia-costiera-libica/>.

⁹ These technologies consist of various communications and monitoring systems intended to help detect persons who try to cross the Mediterranean Sea. More information available here: https://www.repubblica.it/esteri/2021/12/07/news/nave_italiana_libia-329232874/?fbclid=IwAR1V3mGgd_WZWfdWjSfBk2TV1Y1slvtDDXJUmfUeA2VQJeUzUf70BR8F8f0, <https://digit.site36.net/2021/12/07/eu-development-aid-italy-is-gifting-more-surveillance-technology-to-the-libyan-coastguard/>.

Libyan authorities received various patrol vessels from Italy. Italy will also be responsible for training Libyan personnel to operate the MRCC.

Aside from the Italian authorities, in May 2020 the Maltese authorities also concluded a MoU with Libya. The aim is to set up two coordination centres in Tripoli and Valletta for supporting 'operations against illegal migration'. The MoU is supposedly still in force.¹⁰

With bilateral agreements, programmes and the establishment of a Libyan Search-and-Rescue zone in 2018, the European Union and its member states have established and continue to maintain a structure in which their duty to render assistance and to disembark rescued persons in a safe place is delegated to the so-called Libyan Coast Guard, in full knowledge that according to international maritime and human rights law, **Libya is not a place of safety**.¹¹

III. Current state practices in the central Mediterranean resulting in violations of international law

With regard to the human rights situation for people on the move, the situation has worsened since Sea-Watch's last submissions. So far in 2023, more than 938 persons went missing or died in the central Mediterranean sea.¹² In comparison, the IOM counted 1,417 persons overall in 2022.¹³ **2023 is the deadliest year in the central Mediterranean since 2017**.¹⁴

The European Union and European member states continue to delegate their duties to the so-called Libyan Coast Guard, despite the latter repeatedly acting in violation of international human rights and maritime laws, even using violence against persons in distress and civil actors.¹⁵ The Italian and Maltese authorities continuously refuse to deploy any rescue assets, even when the so-called Libyan Coast Guard do not or will not intervene, leading to the deaths of persons in distress - **deaths that could have been prevented**.¹⁶

When taking over the coordination of distress cases - because the so-called Libyan Coast Guard are not capable of doing so - **the Italian and Maltese authorities exclusively rely on private actors that are not equipped or trained to conduct such operations**. European actors order merchant vessels merely to stay on scene¹⁷ for hours, or give them illegal instructions such as not to rescue¹⁸ or to return persons to unsafe places.¹⁹ Merchant

¹⁰ The MoU is valid for three years: <https://www.statewatch.org/media/documents/news/2020/jun/malta-libya-mou-immigration.pdf> . See Sea-Watch's last submission for more information about the EU-Libya cooperation: https://www.ohchr.org/Documents/Issues/Migration/pushback/Sea-Watch_Submission.pdf .

¹¹ The Independent Fact-Finding Mission on Libya declared during a press conference that the support provided to Libya by the EU and EU member states aids and abets the commission of crimes against humanity: <https://media.un.org/en/asset/k1q/k1q8qjcx9x> . The ECCHR demonstrated that individuals from the EU and its member states were co-perpetrators of crimes against humanity: https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Executive_Summary_ICC_Libya.pdf .

¹² According to the International Organisation for Migration as of May 11th 2023, data available at: https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&year%5B%5D=11681&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=

¹³ *Ibid.*

¹⁴ According to the IOM: <https://www.iom.int/news/deadliest-quarter-migrants-central-mediterranean-2017> .

¹⁵ See distress case A: https://sea-watch.org/wp-content/uploads/2023/04/202301_02_Airborne_Monthly_Factsheet.pdf . See also the so-called Libyan Coast Guard shooting at persons in distress and threatening the NGO vessel Ocean Viking: https://twitter.com/seawatch_intl/status/1639695334057050114?s=20 <https://twitter.com/SOSMedIntl/status/1639703934691418112?s=20> . On October 25th 2022, the so-called Libyan Coast Guard threatened to fire upon a Sea-Watch aircraft during an illegal interception in the Maltese SAR zone, see: https://twitter.com/seawatch_intl/status/1585254002404753414?s=20 .

¹⁶ See the reconstruction of the shipwreck that occurred on March 12th: <https://sea-watch.org/en/non-assistance-joint-statement/> .

¹⁷ See the reconstruction of the return to Egypt by the MV Shimanami Queen: <https://sea-watch.org/en/nonrefoulement/> as an example.

¹⁸ See one recent example: https://twitter.com/seawatch_intl/status/1653417635030130691?s=20 .

¹⁹ See the case with the MV Grimstad, the persons were disembarked in Libya following the orders of the Italian MRCC: https://twitter.com/seawatch_intl/status/1652393012398284805?s=20 or the reconstruction of the case with the MV Shimanami Queen, the persons were disembarked in Egypt following the orders of the Maltese RCC: <https://sea-watch.org/en/nonrefoulement/> .

vessels, then, are left alone, without instructions or with illegal orders. Consequently, in practice they tend towards omitting the rendering of assistance to persons in distress.²⁰

Additionally **Frontex**, operating aircraft and a drone, is a major contributor to the increase in interceptions by the so-called Libyan Coast Guard, as demonstrated by Human Rights Watch and Border Forensics.²¹ It was also disclosed that Frontex exchanges information with the so-called Libyan coastguard via WhatsApp about boats in distress.²² It must also be noted that regarding the shipwreck that occurred in Crotona, Frontex stated that ‘there were no signs of distress’, although the boat was clearly in distress.²³

The **European military operation EUNAVFOR MED Iriini** ultimately only covers the eastern part of the central Mediterranean Sea, knowingly avoiding the migration route and therefore circumventing its involvement in sea rescue operations.²⁴

IV. Obstacles faced by persons on the move and civil society

European member states, supported by the EU, seek to shut down all possible eyes on the Mediterranean region, through criminalising persons on the move and NGOs, but also by systematically refusing to be transparent about their own activities. During operations, the Italian and Maltese authorities continuously refuse to share information with Sea-Watch,²⁵ openly stating that they ‘do not talk to NGOs’ or hanging up the phone.²⁶ The Maltese authorities in fact instruct their officers not to share information.²⁷ Recently, the Maltese authorities dismissed a request for information about arrivals in Malta as ‘curiosity’.²⁸ Furthermore, Sea-Watch took Frontex to court regarding documents the agency refused to share concerning an interception in the Maltese SAR zone in which it must be strongly assumed that their drone was involved.²⁹

Since the end of October 2022,³⁰ the Italian government as guided by prime minister Giorgia Meloni has jeopardised the human rights of people on the move arriving to Italy via the central Mediterranean. Immediately after taking office, minister of the interior Matteo Piantedosi and minister for foreign affairs Antonio Tajani hindered the disembarkation of people rescued by NGO vessels by attempting to implement a so-called ‘selective disembarkation’ mechanism, ultimately opening a diplomatic crisis with France.³¹

²⁰ For examples, see the summaries of the distress cases K and S: https://sea-watch.org/wp-content/uploads/2022/09/202207_Airborne_Monthly_Factsheet.pdf and distress cases AJ and AL: https://sea-watch.org/wp-content/uploads/2022/11/Airborne_Monthly_Factsheet_August_2022.pdf.

²¹ ‘There is a moderate and statistically significant correlation between aerial asset flights and the number of interceptions performed by the Libyan Coast Guard. On days when the assets fly more hours over its area of operation, the Libyan Coast Guard tends to intercept more vessels.’ See: <https://www.hrw.org/video-photos/interactive/2022/12/08/airborne-complicity-frontex-aerial-surveillance-enables-abuse>.

²² Information available at: <https://digit.site36.net/2021/10/08/whatsapp-to-libya-how-frontex-uses-a-trick-to-circumvent-international-law/>; <https://fragdenstaat.de/anfrage/whatsapp-nachrichten-an-die-libysche-kuestenwache/>.

²³ See Frontex’ statement: <https://frontex.europa.eu/media-centre/news/news-release/frontex-statement-following-traffic-shipwreck-off-crotona-gKRXcg>, contradicting a video of the boat taken by Frontex that was published in the media: <https://video.corriere.it/cronaca/ultime-immagini-barcone-cutro-video-frontex-che-ora-mano-procura/6c83ccec-c8c1-11ed-85b6-6207f76c958d>.

²⁴ More information and analysis available at: <https://us.boell.org/en/2021/04/16/evolution-eus-naval-operations-central-mediterranean-gradual-shift-away-search-and>.

²⁵ See as an example distress case C: https://sea-watch.org/wp-content/uploads/2023/04/202301_02_Airborne_Monthly_Factsheet.pdf, <https://sea-watch.org/en/nonrefoulement/>.

²⁶ For recent examples, see: https://sea-watch.org/wp-content/uploads/2023/04/202301_02_Airborne_Monthly_Factsheet.pdf, <https://sea-watch.org/en/nonrefoulement/>.

²⁷ Distress case C, *ibid*.

²⁸ See: https://timesofmalta.com/articles/view/ban-information-boat-people.1027141?utm_term=Autofeed&utm_medium=Social&utm_source=Twitter#Echobox=1682248080.

²⁹ More information available at: <https://sea-watch.org/en/sea-watch-takes-frontex-to-court/>. The case in question was thoroughly analyzed by Human Rights Watch and Border Forensics: <https://www.hrw.org/video-photos/interactive/2022/12/08/airborne-complicity-frontex-aerial-surveillance-enables-abuse>.

³⁰ For a thorough overview of criminalisation efforts before 2022, please read Sea-Watch’s previous submissions, footnote nr 3.

³¹ More information available here: <https://ecre.org/mediterranean-stand-off-over-disembarkations-of-survivors-rescued-by-civilian-search-and-rescue-operators-leaves-italian-government-on-collision-course-with-france-ngos-and-international-law/>.

On January 2nd the Decree n.1 entitled 'Urgent provisions for the management of migration flows', also known as the Piantedosi Decree or NGOs Decree,³² was enacted, setting up a new legal framework with the clear aim of reducing the presence of SAR NGOs at sea and of making their operations financially unviable through the current practice of assigning 'distant ports' for disembarkation - up to 4 days navigation from the standard area of operation.³³ The real price, however, is paid by the rescued persons - the resulting unjustifiably prolonged navigation exposes the rescued people on board SAR NGO vessels to weather conditions, the risk of re-traumatisation as well as the possible deterioration of their already vulnerable physical and mental conditions, while also postponing access to basic rights such as medical care. Furthermore, **a decrease in the presence of NGOs in the Mediterranean will result in more interceptions to Libya and hence, more human rights violations.** The law imposes a new 'code of conduct' for NGOs, setting rules that are either already enshrined by relevant international agreements or are illegitimate because they undermine the duty to rescue. In particular, the new law includes six conditions that NGO vessels should abide by and several administrative sanctions in case of violations, up to the confiscation of the vessel.³⁴ Such penalties, assessed and imposed by the prefecture, which directly reports to the ministry of the interior, have also already been applied.³⁵

Furthermore, after the shipwreck off Cutro in Calabria on February 26th in which over 90 people lost their lives, the Italian government enacted a second decree entitled 'Urgent provisions on legal entry flows of foreign workers and on preventing and combating irregular immigration',³⁶ With such a legislative act, the parliament further narrowed the special protections,³⁷ limited the access of asylum seekers to the only 'emergency reception centres' (CAS),³⁸ as well as creating a new offence for 'death or injury as a consequence of illegal immigration offences' - aggravating the crime of facilitating illegal migration³⁹ with penalties of 20 to 30 years, targeting alleged smugglers exclusively on the basis that they were driving the boat carrying people in distress. The criminalisation of boat drivers has already destroyed the lives of many young people who have been sentenced to up to 30 years of jail, and its further exacerbation has put more people at risk.⁴⁰ This is also the accusation of crime used in over 20 criminal investigations against NGO activists. **These amendments will lead to a decrease in the number of special protection permits issued and an**

³² The provisions of the decree, converted into law n.15 on February 24th see: <https://www.gazzettaufficiale.it/eli/id/2023/03/02/23G00023/sg> .

³³ Statement: New Italian government decree will cause more deaths in the Mediterranean Sea, available at: <https://seawatch.org/en/statement-by-civil-rescue-organizations-new-italian-government-decree/> .

³⁴ More information and complete legal analysis here: https://www.asgi.it/wp-content/uploads/2023/03/Commento-d.l.-1_2023_def_6marzo.docx.pdf .

³⁵ Penalties were applied against the NGO vessels Geo Barents and Louise Michel which were both administratively detained for 20 days. More information available at: <https://www.infomigrants.net/en/post/47111/geo-barents-rescue-ship-detained-and-fined-failed-to-provide-information>, <https://twitter.com/MVLouiseMichel/status/1641882902462865409> .

³⁶ The decree was converted into Law n. 50 on 5 May 2023: <https://www.gazzettaufficiale.it/eli/id/2023/05/05/23G00058/SG>.

³⁷ Regarding the special protection, it remains only for those who have not been granted international protection but cannot be expelled or rejected because they are at risk of persecution, systematic violations of human rights, inhuman treatment or torture. However, it has been abrogated that the paragraph affirming the nature and effectiveness of the family ties of the person, their effective social integration in Italy, the duration of their stay in the national territory, as well as the existence of family, cultural or social ties with the country of origin, should be taken into account. Indeed, the new wording does not assess the well founded risk of violation of the right to private and family life as enshrined in Article 8 of the European Convention on Human Rights. In addition to the mentioned restrictions affecting the special protection, the permissions granted for 'calamities' and relating to 'medical treatments' have also been significantly constrained. None of these residency permits will any longer be convertible into work permits. More information available here <https://www.meltingpot.org/2023/05/il-contestato-di-cutro-e-diventato-legge/>; https://www.ilpost.it/2023/04/16/protezione-speciale-migranti-governo/?utm_source=ilpost&utm_medium=leggi_anche&utm_campaign=leggi_anche; <https://www.avvenire.it/attualita/pagine/protezione-speciale-scheda> .

³⁸ Such centres differ from the Integration Reception System (SAI), which are now reserved only for those who have been granted with a protection as already provided for in the Salvini Decree of 2018, due to the lack of services necessary to begin a path of integration and social rootedness.

³⁹ [Article 12 Legislative Decree 25 July 1998, n. 286](#) .

⁴⁰ Report on criminalization of migrant boat drivers in Italy. ARCI Porco Rosso Palermo/ Borderline Europe. See <https://fromseatonprison.info/> .

increase in the number of persons irregularly present on the national territory, with no rights and no prospects.⁴¹

Finally, on April 11th the Italian minister of council declared a state of emergency on migration⁴² for the whole Italian territory for 6 months,⁴³ 'to provide more effective and timely responses to the management of the flows'⁴⁴. The state of emergency has the aim of speeding up the bureaucratic process without setting calls for tenders. This administrative act makes it possible to release funds⁴⁵ and functions which will allow the commissioner Valerio Valenti to faster manage the critical issues that have emerged with the multiplication of arrivals.⁴⁶ Although an implementing decree is currently still missing along with a parliamentary discussion,⁴⁷ it would lead to **increasing the hotspot system capacities and setting up faster expulsion procedures**,⁴⁸ therefore potentially limiting the access to fundamental human rights (e.g. the right to seek asylum) and increasing the risk of collective expulsions.

In light of these three measures - the NGOs Decree, the Cutro Decree and the declaration of the state of emergency - the strategy pursued by the current Italian government in the field of migration clearly emerges. **It starts at sea, limiting the presence of SAR assets ready to render assistance to those in distress, and then continues on land, restricting access through the hindering of protection status and the enhancing of criminalization against people on the move.**

In combination with the Italian measures, **the German government plans to amend its Ship Safety Ordinance, requesting a ship safety certificate for certain small vessels, including small NGO rescue vessels.** Up until now, these were exempted from such requirements. The planned amendments would make the use of smaller ships for search and rescue purposes under the German flag ultimately impossible, and therefore drastically restrict the work of search-and-rescue organisations.⁴⁹

V. Conclusion

Libya is not a safe place for persons rescued at sea. Nevertheless, European authorities and the authorities of European member states continue to outsource their duties, cooperating and strengthening 'structures' which are violent against persons in distress and NGOs, as well as incompatible with international maritime and human rights law. Instead of deploying assets and complying with the law, the authorities of European member states exclusively rely on assets from the so-called Libyan Coast Guard, or in their absence merchant vessels. These actors are however neither equipped nor trained to handle such situations. Under

⁴¹ See https://espresso.repubblica.it/politica/2023/05/04/news/decreto_cutro_migranti-398700489/ .

⁴² The only precedent of a state of emergency on migration dates back to 2011 during the Berlusconi government and included a plan for the distribution of refugees from North Africa in the regions.

⁴³ The duration of 6 months of the state of Emergency can be renewed up to 2 years.

⁴⁴ See https://www.ilssole24ore.com/art/migranti-cosa-cambia-la-dichiarazione-stato-emergenza-AEUevGGD?refresh_ce .

⁴⁵ The current initial allocation amounts to 5 million, which may be progressively increased during the duration of the state of emergency. These funds come from the fund for national emergencies.

⁴⁶ More than 44 thousand people arrived in Italy since the beginning of 2023, mostly from the so-called Tunisian route. According to the Italian Ministry of Interior, as of May 8th 2023, data available at: https://www.interno.gov.it/sites/default/files/2023-05/cruscotto_statistico_giornaliero_08-05-2023.pdf.

⁴⁷ See https://www.repubblica.it/cronaca/2023/04/25/news/migranti_stato_di_emergenza_gazzetta_ufficiale_commissario-397619288/ .

⁴⁸ More in detail, the Commissioner's functions should encompass the creation of new reception facilities without calls for tenders, facilitate the expulsion procedure strengthening the collaboration and incentives for the countries of origin, open new pre-removal centres (Centri di permanenza per i rimpatri – CPR), increase hotspot system capacity and set up faster procedures to manage the transfer of migrants within the Italian territory by being able to hire planes and ships without public tenders (e.g. from Lampedusa to the mainland). See https://www.repubblica.it/cronaca/2023/04/16/news/migranti_sbarchi-396423379/ .

⁴⁹ Most German NGO vessels are affected by these amendments. See a statement by the affected German NGOs (in German): <https://sea-watch.org/bundesregierung-plant-behinderung-ziviler-seenotrettung/> .

intransparency and for many years, the authorities of European member states and Frontex have been conducting an illegal cooperation which amounts to crimes against humanity.⁵⁰

We recommend that the Secretary-General:

- urge the European Union and European member states to stop any cooperation with the Libyan authorities aimed at pulling persons back to Libya
- call upon the executive director of Frontex to terminate Frontex operations in the central Mediterranean, as these enable human rights violations
- urge European member states to stop the criminalisation of persons on the move and NGOs
- call upon European member states to withdraw and refrain from enacting any domestic legislation which can facilitate the violations of fundamental rights of persons in distress at sea and on land, potentially hindering the right to life, the right to asylum, the prohibition of non-refoulement and the prohibition of arbitrary detention, inhuman and degrading treatment and expulsion
- call upon European member states against enacting any domestic legislation that actively hinders sea rescue organisations from operating
- call upon European member states instead to actively support the efforts of civil society, including by sharing key information
- advocate for the launch of a European rescue operation, in accordance with the law, in order to avoid any further shipwrecks and interceptions in the central Mediterranean sea

⁵⁰ See https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Executive_Summary_ICC_Libya.pdf.