

Italy-Libya Deal: Checkmate for Human Rights in Four Moves

Executive Summary

The report reconstructs the four moves made by Italy since the signing of the agreement with Libya. Together, these four moves had led to a checkmate for human rights. With the European Union's participation and support, Italy has given up on dealing with the issue of managing irregular entrances to Europe, as well as mechanisms to automatically redistribute migrants among member states. The approach adopted instead is having disastrous effects on the mortality rate at sea and on protecting the human rights of people fleeing to Italy and Europe more generally.

In adopting these policies, Italy has failed to recognise that **rescue is a fundamental obligation** of all the major international agreements on protecting life at sea as well as Italian maritime law. This obligation relates to all subjects, whether public or private, who have news of a ship or person in danger in any part of the sea where the need for rescuing has been confirmed.

International law and the necessity to identify a port of safety

The Hamburg Convention (signed in 1979 and ratified by Italy in 1989) establishes the necessity for coastal states to ensure a "Search and Rescue" (SAR) service in their respective maritime zones and for the mutual coordination of these different SAR zones. Italy's SAR zone covers one fifth of the Mediterranean Sea, extending for around 500,000km². Malta's SAR zone covers around 250,000km² with areas that overlap with Italy's.

The SAR and SOLAS agreements (the International Convention for Safety of Life at Sea, signed in 1974 and ratified by Italy in 1980), according to the 2004 amendments **ratified by Italy**, establish that **whichever state has first received news of the event – or that which has taken on the coordination of the rescue operations – is obliged** to identify a place of safety ("POS") in its **OWN** territory. The POS is a place in which the rescue operations can be considered to have concluded. The POS must be in the rescuing state's territory **unless there has been an agreement** with the state closest to the zone of the event. Malta, on the other hand, **has never ratified these amendments**.

While responding to the need to coordinate rescue operations, Malta is therefore **not obliged to identify a place of safety in its own territory. When it does so, this is on the basis of political judgements.**

Libya is still host to a violent internal conflict and therefore **cannot be considered to be a place of safety**. It has not ratified the Geneva Convention of 1951, nor has it established its own law for the protection of refugees and people seeking asylum from the systematic violations of human rights suffered by migrants present in its territory (violations including torture, violence and arbitrary detention in inhumane conditions).

Because Libya does not contain ports or territory that can be considered “safe”, it is clear that if Malta (a country that has not ratified the 2004 amendments) **does not identify a POS for rescue ships then Italy has a duty to do so.**

The four moves made by Italy that have led to checkmate for human rights are the following:

Move number 1: The attempt to give the Libyan Coast Guard a legitimate role in the Central Mediterranean through the establishment of a Libyan SAR zone

Italy and the European Union contributed to strengthening the Libyan Coast Guard's operations through sending motorboats, training personnel and occasional financing since 2016. Since 2017 the Libyan Coast Guard has been delegated with interceptions at sea and coordinating rescue operations carried out by private vessels.

The Libyan SAR zone was established through a unilateral declaration, recognised on an international level and officially approved by the International Maritime Organization, a UN agency, in June 2018. This has caused embarrassment among other international organisations due to the mounting evidence that Libya is not a place of safety. Migrants there “live under the constant risk of the privation of their freedom and arbitrary arrests, aggression, theft and exploitation carried out by both state and non-state actors entirely aware of their vulnerability and inability to access justice or compensation.”

Nevertheless, Libya has been legitimated at not only at the expense of the lives of thousands of people but also the sense of humanity that lies at the foundations of European legal culture. This is a solution aimed at blocking people arriving in Europe rather than providing them with the possibility of life and security.

Move number 2: Changing the terms of the Frontex's European naval mission in the shift from Triton to Themis

In the shift from operation the Frontext operation Triton to operation Themis, Italy requested for **for migrant landings** (and those of shipwreck survivors) **to take place in the port closest to the point where the rescue operation at sea has taken place, and not automatically in an Italian port as**

was the case with the Triton mission.

Furthermore, the patrol area of the European naval vessels has been moved to 24 nautical miles from the Italian coast, deducing the operational zone (for Triton this was 30 nautical miles). **A landing in an Italian port thus becomes automatic only for those within this new area.** This is a condition that has put innocent men, women and children fleeing atrocities at further risk – independently of their individual histories, conditions of vulnerability or their country of origin.

Move number 3: The “policy” of closed ports

The current Italian government has picked up the baton of the previous administration and run with it, heralding a season of head-on fighting with other member states as well as with vessels that rescue shipwrecks.

The vessel *Aquarius* of the NGO Lifeline was forced to change course for Valencia after a game of tug-of-war between European governments. This represented a precedent that led to the introduction by EU member states of an insertion to Point 6 of the Conclusions of the European Council held on 28-29 June that the ability for member states to authorise a landing is **subordinate to a preceding agreement for the redistribution of the migrants on board.** This measure sanctifies European states' renouncing of the attempt to find **structural solutions and marks a period in which decisions are made on a case by case basis.** Over the following weeks there were different episodes of authorisation not being given for landing operations by ships (including merchant vessels) that had rescued migrants at sea. This reached a climax in the case of the Italian Coast Guard ship the *Diciotti* and the Sea Watch vessel.

Witness account of B.B., a 29-year-old Eritrean – brought in by the *Diciotti*

“[...] The conditions on board the *Diciotti* were terrible. It was impossible to stand in the sun but there was only one large tent. The shade wasn't enough for all of us, and when it rained we got wet. There were only two toilets. After two days we arrived in Catania and they handed out clothes and said we needed to take a shower. There was a sailor with a hose who sprayed water for a minute on ten people at a time, standing naked behind a sheet of plastic. Hardly anyone felt even a drop of water. That was the only time we men were allowed to wash. The women were helped to take a shower by one of the women from Intersos. I knew why we weren't allowed to land from the committee of three Eritreans that had been made on board in order to speak with the commander. They told us twice that the problem was that we were meant to land at Malta and therefore the Italian government wouldn't let us down.”

This “case by case” approach reached its climax (at the point of writing) with the cases of the Sea Watch and the Sea Eye, which remained blocked at in the Mediterranean Sea from 22 December 2018 to 9 January 2019, awaiting a port of safety where the rescued people could be landed. The European Union took 19 days to reach an agreement between European governments for the redistribution of the

shipwreck victims. Malta attempted to connect the authorisation of the landing to the fact that it had taken charge not only of 49 people rescued off its own coast but also the 250 people saved by Malta directly over previous weeks. This Odyssey carried out on the icy sea does not, at the moment, seem to have changed the minds of European governments. Even though the facts of this episode demonstrate the limitations of the agreement made by the European Council in June 2018, member states have not removed the necessity of authorising landings only following an agreement for the distribution of migrants on board.

Disagreements between states on the identification of ports of safety are putting people's lives in danger, representing a violation of Article 2 (the right to life) and Article 3 (the forbidding of torture and inhumane or degrading detention) of the European Court of Human Rights in that those rescued may have urgent need of medical care, as well as basic needs (food, water, medicine) that cannot be appropriately satisfied. This does not, however, seem to have concerned the current Italian government which – in the name of a stand-off with Europe – is refusing to authorise landings on its own territory to any vessels involved in rescues at sea. This has put it outside of the norms of both Italian and international law.

Move number 4. The creation of a new enemy, the NGOs

Between 2014 and 2017, NGO vessels have saved the lives of 114,910 people out of the total 611,414 rescued at sea, equivalent to 18.8%.

The facts clearly state that with the end of the Mare Nostrum operation – the **Italian mission that, unlike following ones, was first and foremost a mission for saving lives** – and the arrival of operation Triton, the NGOs have carried out an important, integrated role. This has always been in coordination with the Italian Coast Guard, carrying out necessary SAR operations and making up for the removal of official ones.

Nevertheless, a smear campaign has been mounted since 2017 against the NGOs, progressively criminalising those carrying out sea rescue operations. This has been effect through claims of complicity with human smugglers, putting constraints on their activities, gradually making their missions impossible.

Despite there being various investigations into the NGOs, at the time of writing all accusations against them have either been dropped or are in the process of being dropped by the courts of Trapani, Catania, Ragusa and Palermo. Unfortunately, however, the damage to their reputations and in terms of their operational ability has already been done.

Indeed, little by little they have been removed from the Mediterranean Sea. This means that today the Mediterranean not only lacks rescue missions but also important eye-witnesses to the violations of human rights suffered by migrants at the hands of the Libyan Coast Guard during their own rescue operations.

The Tragic Effects of the Human Rights Checkmate

The Central Mediterranean remains the most dangerous route in the world

This strategy has led to a tragic increase in the death rate on the Mediterranean route, passing from 2.1% in 2017 to **3.4%** in 2018, with 1,311 people either dead or missing.

The Central Mediterranean route is, by a long way, **the most dangerous in the world**, as seen from Table 1. The available data shows, furthermore, that the numbers of dead and missing from June to December 2018 have dramatically increased, rising from 937 out of the 1,311 total deaths in the Mediterranean in 2018. The year 2019 has not begun well either, with 143 deaths out of the 502 who have attempted the crossing.

The detention centre business continues in Libya

Despite the internal conflict it is undergoing, Libya remains one of the main destinations for migrants crossing Subsaharan Africa headed for Europe. The country is host to widespread corruption, extortion and trafficking of every kind. The “blood pacts” on the borders with Chad, Algeria and Sudan notwithstanding, human traffickers are continuing their business.

Furthermore, thanks for the conflicts that have never paused, which has effected every kind of building, **and thanks to the growing number of people taken back to Libya by the Libyan Coast Guard**, those brought back to the country end up in one of the official centres recognised by the Department for Combating Illegal Migration (DCIM). Many actors have seen this as a new business opportunity.

In 2017 the first monitors already raised the alarm relating to the gradual institutionalisation of militia and clan leaders who controlled important parts of Libya, above all to the West of Tripoli, where discredited human traffickers were attempting to reinvest their profits and “launder them”, at the same time attempting to take on roles in public administration.

The issue has become so pressing that in its December 2018 report, even the United Nations Support Mission in Libya (UNSMIL) put among its recommendations to the Libyan authorities a request to “further reduce the number of DCIM detention centres; ensure the prompt closure of centres with the most problematic human rights records, including Zuwara, Shuhada, **Al-Nasr/Al-Zawiya** and Gharyan; and remove from duty DCIM officials against whom there are reasonable suspicions of involvement in human rights violations and corruption, pending effective prosecutions and investigations.”

Witness account of F.E., 17-year-old Eritrean

“[...] At the port we were taken to a camp where there were UNHCR signs and symbols, even if everyone around us seemed to be Libyans, or Arabs anyway, not Europeans. They didn't give us anything except a blanket and some biscuits.

I think we were in Tajura and I was there for around two weeks. Some Europeans with UNHCR symbols

came once to visit the camp, but we weren't free to talk to them. The camp militia kept us under watch and even the visitors seemed to be scared. Someone managed to speak to them in English, but that was it. The conditions in the camp weren't good and we weren't allowed out except for one hour per day in the internal courtyard of the camp.

One day, in the same camp, a group of around 35 people were re-sold to an Eritrean trafficker who I already knew, called Kidane. The same police officers took me to the port and asked me for \$800. Then I stayed for around a month in a house next to the sea controlled by Libyans and Eritreans until I managed to pay them. Then they made me leave on a rubber boat with another hundred people. The boat was driven by Africans.”

Finally, the proliferation of informal camps should be noted, around Tripoli and elsewhere. Episodes of every kind of violence continue to be reported from these. Even if there has also been a noted slowing down of journeys towards Europe than in the past, human traffickers are continuing to extort money from the relatives of migrants who are victim to limitless abuse and violence.

The Illusion of an Evacuation Plan

Despite the optimism demonstrated in various public declarations made by the Italian Minister of the Interior, Minniti, since the end of 2017 till February 2018, an evacuation plan from Libya (and from Niger) managed by the United Nations has not brought hoped-for results.

Since the end of 2017, 2,879 people have been evacuated from Libya – or rather, allowed to leave in a legal manner. The total number of people resettled from both Libya and Niger is **1,691**. These numbers are a far cry from the UNHCR's nevertheless moderate objectives for 2018 (between 5,000 to 10,000 people), designed with the support of European countries in mind.

As of 14 January 2019, only 12 states – some of them from outside Europe – have made themselves available for **the total 5,456 resettlement places** from the Libya-Niger area.

Recommendations

Two years on, the political strategy set in place by Italy and Europe to close the Central Mediterranean route seems clear. This project has been carried out without taking into account a series of limitations imposed by international law.

Defense of and respect for human rights has ended up as an external variable, one fact among many that has not had any influence on the political choices of European leaders.

The agreements made have not had any effect on the mortality rate except in a negative sense, increasing from 3.4% (+1.3% since 2017 and +1% since 2016). Nor have they managed to reach the other objective of stopping the human traffickers, who in the meantime have re-invested the profits of their business, some of them have roles in public administration while others manage official detention centres. The business of these centres has developed in part due to the increase in the number of people taken back to Libya by the Libyan Coast Guard, whose destiny is to be resent to government detention centres and return to a cycle of abuse, violence and extortion.

The Italy-Libya agreement was the first move in the “human rights checkmate”. We were meant to believe that Libya is a safe place and that returning migrants intercepted at sea back to their point of departure might be one of the available options.

To make this fiction work, the Libyan Coast Guard was trained and financed with Italian and European funding, as well as provided with vehicles. Libya was supported in its request for recognition of its own SAR zone by the International Maritime Organization.

On the European front, with the Themis mission, Italy managed to obtain an end to the automatic landing in Italy of rescue vessels and the pushing back of the patrol line by Italian naval ships to 24 nautical miles.

The final piece of the puzzle was introduced with the Conclusions of the European Council in June 2018, making the authorisation for landing operations in European ports subordinate to agreements between member states on the redistribution of migrants on board.

Over the past two years, Italy has changed the mandates of the Frontex missions, favouring the Conclusions of the European council, invented a Libyan Coast Guard and pushed for the institution of a Libyan SAR zone. That is, **Italy has done everything it can in the political sphere to overcome the geographical and legal inevitability** of being the country most involved in landing

operations. This inevitable situation would not be a problem however if member states had a shared vision of solidarity.

In the second half of 2018 and the beginning of 2019 we have seen how, even in the face of paltry numbers of landing, member states have not managed to find agreement. This result is not surprising given the short-sighted reasoning put in place, aimed at creating the electoral consensus that caused it in the first place. In the process, hundreds of human lives have been sacrificed on the altar of Italian and European public opinion.

Greater courage and strength of will are needed to achieve lasting medium- and long-term results in relation to international humanitarian law. For this reason Oxfam Italia and Borderline Sicilia:

Asks Italy to:

- Immediately revoke the *Memorandum of understanding on cooperation in the development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security between the Libyan State and the Italian Republic* and the **initiatives relating to it**.
- Interrupt the policy of closed ports and enact a new European mission that explicitly contains the **saving of human lives** in its mandate, and that the means and personnel adequate for carrying out this objective are made available.

Asks Italy and the European Union to:

- Put in motion all diplomatic forces possible for member states to approve a reform of the Dublin treaty in the European Council, as voted for by the European Parliament.
- Ensure that aid for development maintains its aim of eradicating poverty and reducing inequality: support for border management must be finalised to protect people and their human rights, not aimed at stopping their movement
- Established, as soon as possible, effective and independent monitoring of the situation of human rights and conditions of life in Libya, including the guarantee that cooperation with and/or support provided to Libya does not contribute to or favour, directly or indirectly, violations of human rights
- Abstain from making agreements to combat illegal immigration with countries of emigration of transit where governments and security forces do not guarantee full respect for human rights
- Increase efforts to guarantee the re-entrance of people to their countries of origin through procedures based on respect for human rights and never in conditions that might put them in danger

- Put in motion all political measures until the European Union provides an effective policy of resettlement from Libya and Niger in numerical terms
- Adopts concrete political initiatives for the opening of regular channels of entrance for study, work and family unification, and increases the plan for the resettlement of persons in Libya and Niger

Asks the International Maritime Organization to:

- Review its own position in relation to the recognition of the Libyan SAR zone
- Adopt a resolution that confirms that the Libya is not a place of safety to which people intercepted in SAR missions can be brought, in the light of evidence demonstrated in United Nations reports relating to the violence and abuse suffered by people brought back to the country and sent to detention centres.