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Submission to the UN Special Rapporteur on the Human Rights of Migrants

Push-back practices and their impact on the human rights of migrants

Submitted by Sea-Watch e.V.

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I. Submitting organization

Sea-Watch e.V. is a civil non-profit organisation (NGO) which has conducted search and rescue operations in the Central Mediterranean Sea for over five years,[1] documents human rights violations and reports people in distress using civil reconnaissance airplanes, *Moonbird* and *Seabird.*[2]

II. Limitations in law to claiming and seeking asylum across the Central Mediterranean Sea

The externalization of European borders is not a new phenomenon. With the substantial contribution of Member States, European externalization policies have been sharpened and increased into a comprehensive strategy which aims at controlling and managing every phase of migratory flows. Within this framework, refusals of entry and expulsions without any individual assessment of protection needs have become systematic practice at Europe's borders. Italy and Malta have constructed policies of prevention and interdiction, including push-backs at sea, which have become the focal core of their cooperation with the main countries of departure for migrants on the Central Mediterranean route.[3] The current "Memorandum of understanding" (MoU) between Libya and Italy[4] was signed in 2017, and then silently, automatically renewed on February 2020. Aiming to strengthen cooperation regarding "Libyan land and sea borders' control and security, in order to ensure the reduction of illegal migratory fluxes", Italy engages in providing training and materials to the so-called *Libyan Coastguard* (scLYCG), including the provision of military and financial resources, in order to block boats coming towards Europe, as well as to complete the implementation of Libya's southern land border control system. Similarly, in May 2020 Malta signed a MoU[5] with Libya in order to set up two coordination centres in Tripoli and Valletta for supporting "operations against illegal migration".

The implementation of both MoUs and the consequent push-backs lead to clear violations of the principle of non-refoulement, the prohibition of collective expulsion, the right to asylum and the right to an effective remedy as anchored in human rights law.[6] Moreover, in addition to the fact that Libya has not ratified the 1951 Refugee Convention, and considering that people pushed back to Libya are exposed to torture, inhumane treatment, slavery, abuse and arbitrary

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1 Sea-Watch currently operates two vessels, the *Sea-Watch 3* and the *Sea-Watch 4*.

2 These airplanes are operated together with the Swiss non-profit organisation *Humanitarian Pilots Initiative*.

3 Inter alia, following the visit to Tunisia by the Italian Minister of Foreign Affairs, Luigi di Maio, together with the Minister of the Interior, Luciana Lamorgese, and the European Commissioners for Home Affairs, Ylva Johansson, and Olivér Várhelyi, on 17 August 2020 a new informal pact between Italy and Tunisia on immigration was 'sealed'. Both countries have never disclosed the documents relating to the meeting. In any case, 11 million Euros has been transferred to Tunisia for funding the control of its maritime borders, in order to ensure that an 'extra effort' is enacted on the management of migration to Italy and therefore for the maintenance of patrol boats, the training of security forces, radar and an information system that will promptly alert the gendarmerie when migrant boats are at sea in order to stop them in Tunisian waters. Further information is available at https://www.infomigrants.net/en/post/27858/associations-request-access-to-italy-tunisia-agreement.

4 Memorandum of understanding" on cooperation in the development sector to combat illegal immigration, human trafficking and contraband, and on reinforcing border security between the Libyan State and the Italian Republic".The MoU represents an agreement of intention signed by the Italian government led by Paolo Gentiloni and Fayer Mustafa Sarraj, and the Head of the Libyan Government of National Accord recognized by the international community. The MoU refers to a previous partnership and cooperation agreement signed in 2008 in Benghazi. The text of the MoU (eng version) is available at: https://www.asgi.it/wp-content/uploads/2017/02/ITALY-LIBYA-MEMORANDUM-02.02.2017.pdf.

5 "Memorandum of Understanding Between the Government of National Accord of the State of Libya and The Government of The Republic of Malta in the Field of Combating Illegal Immigration", valid for three years. The text of the MoU is available at: https://www.statewatch.org/media/documents/news/2020/jun/malta-libya-mou-immigration.pdf.

6 Note that in 2012, Italy was condemned by the European Court of Human Rights for having pushed people back to Libya (Hirsi Jamaa and others v. Italy, 23.02.2012, num. 27765/09).

detention,[7] Libya cannot be considered a safe place for migrants to be returned or disembarked under international human rights and maritime law.[8]

III. Pushback practices in the Central Mediterranean Sea

Through its aerial and maritime missions,[9] *Sea-Watch* has documented numerous push-backs which were carried out in different ways by various actors present in the Central Mediterranean Sea. A significant volume of these cases evidentially took place under the coordination of European actors, such as EUNAVFOR MED and *Frontex*, but also by the Italian and Maltese authorities. The latter are aware of distress cases, but either **delay** the deployment of their own rescue assets until the scLYCG is able to intercept the boats, or directly **delegate their duty to render assistance** to the scLYCG and thus commit **non-assistance and violations of international law**:

On 06.11.2017, when *Sea-Watch*'s vessel arrived on-scene to a boat in distress as ordered by the Italian authorities, the scLYCG tried to take over the rescue. The scLYCG were observed beating the people on the move with a bullwhip and threatening the crew of the NGO vessel, all under the coordination of an Italian helicopter. The scLYCG continued to take people on-board their vessel while at the same time people jumped back into the water. The S*ea-Watch* 3 rescued 58 persons. At least 5 people died during this operation and others were pulled back to Libya.[10]

On 28.08.2020, *Moonbird*'s crew spotted around 30 persons in a boat in distress in the Maltese Search-and-Rescue (SAR) zone, and later the interception of this boat by the scLYCG. The Maltese authorities were alerted about the distress case and of its likely interception in their SAR zone, under their responsibility, but did not take any action to prevent the interception.

The delegation of the duty to render assistance to the scLYCG is made possible by the **deployment of European aerial assets (EUNAVFOR MED[11] and *Frontex*[12])** which are able to detect boats and to guide the scLYCG from the air and hence facilitate the interception activities of the Libyan authorities:

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7 People pulled back to Libya are kept in migrant centres. The official centres financed by Italy and the European Union with about 4.500 people in detention are about to be closed. Additionally, thousands more are held in "unofficial" detention centres under the control of armed militias where human conditions seem to be even worse than in the others. For more information on the conditions of migrants trapped in Libya see: Libya Immigration Detention Data Profile, https://www.globaldetentionproject.org/wp-content/uploads/2020/12/Libya-Detention-Data-Profile-2020.pdf.

8 The requirement to deliver rescued persons to a place of safety is anchored in the Search-and-Rescue Convention, Annex, 1.3.2 and 3.1.9 (as amended by IMO Resolution MSC.155(78)) and defined by the IMO Resolution MSC.167(78), 6.12 et seq.

9 Further information and data on the below mentioned cases - footage, videos - can be made available on request. All cases are summarized in the Airborne Monthly Factsheets, available on Sea-Watch's website: https://sea-watch.org/en/.

10 Sea-Watch (2017). Breaking: Dramatic first rescue operation for Sea-Watch 3. Available at: https://sea-watch.org/en/dramatic-rescue-operation-sea-watch-3/.

11 EUNAVFOR MED, formerly Operation Sophia, currently Operation Irini, is the European military operation deployed in the Central Mediterranean Sea. More information available at: https://www.operationirini.eu/about-us/ and https://www.operationsophia.eu/about-us/.

12 Frontex is the European Border and Coast Guard Agency of the European Union. More information available at: https://frontex.europa.eu/.

On 10.04.2019,[13] around 20 persons called the emergency hotline *Alarm Phone* requesting assistance, which immediately passed the information to the authorities and *Moonbird*,[14] who was able to find the persons in the Libyan SAR zone. Meanwhile, the Libyan authorities were unreachable, though the Italian authorities referred to them as the "coordinating authority". *Moonbird*'s crew sent out a mayday relay[15] answered by the EUNAVFOR MED aircraft *Falcon 50*, which proceeded to the position. *Moonbird* documented how the aircraft dropped life rafts and smoke cans onto the distress scene - though still none of the European actors deployed rescue capacities. The Italian MRCC sent out a NAVTEX message[16] on behalf of "JRCC[17] Tripoli", insisting on them being the competent authority. When *Moonbird* found the people in a second mission, another EUNAVFOR MED aircraft, *Cotos 45*, was on-scene. None of the four merchant vessels in the vicinity rendered assistance. Later, the Italian Maritime Rescue Coordination Centre (MRCC) informed *Alarm Phone* that the people had been pulled back to Libya by the scLYCG - 12 hours after the first alert by *Alarm Phone*.

On 14.07.2020, *Moonbird* overheard an aircraft calling the scLYCG patrol boat *Ras Jadar* several times on the radio, requesting them to "go north, go north, turn 360 [degrees]!". In another communication, the aircraft requested that the scLYCG proceed "7 miles" more to the north, "follow follow", "go go". Later, the patrol boat asked "Are you with me?" which was confirmed by the aircraft stating "I'll stay with you, I"ll stay with you, no problem, no problem!". Based on the accent and phrases used, *Sea-Watch* assumes that the aircraft was a Maltese one. This incident coincides with reports of around 86 persons being pulled back to Libya.[18]

On 30.01.2020, the airplane *Pirate* deployed within EUNAVFOR MED was spotted by *Moonbird* on-scene with a boat in distress which was eventually intercepted in the Maltese SAR zone by the scLYCG.[19]

In other cases, authorities of European Member States coordinate **push-backs to Libya through other assets**, such as privately owned fishing vessels or merchant vessels:

Between the 9th and the 14th of April 2020, 63 persons were in distress,[20] the Libyan, Maltese and Italian authorities had been alerted by *Alarm Phone*. The Maltese authorities issued a NAVTEX message on 14.04.2020, stating all vessels "transiting in the area to keep hard lookout, assist if necessary" but also that Malta could not provide a place of safety. A merchant vessel *IVAN* was on-scene, as well as a Maltese airplane. Neither rendered assistance. Instead, Malta deployed two privately owned fishing vessels, *the Dar Al Salam 1* and the *Tremar*, which carried out the push-backs of 56 persons to Libya during the night of the 14th to the 15th of

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13 Please find a more detailed case reconstruction and further push-backs facilitated through EU aerial surveillance in this report: Alarm Phone, borderline-europe, Mediterranea and Sea-Watch (2020) Remote Control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean, p. 13, available at: https://www.eu-libya.info/img/RemoteControl_Report_0620.pdf.

14 Alarm Phone, (2019), Apr. 10. Available at: https://twitter.com/alarm_phone/status/1115856003717914624?s=20 ; Sea-Watch International, (2019), Apr. 10. Available at:
https://twitter.com/seawatch_intl/status/1115867212286431235?s=20; a video of the incident is also available at: https://www.eu-libya.info/.

15 A "mayday relay" is an emergency procedure which provides information about a boat in distress via maritime or aerial radio, requesting any asset in the vicinity to assist.

16 NAVTEX is the acronym for "navigational telex", a navigational text message that alerts all vessels in the surrounding about a distress case.

17 Joint Rescue Coordination Centre (JRCC) is "a Rescue Coordination Centre responsible for both aeronautical and maritime search and rescue incidents" (IAMSAR Manual, Vol. II, (2020, xxi).

18 International Organization for Migration (2020). Jul. 14. Available at:
https://twitter.com/IOM_Libya/status/1283129105152651274?s=19.

19 Alarm Phone, (2020), Jan. 30. Available at: https://twitter.com/alarm_phone/status/1222866570403352576?s=19.

20 A reconstruction of the event is available at: https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya/.

April, after the people had already spent 5 nights at sea.[21] According to testimonies, the crew let them believe that they would be brought to safety in Europe.[22] Instead, 5 persons died and 7 are still missing due to the non-assistance of European Member States.[23] The Maltese authorities recognized the coordination of the case.[24]

A few weeks later on 25.05.2020, the Maltese authorities coordinated the rescue of 98 persons by the merchant vessel *Anne*, who were in distress in the Libyan SAR zone. They also ordered the crew to hand the rescuees over to the Libyan authorities, which happened two days later in Misrata, Libya.[25]

Both cases represent severe violations of human rights and maritime law.

Since military naval ships have deserted the Central Mediterranean and NGOs are being criminalized, **merchant vessels** often remain the only assets available to conduct rescues. However, they are not sufficiently equipped, nor are crews trained enough for these operations. As a consequence of restrictive European migration policies, *Sea-Watch* has witnessed the refusals of merchant vessels to render assistance, their complicity with the scLYCG and the difficulties they encounter when they comply with their duty to rescue. There have been around 30 confirmed cases of **"privatized push-backs"** since 2018.[26] In only one case, a representative of the shipowner and the shipmaster face criminal charges for pushing people back to Libya.[27]

On 11.05.2019, *Moonbird* spotted the merchant vessel *Vos Triton* in the vicinity of persons in distress. The scLYCG arrived and intercepted the persons in distress. *Moonbird* documented how one person escaped, swimming to the *Vos Triton* and climbing on board, and how the crew ultimately transshipped him and another rescuee already on board back to the scLYCG.[28]

On 24.07.20, *Moonbird*'s crew spotted respectively 108 and 72 people in distress in 2 different boats, only 2 nm[29] away from one another. The merchant vessel *Cosmo* was instructed by the Maltese RCC to only monitor both cases. After several hours and a situation of severe danger,[30] the people from the first boat were rescued by the *Cosmo*.[31] However, the people from the second boat were intercepted within the Maltese SAR zone by the scLYCG and pulled back to

21 The New-York Times (2020). Latest Tactic to Push Migrants From Europe? A Private Clandestine Fleet. Available at: https://www.nytimes.com/2020/04/30/world/europe/migrants-malta.html.

22 Alarm Phone (2020). Twelve Deaths and a Secret Push-Back to Libya. Available at: https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya/.

23 Ibid.

24 Statement by the Government of Malta (2020). Available at: https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/April/15/pr200673en.aspx.

25 Infomigrants (2020). 98 migrants rescued to Libya after being rescued by a commercial ship. Available at: https://www.infomigrants.net/en/post/25040/98-migrants-returned-to-libya-after-being-rescued-by-commercial-ship; tvi24 (2020). Migrantes resgatados por navio com bandeira portuguesa desembarcam a Liíbia. Available at: https://tvi24.iol.pt/sociedade/mediterraneo/migrantes-resgatados-por-navio-com-bandeira-portuguesa-desembarcam-na-libia.

26 The New-York Times (2020). Privatized Pushbacks: How Merchant Ships Guard Europe. Available at: https://www.nytimes.com/2020/03/20/world/europe/mediterranean-libya-migrants-europe.html . See also Sea-Watch e.V. (2020). Merchant Vessel Involvement in Sea Rescue Operations. Available at: https://sea-watch.org/wp-content/uploads/2020/11/Airborne_Factsheet_Merchant_vessels_2020.pdf.

27 The Local (2020), First Trial over migrant pushback. Available at: https://www.thelocal.it/20200719/first-italy-trial-over-migrant-pushback-to-libya?fbclid=IwAR1H8C59S6IxUILrww51zVpiXh-IoRayZvuuFhTsxbs-vsLnCgnB5sztoOc

28 Sea-Watch, (2019). #Moonbird: Verzweifelte Fluchtversuch. A video of the event is available at: https://www.youtube.com/watch?v=x0Ms4YspebQ.

29 "Nautical miles" (nm) is the unit of measurement used at sea. 1 nautical mile is equal to 1,852 kilometers.

30 On one boat, a tube was deflated and people were removing water from the boat with their hands.

31 The people were disembarked in Italy.

Libya.[32] The scLYCG also requested the *Cosmo* to transfer to them the people the crew had rescued. This request was refused by the shipmaster.

On 25.09.20, *Seabird* overheard the merchant vessel *Cape Guinea* via radio, sheltering a distress case and informing the scLYCG that 1 person was in the water. The scLYCG ordered the vessel to leave the scene as their patrol boat was approaching. Once *Seabird* was on-scene, the crew spotted the boat with 2 persons in the water and 1 dead body. Later they observed how the scLYCG intercepted the boat, took the 2 persons in the water on board but refused to recover the dead body. After completing the interception, the scLYCG confirmed on the radio that there were 2 other dead persons. The people were pulled-back to Libya.[33] 15 persons drowned.[34]

IV. Challenges and obstacles faced by civil society and merchant vessels

European Member States not only cooperate with the Libyan authorities, but also put a lot of effort into criminalizing NGOs and preventing them from operating.[35] In July 2017, Italy drafted a "Code of Conduct"[36] exclusively for SAR NGOs. In August 2017, the NGO vessel *IUVENTA* was seized and 10 crew members were put under criminal investigation for "aiding and abetting illegal immigration".[37] Two years later, in July 2019, *Carola Rackete,* the captain of the NGO vessel *Sea-Watch 3* was arrested and then released while becoming a victim of a smear and defamation campaign in Italy, after disembarking 53 rescuees in Lampedusa.[38] As of 2021, the criminal investigations in both cases are still ongoing.

NGO vessels are currently blocked by the Italian port authorities, which clearly misuses these inspections in order to prevent NGOs from rescuing people at sea, under the pretense of alleged safety concerns.[39] *Sea-Watch*'s reconnaissance aircraft *Moonbird* was also grounded by the Italian authorities in September 2020 in order to hinder the documentation of human rights violations taking place in the Central Med.[40]

On 03.07.2020, *Seabird* spotted 52 persons in distress in the Maltese SAR zone, who had also previously called *Alarm Phone*. The livestock carrier *Talia* was in the vicinity and proceeded to the location. *Sea-Watch* called the Maltese RCC but they refused to take any information and hung up with the words "we don't speak with NGOs". Malta refused to take any responsibility, though the rescue took place in the Maltese SAR zone and therefore RCC Malta was obliged to coordinate and organize the disembarkation. The Italian authorities also denied the *Talia*'s entry into Italian territorial waters. Instead, they left the *Talia* alone, sailing back and forth between

32 Sea-Watch international, (2020). Jul. 24. Available at:
https://twitter.com/seawatch_intl/status/1286637398768734209?s=20.
33 Sea-Watch Italy, (2020). Sep. 25. Available at: https://twitter.com/SeaWatchItaly/status/1309492977656627201?s=20.
34 International Organization for Migration, (2020). Sep. 26. Available at:
https://twitter.com/IOM_Libya/status/1309778520609038337?s=20.
35 Doctors Without Borders, Sea-Eye, Mare Liberum, Mediterranea, Salvamento Marítimo Humanitario, ProActiva Open Arms, Alarm Phone and RESQSHIP (2020). This criminalization kills! Available at:
https://sea-watch.org/en/criminalization-kills-2/; European Union Agency for Fundamental Rights, (2020) June 2020 update - NGO ships involved in search and rescue in the Mediterranean and legal proceedings against them. Available at: https://fra.europa.eu/en/publication/2020/2020-update-ngos-sar-activities#TabPubOverview0.
36 The content of the Code of Conduct is available at: https://www.euronews.com/2017/08/03/text-of-italys-code-of-conduct-for-ngos-involved-in-migrant-rescue.
37 Blaming the rescuers. The Iuventa case. Available at: https://blamingtherescuers.org/iuventa/.
38 ECCHR (2020). Criminalizing sea rescue: ECCHR demands UN intervention. Available at:
https://www.ecchr.eu/en/case/criminalizing-sea-rescue-ecchr-demands-un-intervention/.
39 See the example of the Sea-Watch 4: https://sea-watch.org/en/sea-watch-defends-itself-against-unlawful-blockade/.
40 More information available in the Airborne Monthly Factsheet of September. Available at:
https://sea-watch.org/wp-content/uploads/2020/10/Airborne_Monthly_Factsheet_September-2020.pdf.

Malta and Italy. Several rescued persons showed symptoms of sickness, while 1 person had to be evacuated to Malta for medical reasons. After spending 5 days in inhumane and degrading conditions,[41] though with the support of civil society, various other actors and a lot of media coverage, the rescued people were finally transferred to a Maltese patrol boat and disembarked in Malta on the evening of 07.07.2020.[42]

On 04.08.20, *Alarm Phone* was called by people onboard a boat in distress and alerted the authorities. *Moonbird*'s crew then spotted 27 persons in the Maltese SAR zone. The *Maersk Etienne* was 11 nm away from the boat and already heading to the position. The crew secured the boat, provided assistance but rescued the persons first in the evening. The merchant vessel set its course to Malta, as Maltese authorities were aware of this case and had given instructions to the vessel. However, although the Maltese authorities had started coordinating the distress case, they were not willing to let the rescued people disembark in Malta. The *Maersk Etienne* waited for more than 5 weeks outside Maltese waters, the request for a port of disembarkation having been denied by Maltese and Tunisian authorities. 3 people even jumped overboard out of desperation and had to be rescued again by the crew. The people were finally transshipped to the NGO vessel *Mare Jonio* on 11.09 and disembarked in Pozzallo, Italy, on 12.09.[43]

In both cases the Italian and Maltese authorities did not cooperate, nor did they show any support to the concerned merchant vessels, clearly to discourage private stakeholders operating at sea from engaging in rescue operations and, complicit with the law, disembarking in Europe.

V. Conclusion

Libya is not a safe place for persons rescued at sea. These missions carried out by civil society underline the continuous practices of European Member States in delegating their duty to render assistance to the scLYCG, strengthening a never-ending cycle of abuses in bringing people back to detention centres where they face severe human rights violations. Even people in the Maltese SAR zone and therefore under Maltese responsibility can be intercepted by the scLYCG. These interceptions are coordinated by the Maltese or Italian authorities, in clear violation of human rights and maritime law. Assets deployed under the EUNAVFOR MED Operation or by Frontex are accomplices of such violations.

In order to hinder any civil rescue or monitoring operations that support people on the move to safely reach Europe, European Member States criminalize NGO volunteers and shipmasters, as well as blocking civil rescue assets. The few rescue operations conducted by civil society which do nevertheless take place are not supported by the Italian or Maltese authorities in any way.

Further, merchant vessels receive no support from European Member States authorities when they are in the vicinity of people in distress and willing to conduct rescue operations. Instead they are often left alone, leading to further cases of non-assistance and privatized push-backs to Libya.

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41 The *Talia* is a vessel that normally transports livestock. Pictures can be consulted at: https://www.infomigrants.net/en/post/25829/migrants-stranded-on-animal-cargo-ship-off-malta.

42 Alarm Phone, Sea-Watch, Mediterranea (2020). Rescued but not safe! Europe plays game with 52 lives. Available at: https://alarmphone.org/en/2020/07/04/rescued-but-not-safe-europe-plays-games-with-52-lives/; Alarm Phone, (2020). Jul. 7. Available at:https://twitter.com/alarm_phone/status/1280612273988546560.

43 The Guardian (2020). Migrants land in Sicily after 'longest standoff in European maritime history'. Available at: https://www.theguardian.com/world/2020/sep/13/migrants-land-in-sicily-after-longest-standoff-in-european-maritime-history.

Based upon the severe examples reported, *Sea-Watch* urges the UN Special Rapporteur for the human rights of migrants to address the push-back practices of European Member States in the Central Mediterranean to the *Human Rights Council*, and urge them to stop any cooperation with the Libyan authorities. The European Member States should instead at least support the efforts of civil society or launch a rescue operation in accordance with the law, in order to avoid any further shipwrecks and interceptions in the Central Mediterranean.