

ITALIAN-LIBYAN PACTS ON MIGRATION

How a renovated partnership is negatively impacting the rights of people on the move





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Authored by Alice Cazzoli

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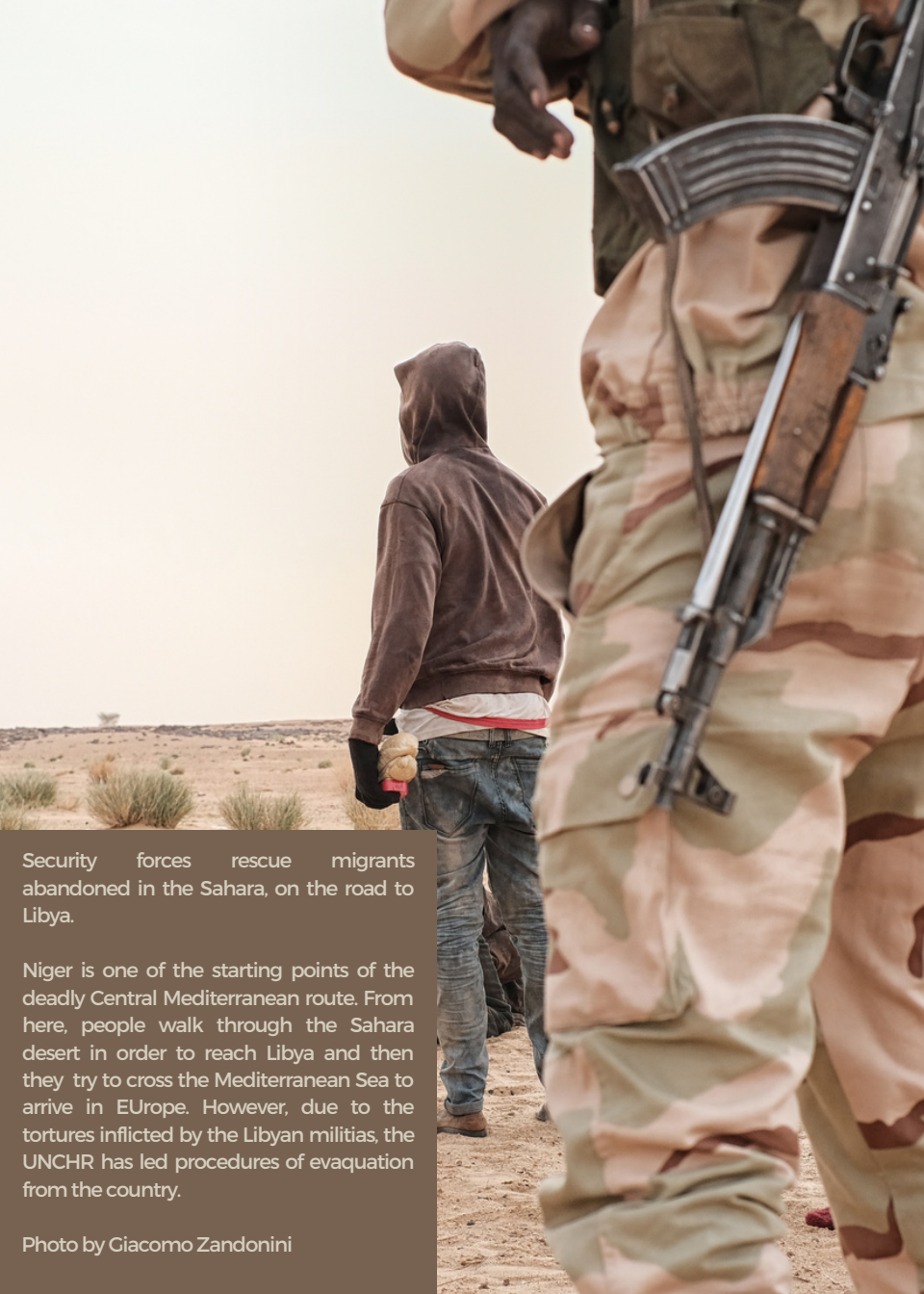
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Introduction

As a destination country along one of the world's deadliest migration routes, the Central Mediterranean Sea, Italy has a long history of dealing with people on the move. In fact, by departing from North African countries such as Tunisia and Libya, people who flee their country of origin for social, political or economic reasons try to reach the safe territories of the European Union. Even though this phenomenon is well established by now, Italy's migration policy has been inconsistent and harmful towards people on the move.

In particular, the ongoing deals between Italy and Libya are enabling violent *push*- and *pullbacks* of people intercepted at sea and are breaching many international obligations concerning human rights. Despite the different tools which have been used to formalise the cooperation between the two countries, this partnership represents a common thread in the succession of Italy's many governments throughout time.

The aim of this article is to investigate how the cooperation between Italy and Libya has evolved through time and to assess its noxious consequences on people on the move. In order to introduce the Italian approach to migration, it will firstly present a brief summary of the country's most important anti-migration laws, which will be followed by the analysis of the most significant milestones of the Italian-Libyan partnership. Thereafter, a focus will be put on the ongoing Memorandum of Understanding, its repercussions for people on the move and Italy and Libya's contributions to the violation of human rights. Finally, the article will frame Italian-Libyan migration pacts in the broader European context of externalisation of borders.



Security forces rescue migrants abandoned in the Sahara, on the road to Libya.

Niger is one of the starting points of the deadly Central Mediterranean route. From here, people walk through the Sahara desert in order to reach Libya and then they try to cross the Mediterranean Sea to arrive in Europe. However, due to the tortures inflicted by the Libyan militias, the UNCHR has led procedures of evacuation from the country.

Photo by Giacomo Zandonini

Background information

Italy has a long history of obstructing people on the move in their attempts to reach the country. The common denominator to the alternation of political parties are policies generally hostile to immigration. To give some context, it is worth mentioning that the only policies in Italy prior to the 1980s concerning the entry of people on the move date back to the period of fascism (Morgese, 2015).

The first comprehensive immigration law, called “Testo Unico sull’Immigrazione e sulla Condizione dello Straniero” (Consolidation Act on Immigration and the Status of Foreigners) was introduced in 1998. Already in its original form, the text included restrictive measures such as the planning of incoming flows. In fact, art.3 of the document provided for the so-called *decreto flussi* which established the maximum annual quota of entry visas and residence permits to be granted by the state, taking into account the Italian labour market and European migration policies .

This law was modified in 2002 by the stricter Bossi-Fini law. Among other modifications, the Bossini-Fini law included the use of naval vessels to fight smuggling of irregular migrants and the permission to enter Italian territory only if already in possession of an employment contract. Furthermore, for people subjected to expulsion or removal from Italian territory, art.12 introduced the coercive accompaniment to the border through immediately enforceable decree as the main method of expulsion.

This background of restrictive laws on migration has set the grounds for bilateral agreements between Italy and Libya.

¹ D. Lgs. 25 luglio 1998, n.286, “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero” (Pubblicata in G.U. 18 Agosto 1998, n.139).

² D.L. 30 Luglio 2002, n.189, “Modifica alla normativa in materia di immigrazione e di asilo” (Pubblicata in G.U. 26 Agosto 2002, n. 199)

The evolution of the partnership between Italy and Libya

At the turn of the 20th and 21st century, Italy put a lot of effort into becoming an important diplomatic bridge between Europe and North Africa. Coming from a situation of international isolation, Libya established the will for a Mediterranean collaboration with Italy (Rossi et al., 2000). After the first partnership steps taken in 1998 with the Dini-Mountasser communiqué (Rivis, 2012), Italy and Libya signed the first bilateral agreement in 2000, which sought, among other objectives, to curb “illegal” migration through the collaboration (Vari, 2020).

Common anti-migration policies were introduced, in particular the exchange of information on ‘illegal’ migratory flows, on criminal organisations facilitating entrances in the country and the itineraries taken (Battista, 2011). Although this agreement didn’t lead to concrete consequences on Italy’s management of people on the move, it was instrumental to normalise Italian-Libyan relations. Just a few years later, the Protocols created in 2007 established a joint mission where Libya would intercept and stop people on the move before they reached the Italian coasts. In this way, the European country succeeded in delegating the legal authority over people pulled back by the Libyan government, therefore managing to avoid the breaching of international obligations (Vari, 2020).

The natural aftermath of the many bilateral agreements was the Treaty on Friendship, Partnership and Cooperation (or Benghazi treaty) signed by the then Italian prime minister Silvio Berlusconi and Colonel Muammar Gaddafi. It was aimed at underlining the special relationship between the two countries and the intention to tighten their collaboration. In addition to the implementation of the earlier agreements, Article 19 of the Treaty envisaged boats patrolling 200km of Libyan coast, provided by Italy and the

oversight of Libyan land borders via a satellite detection system funded by Italy and the EU (Ronzitti, 2009).

While the start of the civil war in Libya in 2011 catalysed the suspension of the Benghazi treaty ("Sospeso trattato Italia-Libia", 2011), Italy had already exhumed its partnership with the Magrebi country by 2012. The respective ministers of interior signed a memorandum expressing the intention of renewing the cooperation for the training of Libyan coast guards and for the repatriation of people on the move to their countries of origin (Morone, 2019). What has to be kept in mind is that in the same year of the renewed cooperation, the European Court of Human Rights established as illegal the practices entailed by the 2009/10 agreements between Qaddafi and Berlusconi. In fact, the *Hirsi & Jamaa case* determined that, by pushing 200 people on the move back to Libya without any process of identification or information to the passengers, Italy had been responsible for breaching art. 3 (refoulement to a country with risk of arbitrary return) and Protocol 4 (prohibition of collective expulsions) of the European Convention of Human Rights (1950).

³ Case of *Hirsi Jamaa & others v. Italy*, no 27765/09, ECHR 2012



Guardia di finanza moored at Porto Empedocle (AG) , Sicily - where people on the move are transferred after reaching Lampedusa.

Guardia di finanza is the Italian police force which deals with arrivals of people on the move. It is often involved and collaborates with the Libyan coast guard - responsible for violent pullbacks in the Mediterranean Sea.

Photo by Kristina di Bella

The memorandum of understanding

The content and its shortcomings

In 2017, Italy and Libya's prime ministers signed a Memorandum of Understanding which secured Italian support for the Libyan military and security institutions. This pact established the Libyan interception of boats in the Mediterranean Sea and Libya's commitment to prevent the departure of people on the move from its territory. Moreover, Italy pledged to fund detention camps and to financially support organisations and entities entitled to deport migrants from Libya to their countries of origin, in spite of their need of international protection (Vari, 2020). Furthermore, the implementation of art. 19 of the Benghazi Treaty made it possible for Italy to provide technical and technological support to the *organismi libici*⁴ in charge of dealing with irregular migration such as the so-called Libyan coast guard and border guard (Pacella, 2018).

Even if the agreement states the Libyan task of preventing people on the move to reach the Italian territory, it presents shortcomings concerning the management of said people. For example, the Memorandum does not define the difference between asylum seekers and economic migrants (Vari, 2020) and consequently fails to consider the fact that asylum seekers go through a different procedure when trying to reach a safe country. Furthermore, it does not mention the identification of potential refugees within people on the move, in which case the country involved in push backs should ensure that those returned are headed towards a safe country. Finally, it is not stated how Libyan authorities should handle intercepted people at sea.

⁴ Libyan organisms, translation by the author

Implications - Italy's violations of human rights

According to art. 16 of the Draft articles in Responsibility of States for Internationally Wrongful Acts

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State (International Law Commission, 2001, pp.65)

Even if the Draft is not binding, art. 16 brings clarity on Italy's contribution to the sufferings of people on the move.

According to article 16 (a), if Italy was aware of the circumstances of human rights violations by Libya, it would be considered equally as responsible. In this regard, some international organisations have levelled much criticism at the Memorandum of Understanding. While the United Nations heavily condemned as inhumane Italy and the EU's assistance to the Libyan coast guard, the Committee against Torture pointed out how the agreement was signed despite the violations of human rights by Libyan militias (Pacella, 2018). To continue, from 2017 onwards, many testimonies reported dangerous deeds brought on by the Libyan coast guard. For instance, according to Human Rights Watch (2019), the latter repeatedly fired shots during an NGO's search and rescue operation, aiming at spreading panic amongst migrants. Moreover, the inhumane treatments by militia groups (Creta, 2021) have become a common thread in statements coming from people on the move. The acknowledgment of such a situation by international actors and the evidence provided confirm that Italy was aware, and hence responsible, for human rights violations.

Furthermore, article 16 (b) suggests that the actions carried out by Libya's government of national accord would violate many international treaties if committed by Italy . On this subject, it is useful to mention two of the most important international obligations of the European country. Entered into force in 1987, the Convention against Torture states that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (1984, pp.2) In addition to that, Italy is part of the 1951 Convention on the Status of Refugees, according to which "refugees are entitled to special protections under international law" (Vari, 2020, pp.127).

Finally, although Libya is not a party to many international human rights treaties, it is possible to claim that the country is breaking a *jus cogens*, i.e. an unbreakable customary law that binds all states regardless of treaties concluded. Some schools of thought consider the prohibition of torture, to which the actions of the militias supported by the Libyan state can be traced, to be one of the above-mentioned norms. In addition to this, art. 17 of the Draft states that

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if (a) that State does so with knowledge of the circumstances of the internationally wrongful act and (b) that act would be internationally wrongful if committed by that State (International Law Commission, 2001, pp.67)

The commentary to said article observes that the notion of control shouldn't be entailed as "complete power" (Moreno-Lax, Giuffr , 2017, pp.22), therefore it is appropriate to argue that Italy would be responsible for the violation of migrants' rights as it is financially, hence *de facto*, assisting Libya to commit internationally wrongful acts.



"I don't agree with this", "No to pacts with torturers and killers. No Libya pact!", "#nopactswithLibya"

14.07.2021 - Demonstration against Italian-Libyan pacts, in Palermo, Sicily

Photo by borderline-europe

The consequences of the memorandum

Since its beginning in 2017, the Memorandum of Understanding was structured with a lasting period of three years and an automatic renewal. Despite its contribution to human rights violations and the opposition of civil society, its restoration took place in 2020 and again in February 2023.

Throughout its tenure, collaboration with Libya has been presented by Italian politicians as crucial to preventing deaths in the Mediterranean and as a tool to preserve the safety of people on the move. On many occasions, Italian FM Tajani declared his intention of wanting the Mediterranean not be "una sorta di grande cimitero"⁵ (Redazione ANSA, 2023). Nevertheless, it is possible to disprove this narrative by identifying three main negative consequences.

First of all, by rejecting people who are eligible for asylum or protection, a new concept of *refoulement*, called *preventive* or *neo-refoulement* (Marchetti, 2010) emerged. As mentioned above, the act of *refoulement*, i.e. the guarantee that no one should be sent back to a country where they would encounter torture or inhuman treatments, is forbidden by the Convention relating to the status of Refugee (1951). However, the behaviour of preventive *refoulement* circumvents such restraint (Morone, 2019), allowing pullbacks of people on the move in international waters, where technically no kind of expulsion takes place. In the case of Italy, through its collaboration with the Libyan coast guard, the country has been able to restrain people on the move from touching its soils and therefore denying a whole set of rights (Marchetti, 2010). Despite the fact that no member State or European institution could openly promote return policies towards asylum seekers, by involving more and more private or non-state ac-

⁵"Some kind of big cemetery". Translation provided by the author.

-tors, the above-mentioned practice has evolved and improved at the expense of migrants.

Secondly, the perpetrated pacts between Italy and Libya normalise the intervention of militias in the management of people who get pulled back. On 4 May 2023, Italian PM Meloni met the Libyan marshal Haftar, who has power over the region of Cyrenaica, from which departures have rapidly increased in the last months (borderline-europe, 2023). The main topic of discussion concerned migration and future plans of involvement for the Marshal. Nevertheless, according to Il Foglio (2023), it is possible to trace clear links between Haftar and his entourage with militias and human traffickers. In fact, the Marshal commands the militia which regulates the migratory flow in the region while human traffickers operating in the same geographical area partially refer to Saddam Haftar, the Marshal's son (Il Post, 2023). Thus, it is evident that the Italian government openly sustains a collaboration with non-state actors who operate violently towards people on the move.

Finally, data retrieved by the International Organization for Migration's annual Migrant Reports (2018, 2019, 2020, 2021) allow us to assert that pullbacks have vigorously increased since the signing of the agreement, meaning that the number of people who face inhumane treatments in the Libyan territory has escalated as well. In the months of January and February in 2019, 855 people were returned by the Libyan coast guard (IOM, 2019), while in the same period of 2021 the number quadrupled (3,953 people) (IOM, 2021). Overall, from 2017 to the beginning of 2023, 108,000 people have been intercepted and forced to return to Libya (Marsi, 2023), many of whom were held in detention centres controlled by militias. Although it is difficult to establish a direct correlation between the Memorandum and the numbers of pullbacks, it is nevertheless possible to draw a conclusion from this data. Despite political statements,

the agreements between Italy and Libya have neither decreased deaths at sea nor protected the well-being of people on the move.

Libya's violations of human rights - what happens after the pullbacks by the Libyan coast guard?

As mentioned above, even if Libya committed to preventing people on the move reaching Italian coasts, the Memorandum does not specify how the Libyan authorities should behave when handling pullbacks. People who are returned to Libya face two main scenarios.

The first one is the threat of being kidnapped and tortured by human traffickers, as many testimonies state. People on the move are considered as “a blood diamond – they can be kidnapped to make money out of them” (Médecins sans frontières, 2022) and they describe their arrival to Libyan detention camps as a “nightmare made of tortures, rapes, extorsions and arbitrary detentions under a system found and funded by European countries” (“Our Manifesto”, n.d.). This evidence is backed up by the UN Report of the Independent Fact-Finding Mission on Libya (2023). According to its findings, from 2016 onwards there are grounds to believe that “crimes against humanity were committed against migrants”, such as deprivation of liberty, murder, torture and enslavement. In addition to that, the report sheds light on the fact that such crimes have been committed in detention centres managed by EU-financed Libyan institutions.

The second scenario concerns people who manage to avoid detention centres. Those who settle in Libyan cities face discrimination, persecution, arbitrary incarcerations (Médecins sans frontières, 2022) and unfair working conditions (IOM, 2023). People part

of the organisation of Refugees in Libya (n.d.) describe themselves as the “hidden workforce of the Libyan economy”, yet they are often paid less than agreed, receive verbal abuse and the salaries are paid with much delay (International Organization for Migration, 2023).

The unfit environment for migrants has been confirmed by the UNHCR, which, since 2017, has evacuated 9,000 refugees through an emergency mechanism (Mari, 2023). The main consequence of the described situation is that the worry of losing one's life at sea has been outweighed by the fear of being pulled back and having to remain on Libyan territory (Human Rights Council of the United Nations, 2023).

The involvement of the European Union

The Libyan government is able to coordinate such large-scale pullbacks and border control operations as a result of financial support from external actors. While Italy's involvement stands out, with a total expense of €124 million up until 2022 (ActionAid, 2023), the engagement of the European Union could appear less discernible.

In November 2015, the EU Emergency Trust Fund for Africa was created to address the “issue” of irregular migration in the African continent and to contribute to the migration management in the region. Since its beginning, the amount of funding in the North African region has been around €907.3 million (European Commission, 2022), while to Libya alone €465 million have been dedicated (European Union, 2022). By considering some of the results of said funding in Libya, it is possible to underline how the European Union too, has contributed to the activities of Libyan authorities. In the year

of 2022 alone, 142 members of the General Administration for Coastal Security have been trained, 3 vessels belonging to the coast guard were rehabilitated and 40 new means of transport had been delivered to the Libyan authorities.

Libyan-Italian pacts as part of a bigger picture

The joint effort between Italy, the European Union and Libya to restrain people on the move from entering European territory is not an isolated case. Just in the last few years, it is possible to notice an increase of bilateral pacts between European and third countries. To name a few, the UK is providing £3 million to border forces in Turkey to prevent people on the move from crossing into European territories (Kelly, 2023), Italy has and is expected to sign more agreements on migration with Tunisia (Vassallo Paleologo, 2023) and Spain recently signed more memorandums with Morocco (Ab Elshamy, Wilson, 2023).

All these actions are part of a broader European strategy called border externalisation. Although this practice has existed in Europe since World War II (ASGI, 2019), it took on a new connotation in 2014/2015 with what institutions called the "migration crisis." In this regard, the project began to aim to prevent people on the move from "entering the legal jurisdictions or territories of destination countries [...] or of making them legally inadmissible without individually considering the merits of their protection claims" (Frelick et al., 2016, pp. 193).

Some of the measures taken to reduce the flow of people on the move continue to permeate EU migration policy, for example the EU-Turkey deal and the Emergency Trust Fund for Africa. Moreover, as the aforementioned bilateral agreements demon-

-strate, member states themselves are contributing to the strengthening of the externalisation project. As a consequence, the responsibility for hosting and assisting people on the move is shifting from their destination country to the one of departure (Paoletti, 2011).

Conclusion

In conclusion, the agreements between Italy and Libya are part of a broader European project aimed at restricting the freedom of movement for migrants and delegating responsibility for managing people on the move to third countries in order to protect their borders. In this context, Italy has particularly stood out for its migration policy, which is perfectly in line with the objectives of the European institutions. Indeed, the country has historically been tied to a legislative *modus operandi* hostile to people on the move, remaining consistent for decades despite the alternation of many parties in government. The most recent manifestation of this was the Memorandum of Understanding, which is still in force today. The pact has shortcomings that do not protect, and in some cases actively harm, people on the move. Moreover, it makes Italy complicit in violations of multiple human rights.

The consequences of the cooperation forged by the bilateral agreement are negative, as people who are pulled back to Libya experience traumatic and life-threatening situations. Despite multiple testimonies, both Italy and the European Union are continuing to collaborate with and finance the Libyan authorities, guilty of crimes against humanity, and thus confirming their conscious contribution to the suffering of people on the move.

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Contact us:

borderline-europe

Human Rights without borders e.V.

<https://www.borderline-europe.de/>

mail@borderline-europe.de

