



Strategic inquiry OI/4/2021/MHZ concerning the compliance of the European Border and Coast Guard Agency (Frontex) with its fundamental rights obligations in the course of its activities

Assessment provided by Sea-Watch e.V.

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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, currently with the *Sea-Watch 3* and the *Sea-Watch 4*. Furthermore, *Sea-Watch* e.V. documents human rights violations and reports people in distress using civil reconnaissance airplanes, *Moonbird* and *Seabird*.

European Member States are bound to international human rights law, in particular the right to life,¹ the prohibition of torture and the linked non-refoulement principle,² the prohibition of collective expulsion.³ Furthermore, European Member States are bound to the provisions of the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR). The latter requires States to ensure a disembarkation of rescued persons in a place of safety.⁴

Through its aerial and maritime operations, *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 evidently 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 so-called Libyan Coast Guard is able to intercept the boats, or directly delegate their duty to render assistance to the so-called Libyan Coast Guard and thus commit non-assistance and violations of international law.

The ultimate goal of *Frontex*'s activities in the Central Mediterranean is clear: no one shall cross the Central Mediterranean Sea. To that extent, *Frontex* only operates with aircrafts and more recently one drone, avoiding being directly involved in rescue operations and to comply with the requirements of the SAR and SOLAS conventions. The agency perpetuates European isolation's policies and pursues practices of European Coastal States to delegate the duty to render assistance to the so-called *Libyan Coast Guard*. From the air, they continuously facilitate the interception activities of the Libyan authorities, providing them with positions of people in distress, despite other (NGO or merchant) vessels being in the vicinity. *Frontex* knowingly chooses to ignore human rights and international maritime law. Over the past years, *Sea-Watch* has documented and reported this repeated illegal cooperation:

- On 22.01.2021, the initiative *Watch The Med - Alarm Phone* was called by the 81 persons on board a boat in distress and alerted the authorities. The civilian aircraft *Colibri 2* then spotted the people in the Libyan SAR zone. Meanwhile, *Moonbird*'s ground crew observed the track of *Frontex* aircraft *Osprey3*, which orbited above the persons and then left the scene, first flying towards Tripoli and then back again to the people in distress. We have to assume that the *Frontex* aircraft was guiding the so-called *Libyan Coast Guard* to the distress case. In total, *Osprey3* orbited for more than 40 minutes above the persons in distress. By the time *Moonbird*'s aircrew spotted the people in the Libyan SAR zone, *Osprey3* had already left the scene and was heading back to its home base. The so-called *Libyan Coast Guard* patrol boat *Fezzan* was at this point only 1 nautical mile⁵ (nm) away. *Moonbird*'s crew observed *Fezzan* intercepting the people and pulling them back to Libya. The NGO vessel *Ocean Viking* was operational in the area at this

¹ Art. 2 European Convention on Human Rights, Art. 6§1 International Covenant on Civil and Political Rights.

² Art. 7 International Covenant on Civil and Political Rights, Art. 3§1 UN-Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 33§1 Geneva Refugee Convention, Art.19§2 Charter of Fundamental Rights of the European Union.

³ Art. 4 Prot. 4 European Convention on Human Rights, Art. 19§1 Charter of Fundamental Rights of the European Union.

⁴ 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.

⁵ "Nautical miles" (nm) is the unit of measurement used at sea. 1 nautical mile is equal to 1,852 kilometers.

time and was never contacted by *Frontex's* aircraft in order to rescue the people. Instead, *Frontex* most likely coordinated a pullback to Libya.⁶

- On 07.02.2021, *Moonbird's* ground crew observed *Frontex* aircraft *Eagle1* orbiting around a position in the Libyan SAR zone. When *Moonbird's* aircrew arrived on-scene, an empty burning boat was spotted. The so-called *Libyan Coast Guard* patrol boat *Fezzan* was also spotted on-scene at this time with around 32 persons on deck, who were later pulled back to Libya. According to the observed *Frontex* track, we have to assume that *Frontex* aircraft once again coordinated a pullback to Libya of people in distress.¹⁰

Furthermore, *Frontex* recently started operating from Malta with a drone, remotely controlled, that has a capacity of flying longer than a crewed aircraft and doesn't face issues such as crew fatigue. Once again, the aim is clear: increasing the cooperation with the so-called *Libyan Coast Guard*, hence the number of illegal pushbacks, at the expense of human rights and international maritime law:

- On 13.06.21, the initiative *Watch the Med - Alarm Phone* was called by the people in the Maltese SAR zone and immediately alerted the authorities. While *Seabird* was flying, the ground crew observed the *Frontex* drone orbiting the position given by the *Alarm Phone*. *Seabird's* crew spotted the people around 20 minutes later as well as their interception in the Maltese (!) SAR zone by the so-called *Libyan Coast Guard*. The people were pulled back to Libya.
- On 21.06.2021, *Seabird's* ground crew observed the drone orbiting in the Libyan SAR zone. The JRCC Tripoli later confirmed that they had received a position via email that corresponds with the observed orbit and that they were sending an asset. Later, *Seabird* spotted an empty boat at the position. The Libyan authorities confirmed afterwards that the people had been intercepted and that the so-called *Libyan Coast Guard* patrol boat was returning to Tripoli.

In none of the cases observed by *Sea-Watch's* aerial operations did *Frontex* involve any vessels in the vicinity. **As a matter of fact, Frontex chose to only cooperate with the so-called *Libyan Coast Guard*. Libya is however not a place of safety** as required by international maritime and human rights

⁶ Evidence is available under:

https://sea-watch.org/wp-content/uploads/2021/05/Frontex-Factsheet_Airborne_Sea-Watch_May-2021.pdf .

law. Multiple reports⁷ and judicial decisions⁸ attest that **Libya is under no circumstance a place of safety for rescued persons at sea.**

The European Coast Guard Agency has however the mandate to prevent people fleeing Libya to arrive safely in Europe. *Frontex* does not and cannot conduct Search-and-rescue operations as enshrined in international maritime law. Instead, *Frontex* continuously violates international law in cooperating with the so-called *Libyan Coast Guard* and ensuring interceptions and pushbacks to Libya.

Frontex embodied the externalization policies of the European Union, strengthening a never-ending cycle of abuses in bringing people back to detention centres where they face severe human rights violations.

We presented clear evidence to our observations in written form to the Scrutiny Group of the European Parliament, but were not invited as witnesses nor were our findings respected in the final report of the scrutiny group.

We hope that our report can be considered by your strategic inquiry.

⁷ For example: S/2021/62, para. 107; and “UNHCR position on the designations of Libya as a safe third country and as a place of safety for the purpose of disembarkation following rescue at sea”, September 2020, available at www.refworld.org/publisher,UNHCR,,5f1edee24,0.html; Amnesty International, “Between Life and Death - Refugee and Migrants trapped in Libya’s Cycle of Abuses”, September 2020, p.54, available at: <https://www.amnesty.eu/wp-content/uploads/2020/09/Libya-report-Between-life-and-death.pdf>

⁸ For example: decision of the GIP (preliminary investigation judge) of Agrigento on 02.07.2019, confirmed by the highest Italian court (Corte di Cassazione) on 21.02.2020, available at: <https://www.giurisprudenzapenale.com/2020/02/21/le-motivazioni-della-cassazione-sulla-mancata-convalida-dellarresto-carola-rackete-nel-la-vicenda-sea-watch-3/>