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1. Submitting organisation

Sea-Watch e.V. is a non-profit organization based in Germany and Italy that conducts civil search and rescue operations in the Central Mediterranean since 2015,¹ documents human rights violations, and with the help of monitoring aircraft,² reports people in distress to the responsible authorities and any nearby vessels. Since the launch of its aerial operations, Sea-Watch has been documenting the behaviour of the European Coast Guard agency, also using open sources.³

2. General remarks on the current situation in the Central Mediterranean Sea

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,⁷ for a total of roughly EUR 44.5 million since 2017.⁸**

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

² The aircraft Seabird 1 and Seabird 2 are operated together with the Swiss non-profit organisation Humanitarian Pilots Initiative (HPI).

³ Frontex' aerial assets can be tracked on open sources, such as on <https://www.flightradar24.com/> or <https://globe.adsbexchange.com/>

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%20,ulteriormente%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

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Address: Sea-Watch e.V. · Moosdorfstraße 7-9, 12435 Berlin · +49 30-120821940 · info@sea-watch.org · VR 34179 B (AG Berlin Charlottenburg)

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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 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

2023 is the deadliest year in the central Mediterranean since 2017.¹²

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.**¹³

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 scene¹⁴ for hours, or give them illegal instructions such as not to rescue¹⁵ or to return persons to unsafe places.¹⁶ Merchant vessels, then, are left alone, without instructions

information available here: <https://www.oxfamitalia.org/umentano-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/>.

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

¹³ See the reconstruction of the shipwreck that occurred on March 12th: <https://sea-watch.org/en/non-assistance-joint-statement/>.

¹⁴ See the reconstruction of the return to Egypt by the MV Shimanami Queen: <https://sea-watch.org/en/nonrefoulement/> as an example.

¹⁵ See one recent example: https://twitter.com/seawatch_intl/status/1653417635030130691?s=20.

¹⁶ 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/>.

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or with illegal orders. Consequently, in practice they tend towards omitting the rendering of assistance to persons in distress.¹⁷

In this environment, the role of **Frontex**, operating aircraft and a drone, is crucial as a major contributor to the increase in interceptions by the so-called Libyan Coast Guard:

3. Frontex's current role in civil SAR operations

Frontex is deployed in the central Mediterranean since end of 2014, as a replacement of the operation Mare Nostrum and with a different mandate: controlling border over engaging in search-and-rescue.¹⁸ **At the moment, Frontex operates in Italy with** “283 officers and staff, five vessels, **seven aircraft**, 18 mobile offices and 4 vehicles for migration management”.¹⁹ In Malta, Frontex operates a drone together with the Armed Forces of Malta.²⁰ The use of aerial assets over vessels is synonym of avoiding to have to rescue persons in distress at sea, in compliance with international law, and also to circumvent legal responsibility following the *Hirsi Jamaa* decision by the European Court of Human Rights, by being indirectly involved in case of facilitation of illegal pullbacks to Libya.

Frontex' contribution in the central Mediterranean consists of flying in the Maltese and Libyan Search-and-rescue (SAR) regions in order to “inform the competent authorities” of boats in distress.²¹

In 2020 **Frontex was involved in the pushback conducted by the Maltese authorities, in which 12 persons lost their lives.**²² **According to information requests, Frontex did not held or disclose any serious incident reports related to this case.**²³ In April 2020, 130 persons died at sea – again even though Frontex had sighted the persons beforehand.²⁴ In this case, Frontex identified one document but refused to disclose it.²⁵

The interception sighted on 30th July 2021 in the Maltese SAR zone

On 30th July 2021, around 20 persons were intercepted and pulled back to Libya from the Maltese

¹⁷ 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.

¹⁸ See Amnesty International, Europe's Sinking Shame p. 15, available at: https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/europa-muss-handeln/Al-Briefing_Search-and-Rescue_220415_EN.pdf.

¹⁹ Press Statement from Frontex 20th September 2023 available at: <https://www.frontex.europa.eu/media-centre/news/news-release/frontex-boosts-support-to-italy-IHEK3y>.

²⁰ See: <https://digit.site36.net/2021/05/03/first-test-in-malta-frontex-drones-approaching/>.

²¹ “The agency informs the national authority responsible for the rescue activities in the area” – see Frontex' own website: <https://www.frontex.europa.eu/what-we-do/operations/search-and-rescue/>.

²² See the thorough reconstruction of the case by the civilian hotline Alarm Phone: <https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya/>.

²³ See the request relating Serious incident reports since July 2019 filed in November 2020: <https://fragdenstaat.de/anfrage/sirs-since-july-2019/#nachricht-574501>.

²⁴ See a reconstruction of the case: <https://www.theguardian.com/global-development/2021/apr/25/a-mayday-call-a-dash-across-the-ocean-and-130-souls-lost-at-sea>.

²⁵ See Frontex' response to the information request: <https://fragdenstaat.de/en/request/shipwreck-in-the-central-mediterranean/>.



Search-and-Rescue (SAR) zone by the so-called Libyan Coast Guard, as witnessed by Sea-Watch's aircraft Seabird 1 as well as its vessel Sea-Watch 3. Based on open sources as well as the NGOs Human Rights Watch and Border Forensics' investigations, we must assume that Frontex' drone sighted the persons in distress at least twice before the interception in the Libyan SAR zone.²⁶ Several NGO vessels were operating on that day, but were never informed by Frontex about the persons in distress. Instead of involving NGO vessels and ensuring a prompt rescue and disembarkation compliant with the law, **we must assume that Frontex facilitated (at least) one interception and pullback by the so-called Libyan Coast Guard to Libya on 30th July 2021.**

The lawsuit

Many questions remain unanswered up to now: *Did the Frontex-operated "Heron" drone sight distress cases on 30th July 2021, but not inform any NGO or merchant vessels in the vicinity which were ready to rescue? Who took this decision, and based on which reasons? Why has Frontex refused to communicate transparently regarding this specific day, particularly regarding the boat in distress which was later intercepted within the Maltese SAR zone?*

In order to seek transparency over this illegal interception, and with the help of the NGO FragDenStaat, Sea-Watch requested documents under the *Freedom of Information Regulation* about this specific aerial operation, including some which relate to Frontex' cooperation with the Italian, Maltese and Libyan authorities.²⁷ **Frontex identified 73 documents in total – but repeatedly refused to disclose any information. On the 15th April 2022 we filed a lawsuit against Frontex' illegal denial to disclose any documents, in front of the General Court of the EU, in Luxembourg.**²⁸

This is the first time a SAR NGO litigates against Frontex for its activity in the central Mediterranean, as Frontex's rarely gets involved with maritime assets at sea, especially NGO vessels, able to assist: On many occasions, Frontex' aircraft were documented **before** or **on-scene** interceptions conducted by the so-called Libyan Coast Guard²⁹ or other Libyan entities³⁰. Therefore, we have to assume that Frontex coordinated interceptions and pullbacks to Libya. Frontex' members even used the Whatsapp messenger to exchange directly with the so-called Libyan Coast Guard regarding boats in distress³¹

The result is clear: as proved by the NGOs Human Rights Watch and Border Forensics **"there is a moderate and statistically significant correlation between aerial asset flights and the number**

²⁶ Evidence of the interception and Frontex' involvement is available at:

<https://www.hrw.org/video-photos/interactive/2022/12/08/airborne-complicity-frontex-aerial-surveillance-enables-abuse>.

²⁷ See the request: <https://fragdenstaat.de/anfrage/antrag-nach-eu-verordnungen-10492001-sowie-13672006-1/>.

²⁸ See the press release: <https://sea-watch.org/en/sea-watch-takes-frontex-to-court/>.

²⁹ Sea-Watch has been documenting Frontex' behaviour for many years now. See some documented cases reported in a factsheet dedicated to Frontex' operations in the central Mediterranean in 2021: https://sea-watch.org/wp-content/uploads/2021/05/Frontex-Factsheet_Airborne_Sea-Watch_May-2021.pdf, a chapter is dedicated to Frontex in the Airborne Annual Report 2021, p. 16: <https://sea-watch.org/wp-content/uploads/2022/05/Airborne-Annual-Report-2021.pdf>.

³⁰ Recently, in July 2023, Frontex potentially cooperated with a vessel belonging to the militia Tarek Ben Zayed, leading to a return of around 300 persons to Libya: https://x.com/seawatch_intl/status/1684904913543864321?s=20. The Tarek Ben Zayed brigade is an unit of the Libyan Armed Forces, led by the war criminal General Khalifa Haftar in eastern Libya. More information available at: <https://www.aljazeera.com/features/longform/2023/8/11/eastern-libya-militia-operates-illegal-pullbacks-in-mediterranean>.

³¹ Excerpts of such exchanges were released via information requests: <https://fragdenstaat.de/anfrage/whatsapp-nachrichten-an-die-libysche-kustenwache/>.



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.³²

Frontex members are co-perpetrating crimes against humanity.³³

³² See Human Rights Watch and Border Forensics investigations: <https://www.hrw.org/video-photos/interactive/2022/12/08/airborne-complicity-frontex-aerial-surveillance-enables-abuse>.

³³ See the ECCHR's communication to the Office of the Prosecutor of the International Criminal Court in November 2022: <https://www.ecchr.eu/en/case/interceptions-of-migrants-and-refugees-at-sea/>; the Executive summary is available at: https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Executive_Summary_ICC_Libya.pdf.