



Libya: The EU's Policy of Migrant Containment

The EU's response towards the ongoing humanitarian crises facing migrants in Libya appears to be two-faced. Whilst claiming to advocate for better conditions for migrants, these are merely cosmetic measures, as the majority of EU measures in Libya instead focus on preventing migrants from reaching EU territory. This strategy fails to address structural drivers of migration and forced displacement, and risks breaching international law. The EU should respect its legal and ethical obligations, and adopt a more humane and strategic migration policy to prevent future tragedies.

Since November 2017, and the CNN 'slave auction' scandal, more than 1000 migrants have been, in the words of the United Nations Refugee Agency (UNHCR)¹, 'evacuated' out of Libya. Of these figures, 770 have been sent to Niger, whereas 312 were sent to Italy. On 15th February 2018, Vincent Cochetel, the UNHCR's special envoy for the Central Mediterranean, praised the response² stating:

"These evacuations are the best example of the impact that international solidarity can have on refugees themselves; however, much more needs to be done."

The UNHCR intends to move thousands more migrants stranded in Libya over the coming months. This is in line with the joint European Union (EU), African Union (AU), United Nations (UN) Task Force established during the November 2017 AU-EU Summit to accelerate both the operations of the UNHCR and the International Organisation for Migration (IOM).

Following this Summit, the EU and AU published a joint statement³ that indicated the need to "facilitate...voluntary repatriation [of refugees in Libya] to their countries of origin". Judging purely by

¹ <http://www.unhcr.org/news/press/2018/2/5a8451f84/1000-refugees-evacuated-libya-unhcr.html>

² <http://www.unhcr.org/news/press/2018/2/5a8451f84/1000-refugees-evacuated-libya-unhcr.html>

³ <https://au.int/en/pressreleases/20171130/joint%2%A0statement-%2%A0migrant%2%A0situation-libya>

the numbers, the implementation of the November 2017 Task Force and of ‘voluntary repatriation’ has been successful so far. But as for the well-being of migrants still suffering human rights abuses within Libya, the EU policy still misses the mark. And in the aftermath of the 2018 Italian elections, with the rise of anti-immigrant parties on the EU’s frontier with Libya, further questions remain regarding future EU strategy and cohesiveness.

Why is the EU strategy flawed? A brief deconstruction of the double-layered nature of EU’s Libya policy reveals that its strategy still fails to address the structural drivers driving forced displacement, and possibly breaches the EU’s obligations under international refugee and humanitarian law.

The EU’s Containment Policy:

Since the EU first implemented the Migration Partnership Framework in 2016, it was clear that the EU’s migration policy primarily sought to stem the influx of arrivals in Europe. In the five subsequent progress reports evaluating the effectiveness of the Framework, the EU candidly frames decreased rate of arrivals, and increased rate of returns, as the benchmark for significant progress.⁴

The EU Trust Fund for Africa, which is widely criticized for its politicization of aid,⁵ is another glaring clue to the EU’s containment policy. According to an Oxfam report, 97% of migration management spending in the Trust Fund is directed towards restricting irregular migratory flows, and just 3% is dedicated towards promoting mobility through safe and legal channels.⁶

Within this context, the most recent EU policy to address migratory flows in Libya- the ‘EU Action in Libya on Migration’⁷ should be broken down into two categories of agreed actions: a cosmetic layer concerned with the immediate well-being of migrants, and the foundational layer concerned with protecting EU borders and containing migrants in countries of origin and transit.⁸

1. *Cosmetic Measures*

There are at least two identifiable measures that appear to be in place to appease concerns of human rights for stranded migrants. As this appears to be the secondary concern for the EU, they have been labeled here as cosmetic measures. These measures are:

- The EU has provided financial backing to the IOM and UNHCR to improve the conditions of more than 20,000 migrants in detention centers, and 3000 displaced Libyan families;
- In the context of providing legal pathways to Europe, since September 2017 the EU has implemented a new resettlement scheme for about 50,000 refugees. This has involved the Commission setting aside 500 million Euros, and 19 Member States signing their support.

Clearly, current detention centers in Libya are inflicting horrific conditions upon migrants, so efforts to improve the situation are welcome. However, these measures do not address the reason why detention centers were implemented in the first place. Beneath the immediate, superficial aid lies the stubborn reality that many migrants do not have clear legal statuses or have access to state representation, for instance Eritreans. Fully addressing this issue requires policies that improve legal

⁴https://eeas.europa.eu/sites/eeas/files/20170906_fifth_progress_report_on_the_partnership_framework_with_third_countries_under_the_eam_en_0.pdf

⁵ <https://concordeurope.org/2018/01/24/monitoring-eu-trust-fund-africa-publication/>

⁶ https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-emergency-for-whom-eutf-africa-migration-151117-summ-en_1.pdf

⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_eu_action_in_libya_on_migration_en.pdf

⁸ This idea is sometimes called “Fortress Europe”. See <http://newafricanmagazine.com/eu-policy-exacerbates-plight-migrants-libya/>

pathways,⁹ take into account the various reasons why people choose to migrate, and acknowledge that most migrants are not attempting to reach Europe. This has been repeatedly stressed by many NGOs and other commentators such as the UN human rights commissioner Zeid Ra'ad al-Hussein.¹⁰

2. Containment Measures

The bulk of the EU's policies on Libya fall into this category of intercepting migrants, helping to move them back to their countries of origin and trying to discourage them from making the journey again. These are grouped together as containment measures, and appear to be the primary concern for the EU:

- The Common Security and Defence Policy (CSDP) Operation EUNAVFOR Operation Med Sophia was launched in 2015 to intercept traffickers in the Mediterranean;
- As most lives are lost in Libyan territorial waters, Operation Sophia, the Italian Coastguard and others have assisted the training of the Libyan coastguard in search and rescue activities;
- The EU has stepped up its funding and training of local security forces in Niger and the Sahel region, to intercept traffickers in countries of origin as well as during the Saharan crossing;
- The EU has increased efforts to voluntarily repatriate migrants to their countries of origin;
- In addition, information has been disseminated amongst migrants and Libyan citizens regarding the dangers of the sea crossing.

Not only do these policies overlook the root causes driving both migration and forced displacement, they often exacerbate the urgent humanitarian needs of vulnerable people, many of whom may be deserving of international protection. For instance, assisting the Libyan coastguard directly inhibits NGOs and humanitarian organizations from reaching at risk migrants within Libyan waters.¹¹

Abstinence of Responsibility:

In addition, the reality of these policies has not changed, even with the shocking revelations of human rights abuses in detention centers by CNN¹² and Amnesty International,¹³ amongst others. The EU has consistently maintained the same approach that is to contain migrants in Libya and move them back to their country of origin. This issue has fluctuated in the media as different stories of tragedies at sea, or shocking videos or terror attacks have taken place, and the sustained commitment to a strict containment policy raises serious ethical concerns. This stance uncomfortably echoes past agreements with former Libyan dictator Muammar Gaddafi, who struck bilateral deals with Italy to restrict migrant flows in exchange for economic support. It is unsurprising to observe what happens to repatriated migrants, who have largely been left to the Government of Niger,¹⁴ in yet another abstinence of EU responsibility.

Besides the ethical implications, the EU's Libya policy also raises serious legal issues concerning its obligations under international refugee and humanitarian law¹⁵. The EU and its Member States are legally prohibited from summarily returning asylum seekers to an unsafe location, and according to

⁹ The need to improve legal pathways has been repeatedly stressed by many NGOs and stakeholders, including the UN human rights commissioner Zeid Ra'ad al-Hussein. See: <https://www.theguardian.com/world/2017/nov/14/eu-libya-coastguard-detention-centres-migration-mediterranean-un-zeid-raad-al-hussein>

¹⁰ <https://www.theguardian.com/world/2017/nov/14/eu-libya-coastguard-detention-centres-migration-mediterranean-un-zeid-raad-al-hussein..>

¹¹ <https://www.reuters.com/article/us-europe-migrants-libya-italy/eu-sticks-to-libya-strategy-on-migrants-despite-human-rights-concerns-idUSKCN1BP2CQ>

¹² <http://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>

¹³ <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

¹⁴ <https://www.iol.co.za/news/africa/hundreds-of-refugees-flee-from-libya-as-un-works-on-solution-13318554>

¹⁵ See: http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433711/EXPO-DROI_NT%282013%29433711_EN.pdf

the UN Special Rapporteur on the human rights of migrants, externalizing the EU border to Libya risks breaching Member States' obligations of non-refoulement.¹⁶

Furthermore, while Libya is not a party to the 1951 Refugee Convention, the EU and Member States nevertheless have a legal obligation not to knowingly aid or assist another state carry out actions that would be wrongful if committed by that state.¹⁷ By contributing assistance to Libyan authorities with a well-documented track-record of abuse and torture, the EU could be held responsible for complicity under international law.¹⁸

Finally, it is insufficient for individual EU member states to take responsibility if others continue to divert people elsewhere. Populist anti-immigrant sentiment has persisted in much of Europe in recent years, and the recent victory of anti-immigrant parties in the 2018 Italian elections has thrown the futures of many migrants into doubt.¹⁹ While it remains to be seen what ramifications these results will have on actual policy, Italy, as the first EU state that migrants from Libya will come into contact with, has a particular role to play in enacting EU migration policy. It, along with every other EU state, must approach the migration crisis with the same unified and clear European message, in order to deliver the fairest and most humane treatment of people as possible.

If the EU truly wishes to prioritize the lives and well-being of migrants who are making such perilous journeys in the hopes of a better life, the strategy must change. Most importantly, the EU should not continue to ignore atrocities with massive human cost until they trigger international media attention.²⁰ Now is the time to act to prevent such catastrophic human tragedies in the future.

Recommendations:

To improve the well-being of migrants traveling through Libya and across the Central Mediterranean Route, the BIC recommends that the European Union:

- *Bring together a wider group of stakeholders to consider strategies for engagement, developed within a long-term framework. Opening lines of communication among key actors can be essential to assess whether other forms of engagement are feasible.*
- *Engage with Libyan authorities to urgently expand the list of seven nationalities recognized by the Libyan government as eligible for international protection by the UNHCR.*
- *Recommit to the extraterritorial applicability of all fundamental rights and refugee law obligations, and recognize that international responsibilities cannot be displaced to third countries.*
- *Expand legal pathways for migrants to access Europe, especially for seasonal workers, and improve overall provision for migrants and asylum-seekers with complex, often undefined, legal statuses.*
- *Reverse the containment policy in the Mediterranean Sea, and support NGOs engaging in rescue operations, rather than directly and indirectly support operations to send them back to the Libyan coast.*

¹⁶ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21978&LangID=E>

¹⁷ Under Article 16 of the International Law Commission Articles on Responsibility of States for Intentionally Wrongful Acts.

¹⁸ See: <https://www.ejiltalk.org/torture-in-libya-and-questions-of-eu-member-state-complicity/>

¹⁹ <https://edition.cnn.com/2018/03/05/europe/italy-elections-intl/index.html>, <https://www.wsj.com/articles/antimigrant-sentiment-fuels-rise-of-italys-league-1520418600>

²⁰ It is striking when tragedies involving the deaths of migrants in Libya, such as a truck crash on February 14th 2018 causing at least 17 deaths, are becoming so commonplace that they are relatively innocuous news items. See <https://www.reuters.com/article/us-europe-migrants-libya/truck-packed-with-migrants-crashes-in-libya-killing-at-least-19-idUSKCN1FY1AM>

- *Support efforts to promote intra-African mobility and regional integration, acknowledging that roughly 70% of migrants in Africa intend to stay on the continent.*
- *Improve research to close data gaps on the various motivations for migration. Analyses of the root causes of migration and forced displacement should guide renewed efforts to capitalize on the development benefits of migration.*
- *Adopt a more proactive stance in relation to this issues rather than reactive, by adopting policies to address these issues before they occur.*

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