Revealed: the great European refugee scandal

Evidence obtained by the Guardian exposes a coordinated and unlawful EU assault on the rights of desperate people trying to cross the Mediterranean

by Daniel Howden, Apostolis Fotiadis and Zach Campbell

As night fell on 26 March 2019, two small boats made their way north across the Mediterranean. The rubber crafts were flimsy; it would be nearly impossible for those onboard to make it to Europe without help. From the north, a twin-propeller aeroplane from the European Union naval force approached. From the south, the coastguard from the country they had just fled, Libya, was coming.

The aircraft arrived first but there would be no rescue from Europe. Instead the flight, callsign Seagull 75, radioed the Libyans telling them where to find the boats. But Libya’s would-be interceptors would need more than just the coordinates. “OK sir, my radar is not good, is not good, if you stay [over the boat] I will follow you,” said the coastguard, according to recordings of VHF marine radio picked up by a nearby ship.

Seagull 75 circled overhead. The flight crew was part of Operation Sophia, an EU naval mission that has patrolled the south-central Mediterranean since 2015. After participating in thousands of rescues in its first four years, Sophia withdrew its sea vessels from March 2019,
leaving only aircraft in the rescue zone. It came to be known as the naval mission without any ships.

“<p>A Frontex air crew monitoring the sea for refugee and migrant crossings. Photograph: Frontex</p>“We have approximately five minutes left on station,” the crew on Seagull 75 told the Libyans. “We will go overhead the vessel, the rubber boat, and we will light our landing lights.” The Sophia flight and the Libyan coastguard ship were searching for each other in the dark. “We don’t have your visual, keep an eye out for a light,” said the flight crew. The Libyans asked for more information. “Stand by, I’m just updating your position. Stand by,” the flight crew replied.

“Turn left about 10 degrees. He is approximately three nautical miles off your nose,” replied Operation Sophia after a minute. The flight was out of fuel and about to head back to base. “Libyan national coastguard, we will contact you through FHQ, over,” said the flight crew, referring to the tactical base from which Operation Sophia is managed.

The confusion at sea that night was not an isolated incident but an illustration of the painstaking lengths to which Europe has gone to ensure migrants do not reach the continent. While the level of violence at Greece’s border with Turkey has shocked many Europeans, Europe’s retreat from refugee rights did not begin last week. Greece’s decision to seal its borders and deny access to asylum is only the most visible escalation of an assault on people’s right to seek protection.

The groundwork for this was laid in the central Mediterranean, where the EU and Italy created a proxy force to do what they could not do themselves without openly violating international laws: intercept unwanted migrants and return them to Libya.
The strategy has relied on maintaining deniability of responsibility for Libyan coastguard operations. But the connivance revealed in the audio recordings is supported by previously unpublished letters between high-level EU mandarins, confirmed by inside sources and laid bare in emails from the Libyan coastguard, all obtained by the Guardian. Taken together, this evidence threatens to unravel a conspiracy in the Mediterranean that flouts international law in the name of migration control.

People wait to be rescued as they drift in the Mediterranean off the coast of Libya, October 2016. Photograph: Aris Messinis/AFP/Getty Images

The Mediterranean is the theatre where tensions between Europe’s ideas of human rights do battle with continental politicians’ anxiety about African migration. Until 2009, Libya was a “safe” country of return because countries such as Italy said it was. Italian vessels would intercept migrants and persuade them to clamber off their boats with promises of passage to Italy, and then put them in handcuffs and sail them to Tripoli.

Italy shipped close to 900 people back to Libya in 2009. Among those returnees were 11 Eritreans and Somalis who complained to the European court of human rights. The court’s ruling in 2012 said Italy was guilty of refoulement and had violated the men’s right to claim asylum and not to be returned to an unsafe port. In rejecting Italy’s arguments, one of the judges pointed out that “refugees have the right to have rights.”

This ruling, named the Hirsi ruling after one of the returnees, means any refoulement operation, even one carried out by a proxy force, would be vulnerable to international legal scrutiny if an EU state could be shown to be controlling and directing these operations. Europe had to find allies in Libya who were capable of intercepting migrants on the high seas without overt direction from the Europeans.

The project of building a proxy took off in the summer of 2017. At that time Libya, in the middle of a civil war, had no centralised coastguard and no capacity to manage its own search
and rescue area. From the outset it was a joint project between Rome and Brussels: Italy provided ships while the EU trained and paid the new coastguards, often recruiting from among militias and smugglers.

To bolster the legitimacy of the new coastguard, paperwork needed to be lodged with the International Maritime Organization declaring that Libya now managed its own search and rescue zone. Court documents from a case in Catania, Sicily, would later show that one of the first telephone numbers listed for the coastguard was an Italian number.

But European money and material would not be enough to create an effective interception force. The former militiamen and smugglers who were now in coastguard uniforms struggled to reduce crossings. According to leaked internal documents from Operation Sophia from 2018, after more than a year of training and financial support the Libyan coastguard was still unable to control its own search and rescue area. To stop more crossings to Europe, they were going to need even more help.

From 2017 the EU began extending surveillance flights over the zone. Two years later, flights by the EU border agency Frontex almost doubled the size of the EU aerial mission. Under the law of the sea its pilots were bound to contact whichever ship was best placed to assist any boats in distress. But as the Libyans began asserting their presence in the Mediterranean, European flights and their coordinators started giving preference to ships that would take those they rescued southwards, despite the fact that European courts, the UN’s refugee and migration agencies all agree Libya is not a safe country.

Potential legal consequences are now on the horizon. There are four submissions before international courts and two in the Italian system, accusing Italy, the EU or both of funding and directing the Libyan coastguard.

“Italy bypassed Hirsi with an artificial edifice of Libyan power, but [an international court] ruling would show that they can’t use this to evade responsibility,” said Itamar Mann, an Israeli lawyer who is leading litigation efforts against the EU and Italy.

The most recent of these is a complaint to the European court of auditors, the EU’s financial watchdog. The complaint accuses the EU of breaking its own laws by funnelling €90m earmarked for poverty reduction to the Libyan coastguard.

Mann alleges that while the Libyans are carrying out the interceptions, in the background it is the EU pulling the strings. “The EU is using Italy in the same way that Italy is using Libya, to evade responsibility. The main culprit is in Brussels.”

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As Seagull 75 left the scene of the rescue last March, the Libyan coastguard radioed back to Operation Sophia to confirm the coordinates. “Three four zero three north, zero one four three one,” said the coastguard. “That’s correct,” the crew of Seagull 75 replied. The Libyans were pursuing the migrant boats to the northern extreme of Libya’s search and rescue zone.

The coastguard vessel still could not find the first rubber boat. The second boat was being followed by another Sophia plane, a Spanish aircraft with the callsign Cotos, but it too was running low on fuel. It was becoming increasingly clear that only one of the boats would be rescued that night.
Minutes later another European helicopter made radio contact. The Libyan response came back, fast and garbled. “Libyan national coastguard, Libyan national coastguard, can you please speak slowly,” said the helicopter crew. “Do you have visual with the rubber boat?”

The Libyans found the first rubber boat and returned all those onboard to Libya. The Spanish flight trailed the second migrant boat until it ran short on fuel and departed. EU officials would later maintain that those onboard the second boat were rescued by a private oil tanker. However, multiple witnesses who were onboard that tanker say no such rescue occurred. VHF radio recordings from that night corroborate this account.

A Libyan coastguard vessel intercepts a rubber boat with around 150 people onboard off the Libyan coast. Photograph: Alamy

The IMO’s search and rescue zones were not designed to exclude potential rescuers. But rescue carries with it the legal responsibility to disembark in a place of safety. After 2012, with Libya stripped of its status as a safe port and the political costs of rescuing migrants rising, European leaders had to find another way to control the Mediterranean.

By early 2019 at EU headquarters in Brussels and at Frontex, Europe’s coastal and border guard agency, senior officials were aware that the scale of their involvement with the Libyans risked making them legally responsible for the fate of returned migrants. A month before the Seagull 75 incident, Fabrice Leggeri, the head of Frontex, wrote to Paraskevi Michou, the highest-ranked migration official in the EU, outlining the problem. ¹)

“Direct exchanges of operational information with the MRCC [Maritime Rescue Coordination Centre] Libya about search and rescue cases may trigger interventions of the Libyan coastguard,” wrote Leggeri, “The development of a Libyan coastguard is funded as you know by the European Union. Nevertheless, the commission and in general institutions may face questions of a political nature as a consequence of the SAR-related operational exchanges of information.”
Couched in official jargon, Europe’s top border official appeared to be asking the EU’s ranking migration official whether they were crossing the line.

The response from Michou a month later sought to reassure him that, legally, they were in the clear. Still, she noted: “[Many] of the recent sightings of migrants in the Libyan SRR [rescue zone] have been provided by aerial assets of [Operation Sophia] and were notified directly to the Libyan RCC responsible for its own region.”

In other words, it was becoming apparent that EU air assets – costing more than €35m in 2019 just for Frontex aircraft – had become the eyes and ears of a Libyan interception force.

In private, some officials from the European agencies most directly involved were uncomfortable with the level of cooperation. An EU border official, who asked not to be identified, told the Guardian there was no difference “between returning someone to an unsafe country or paying someone else to return them”.

In the same period that the Libyan coastguard has been built up operationally and given the facade of legitimacy, private rescue boats run by European charities have faced a sustained campaign of harassment with port closures, arrests and the impounding of ships.

“The Libyan coastguard is not able to locate and track migrant boats itself. In order to do interceptions, they need to be fed from aerial surveillance,” said Tamino Böhm, the head of mission for the German NGO Sea Watch. “Nearly no effective interceptions would take place without an EU air force assisting them.”

Böhm, whose NGO flies its own small surveillance plane through the same skies as Sophia, lists case after case where EU flights relayed data on boats in distress to the Libyan coastguard and to private Libya-bound ships. He notes that NGO vessels and European ships were not called on to rescue as often – a possible violation of international maritime law.
“European actors are not only complicit with but directly responsible for pushbacks to Libya,” Böhm added.

The UN refugee agency’s special envoy for the central Mediterranean, Vincent Cochetel, said nobody in the international community could pretend they did not understand how dangerous Libya had become.

Under these circumstances, he said, “no asset of a third country – naval, aerial or intelligence – should be used to facilitate return from international waters to Libya.”

The main connection between European air surveillance and Libyan interceptions at sea is still the rescue coordination centre in Rome. According to two German legal professors, Anuscheh Farahat and Nora Markard, this makes Italy responsible for internationally wrongful acts, “namely where it violates its obligations under the international law of the sea to make sure a rescue operation leads to a delivery to a place of safety.”

Mario Giro was Italy’s deputy foreign minister for two years while the strategy to support the Libyan coastguard was first being developed. Giro said he believed Italian and European leaders, and in particular Italy’s then interior minister, Marco Minitti, were so focused on stopping the flow of people from Libya that they cut important corners. Italian and European willingness to deal directly with militia members and smugglers was “a mistake, full stop,” Giro said.

“At that time it was very clear that everybody in Italy and in Europe on the right and on the left was obsessed with the question of migrants. And everybody wanted a quick, immediate solution in the name of trying to control the public opinion.”

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Until now the EU and Italy have skirted the line between financing and supporting the Libyan coastguard and taking control of, and therefore responsibility for, its operations. Even when the mask has slipped, as it did when the telephone number listed for Libya’s new rescue centre was listed as an Italian number, the denial of ultimate responsibility is maintained.

“Our personnel are not embedded onboard of Libyan coastguard assets and Eunavfor Med personnel are not part of the Libyan coastguard and navy’s decision-making process,” said Peter Stano, a spokesperson for the European External Action Service, the EU’s diplomatic corps. “Nor is EUnavfor Med entitled to exercise any control and authority over Libyan coastguard and navy’s units or personnel.”

Stano denied any direct coordination of the Libyan coastguard. “[EU] air assets do not exercise any coordination of Libyan vessels during rescue operations. There is no reconnaissance programme,” he said.

However, an email sent by a Libyan coastguard commodore to Alarm Phone, a volunteer monitoring group, in August 2019, obtained by the Guardian, states that EU air assets directly pass information to them. “Please be informed that yesterday PV LNCG FEZZAN has conducted nr. 2 S.A.R. events, two rubber boat in dangerous distress (sinking) with about 30 and 50 people on board, North-West of Tripoli (around 70 NM), in PSN 3350N-01239E and 3348N-01218E correlated to reports by EUNAVFORMED air asset D0102 and D0105,” the email said.

Despite the denials, a reckoning appears closer as an array of international legal actions scrutinise every aspect of this cooperation. What emerges, lawyers claim, is a conspiracy to bypass international law and evade responsibility for effectively blocking the Mediterranean.

A senior EU official close to Libya policy at the time described the Mediterranean strategy as a “political timebomb”.

“The EU has taken a major reputational risk,” said the official. “We put our fate in the hands of crooks, the consequences of which are now arriving.”

In late 2017, decision-makers in Brussels were split between a group of hardliners who wanted Europe’s migration control outsourced to Libya and a reduction in sea crossings at all costs, and others who argued that Sophia and the NGO ships should be allowed to continue rescue operations. The hardliners won out. Now, more than two years later, the presence of European rescue ships in the central Mediterranean is minimal.

At the end of the coming year, Frontex, which has begun to assume a greater role in Libya operations, will become the EU’s biggest agency by budget.

In February EU foreign ministers called for a renewal of Sophia, but ministers noted that any indication that it was coming into contact with migrant boats could “lead to the withdrawal of maritime assets from the relevant area”.

The fate of those seeking to escape Libya by boat is likely to mirror that of the migrants caught in the lights of the Seagull 75 in March last year. The occupants of one boat were successfully intercepted by the Libyan coastguard. What happened to those on other boat is contested, but the weight of evidence suggests they are missing, presumed dead.
1) Exchange of letters between senior EU migration official, Paraskevi Michou and Executive Director of Frontex Fabrice Leggeri. (Obtained through FOI)

DG Migration and Home Affairs
European Commission

Our ref. [Redacted]
Please quote when replying.

Warsaw, 22 February 2019

Subject: Operational communication in case of SAR-related sightings/ Central Mediterranean Area

Dear Director General,

In the context of the European Border Surveillance System (EUROSUR), the European Border and Coast Guard Agency ensures the provision of the common application of surveillance tools. One of these tools of particular relevance for the pre-frontier surveillance, is the Multipurpose Aerial Surveillance (MAS). Using the Agency’s own aerial surveillance capabilities, Frontex Situation Centre shares the information collected by MAS in real-time with the neighbouring Member States via the official EUROSUR channels. Nevertheless, in case of sighting of a distress situation and to expedite the rescue operation, the SAR Convention adopted in 1979 is applied and the responsible Maritime Coordination Centre (MRCC) is directly notified.

Since the start of MAS service operationalisation in 2017, the European Border and Coast Guard Agency has been directly involved in many sightings which saved lives and triggered Search and Rescue (SAR) actions that would otherwise not have taken place because no coastal state was aware of the case. The Central Mediterranean Sea is one of areas currently patrolled by MAS, with daily flights South of Lampedusa. The most recent operational analysis of the above mentioned areas shows a higher risk of loss of lives, mainly due to the increased presence of migrants in Libya and the potential communication delays in case the aerial assets performing SAR sightings do not report directly to the responsible MRCC.

Given the operational risks, potential loss of lives and prosecutions in case of inaction or delays, in case of SAR sighting, Frontex Situation Centre will continue to follow the obligations of SAR Convention. In practice this will mean informing the responsible Maritime Rescue Coordination Centre (i.e. ARCC Libya) as well as the neighbouring MRCCs (i.e. Italy and Malta) and EUVFORMED Headquarters.

This approach will increase the situational awareness and support relevant SAR authorities in the coordination of distress situation and saving lives which has always been the priority of the European Border and Coast Guard Agency. I wanted to share with the Commission our analysis of the operational and legal situation as it stands now in the Central Mediterranean Area. With this letter I also wanted to flag that direct exchanges of operational information with the ARCC Libya about SAR cases may trigger interventions of the Libyan Coast Guard. The development of a Libyan Coast Guard is funded as you know by the European Union. Nevertheless, the Commission and in general EU institutions may face questions of a political nature as a consequence of the SAR related operational exchanges of information that are mentioned above.

Yours sincerely,

[Signature]

Fabrice Leggeri
Executive Director

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Exchange of letters between senior EU migration official, Paraskevi Michou and Frontex’s Fabrice Leggeri. The letters show the extent of high-level EU concern over engagement with the Libyan Coast Guard. Obtained through FOI

Dear Executive Director,

I would like to thank you for your letter and for the positive developments linked with the renewal of the Operational Plan of the Joint Operation Themis and operational communication in case of SAR related sightings in central Mediterranean area.

Libya has ratified the SAR Convention (Hamburg 1979). In December 2017 the Libyan Ports & Maritime Transport Authority notified the International Maritime Organization (I.M.O.) with the Libyan Search and Rescue Region (SRR). In accordance with the SAR Convention it represents a unilateral declaration with a constitutive effect. So far no objections or reserve was expressed by the international maritime community or specific neighbouring countries.

As you are aware the purpose of having an SRR is to clearly define who has primary responsibility for co-ordinating responses to distress situations.

Relevant information to identify the operational facility responsible for co-ordinating the conduct of SAR operations within the Libyan SRR have been uploaded on the SAR Global Plan managed by the IMO so that publicly available for the maritime stakeholders.

We have been observing the increased performance of the Libyan Coast Guard in the period 2017-2018 as direct consequence of the support EU provided both in terms of training and equipment.

In 2018, in accordance with the data provided by the International Organisation for Migration (IOM), a total of 15,358 migrants were rescued by the Libyan Coast Guard and disembarked in Libya. As of 22 February, the Libyan Coast Guard (LCG) rescued/intercepted 779 persons at sea in 2019.

It is also worth noting that in 2018 the majority of the people rescued were disembarked at the Tripoli Naval Base (62%) followed by Al Khums port (19%) and Azizawya (11%) where cooperation is consolidated at disembarkation points with the IOM for registration and initial screening.
The results of the monitoring mechanism implemented by EUNAVFOR MED Operation Sophia are encouraging and have confirmed the appropriate employment of Libyan personnel trained with the aid of EU assistance as well as an increased amount of activity at sea and a rise in capacities and professionalism of the Libyan Coast Guard.

The EU is engaging with the Libyan Coast Guard which has been recognized by the UN Sanctions Committee as a legitimate structure and is accountable to the Government of National Accord which in turn is recognized by the international community.

However, the Commission does not provide direct funding to the Libyan authorities. Since 2013, cooperation with the Libya has been ongoing in the framework of the EU Trust Fund program on various issues, including activities intended to strengthen the authorities' capacities in maritime surveillance and conducting search and rescue operations at sea.

The procedure outlined in your letter to communicate sightings of, as well as initial actions regarding, “distress” situations directly to the Maritime Rescue Coordination Centre (MRCC) “responsible” for the SAR region, constitutes a procedure that is in line with the provisions of the Hamburg Convention of 1979. It is thus in conformity with international law to inform and identify as first MRCC the one which is best placed to assist, so as to avoid delay in actions and minimize loss of life at sea.

With regard to the statement on following procedures and notifying sightings of “distress” at sea to the “Responsible” MRCC (i.e. MRCC Libya) and also to neighboring MRCCs (i.e. those of Italy and Malta) and EUNAVFOR MED Headquarters, I would like to note that although the fact that it cannot be considered a “neighbouring MRCC” because it does not border the Libyan SSR. Is supporting the Libyan Coast Guard a lot in particular in acting during the SAR event as a “communication relay”. In that regard, together with Malta, and following the standard practice, it would be appropriate to include Tunisia and Egypt as well.

I also take the occasion to highlight that EUNAVFOR MED Headquarters cannot be considered among those bodies recognized by the international legislation with responsibility to exercise SAR services including coordination. EUNAVFOR MED represents a structured response as part of the EU integrated approach to migration in the Central Mediterranean and to contribute to the stabilization of Libya. It has provided nevertheless until now its own valuable contribution “to assist persons in distress at sea and to deliver survivors to a place of safety related duties under the coordination of the competent RCC”. Many of the recent sightings of migrants in the Libyan SSR have been provided by aerial assets of EUNAVFOR MED and were notified directly to the Libyan RCC responsible for its own region.

The Commission has repeatedly recalled that the European Union’s actions on saving lives at sea has been resolute and will continue to be so. Providing assistance to persons and vessels in distress at sea is an obligation under international law binding upon the EU and its Member States. Early detection of such vessels and timely transmission of the relevant

1 SAR Convention, paragraph 4.3 “Any search and rescue and receiving information of a distress incident shall initially be handled in immediate actions if in the position to assist and shall, in any case without delay, notify the rescue coordination centre or rescue co-ordination sub-centre in whose area the incident has occurred.”

information to the responsible RCC are of paramount importance for saving the life of people on board.

Yours sincerely,

(e-signed)

Paraskevi Michou