



# CUT ADrift IN THE MEDITERRANEAN

Cover photo: A crew member from Migrant Offshore Aid Station (MOAS) reaches out to pull a man into a rescue craft, May 2018  
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## **INTRODUCTION**

At the start of 2019 it took European governments nearly three weeks to decide what to do with 49 people - including children – rescued at sea. They left them stranded and tossed about in the waves for 19 days. This is not the first time this has happened, and it is unlikely to be the last.

Also in early January 2019, Spanish authorities forbade NGO Proactiva Open Arms from carrying out its life-saving activities in the central Mediterranean.

So what is going on with migration in the central Mediterranean? And what is Europe doing about it?

## **HOW DOES SEARCH AND RESCUE WORK IN THE CENTRAL MED?**

Under international law, people in distress at sea must be promptly rescued and taken to a place of safety, meaning a country where they are treated humanely and offered a genuine opportunity to seek asylum.

Until recently, that meant anyone rescued in the central Mediterranean en route from Libya was taken to Europe, as returning them to Libya would condemn them to the risk of arbitrary detention and torture.

This presented European governments with a dilemma: they were keen to block migration across the central Mediterranean, as they don't want people coming to Europe, but they couldn't return people to Libya without breaching the law.

So, they invented a work-around: they started supporting the Libyan Coast Guard to intercept people at sea and return them to Libya. To enable this arrangement, European governments have assisted the Libyan Coast Guard in many ways, including by donating boats, training crews, helping with planning and coordination, and – crucially – doing all the legwork towards the declaration of a Libyan 'search and rescue region' in the central Mediterranean.

So how does this work in practice? The answer is, it doesn't, as we saw during the Sea-Watch and Sea-Eye standstill and the blocking of Proactiva Open Arms' operations.

## **THE SEA-WATCH AND SEA-EYE STANDSTILL**

### **21 DECEMBER 2018**

Thirty-two people cram into a dinghy on the shores of Libya, among them four women, four teenagers travelling alone, two six-year old children and a baby, and travel towards Europe.

**22 DECEMBER 2018**

The humanitarian rescue ship Sea-Watch 3 saves them from the sea, in international waters within the Libyan search and rescue region. They approach the maritime authorities of Italy and Malta, who tell them to contact Libya. Libyan authorities do not respond to communications. They also approach the Dutch authorities, as the rescue vessel sails under a Dutch flag, but they tell them that finding a place of safety is the responsibility of the ship's captain. Failing to receive any instruction on the country in which to disembark, the rescue ship heads towards the nearest place of safety, which would be in Malta or Italy.

**28 DECEMBER 2018**

Maltese authorities again refuse permission for Sea-Watch 3 to dock in Malta and instruct it to leave the Maltese search and rescue region, according to Sea-Watch.

**29 DECEMBER 2018**

Another rescue ship, Professor Albrecht Penck, operated by German charity Sea-Eye, pulls 17 people from the sea. Having notified Libyan authorities, they refuse to comply with their instructions not to proceed with the rescue, since waiting would endanger the lives of people in distress at sea. They approach the Italian Coast Guard, which directs them to contact Libya and Germany, as the rescue has taken place in the Libyan search and rescue region and the rescue ship has a German flag.

According to the crew, a Libyan Coast Guard patrol boat approaches and tells them to hand over the people onboard, while the German authorities say they should follow Libya's instructions. The crew refuses to do so as it would be unlawful – under international law – to return people to Libya. The ship heads towards Europe, but governments refuse entry.

**31 DECEMBER 2018**

As the weather starts to deteriorate, so does the condition of the rescued people, already malnourished and weak from their journeys. Rescue ships are not designed to cater for their needs for long periods of time.

**2 JANUARY 2019**

Amid stormy weather, Malta allows the ships to approach its coast for some protection from the elements. Meanwhile, some European governments start pledging to receive a few of those rescued, once they enter Europe via Italian or Maltese ports. However, Italy refuses to accept them, while the Maltese government conditions its cooperation on the willingness of other European countries to take

the group as well as some of the 249 people previously rescued by Maltese authorities in a separate operation.

### **8 JANUARY 2019**

Spanish maritime authorities deny rescue ship Open Arms, operated by Spanish NGO Proactiva Open Arms, authorization to leave the port of Barcelona to carry out monitoring operations in the central Mediterranean.

### **9 JANUARY 2019**

After 19 days stranded at sea a deal is finally brokered and people rescued by the Sea-Watch 3 and Professor Albrecht Penck are allowed to disembark in Malta, ahead of their transfer to eight countries that have offered assistance.

## **WE HAVE IDENTIFIED THE PROBLEMS THAT NEED ADDRESSING**

### **THE DUBLIN SYSTEM**

Over the years, there have been many instances of boats carrying refugees and migrants in the Mediterranean left unattended for hours, days or even weeks. These delays have contributed to deaths at sea, as in the case of the “left to die” boat in 2011 and the “children shipwreck” in 2013.

Following such major incidents, EU countries undertook naval operations that saved thousands of lives. But in recent years, in order to reduce the number of people reaching Europe, EU member states have increasingly withdrawn from such engagement, leaving the central Mediterranean once again unattended.

To fill this gap and address the high number of fatalities recorded in the central Mediterranean, a number of NGOs have put ships in the water to rescue people – fully in line with international maritime law. However, now NGO rescue ships are also being abandoned at sea as they are refused permission to dock in Europe, particularly in Italy and Malta, once they have rescued people. So why are southern European governments so cautious about letting people disembark in their country?

A major reason is the Dublin system, under which the first country the asylum-seeker enters is usually responsible for examining their asylum claim, hosting them during the process, integrating the successful applicant and returning those who are refused protection to their countries. This has

significant implications for frontline states, which – in the absence of intra-European solidarity mechanisms to share these responsibilities – have increasingly chosen to bar asylum-seekers from accessing their country, even when this means exposing them to fatal risks and breaching international obligations.

By failing frontline EU states in this way, the system also fails asylum-seekers, who are left abandoned at sea, languishing in EU countries with inefficient or overburdened asylum procedures, or unable to be reunited with relatives already in another European country.

Unfortunately, proposals to reform the Dublin system, or at least set up a swift and reliable disembarkation procedure and a fair system to distribute asylum-seekers among EU countries, have so far been paralyzed by some European governments.

## THE DEAL WITH LIBYA

In recent years, Italy and other European governments have increasingly kept refugees and migrants away from Europe by outsourcing border control to Libyan authorities, in particular by enabling the Libyan Coast Guard to intercept people in distress at sea and return them to Libya.

The fact that women, men and children returned to Libya are arbitrarily detained, tortured, raped and exploited seems to be of little consequence to European leaders.

A key part of this strategy was the declaration of a Libyan search and rescue region in the central Mediterranean in June 2018 – which meant handing over to the Libyan authorities the responsibility for coordinating rescue operations within the area where most shipwrecks happen and for instructing rescue vessels on where to disembark people. But Libya does not have the capacity to coordinate rescues, and people rescued at sea cannot lawfully be taken to Libya.

Now, if any ship rescues people in the Libyan search and rescue region, European governments still can't say, "take them to Libya" – as this would be illegal - but they can say, "that's Libya's search and rescue region so you'll have to ask them what to do". The ship's captain though remains bound by international law not to take them back to Libya.

So a ludicrous, "catch 22" situation arises in which people rescued at sea cannot be taken to either Libya or Europe and are thus stranded at sea.

The most insidious consequence of this state of affairs is that captains of ships, especially commercial ones, are inevitably discouraged from upholding their obligation to rescue people in peril at sea for fear of being left stranded for days on end without a port in which to disembark.

To exacerbate matters, as NGO rescue ships are disrupting Europe's outsourcing strategy, some governments are preventing them from conducting their life-saving activities through unfounded criminal investigations and bureaucratic obstacles.

In the latest example, on 8 January 2019, Spanish maritime authorities issued an administrative order preventing Proactiva's ship Open Arms from rescuing people in the central Mediterranean. In the order, the Spanish authorities acknowledge the failures of the system, highlighting how Mediterranean states reacted to recent rescues in ways that breached international maritime law and standards, but make rescuers and asylum-seekers pay the price for that failure.

By setting up this arrangement and pushing NGOs out of Libya's search and rescue region, European leaders have created a legal fiction, using smoke and mirrors to claim they have no responsibility for people in peril at sea. This is not a solution.

## **DISTORTING THE DEBATE ON MIGRATION FOR POLITICAL GAIN**

The number of irregular border crossings at Europe's external borders fell in 2018 to the lowest level in five years, according to the European border agency Frontex. Yet some people believe there is an ongoing migration "crisis" in the Mediterranean.

Only around 114,000 refugees and migrants crossed the Mediterranean in 2018, mostly reaching Spain (58,569), Greece (32,497) and Italy (23,370).

When you consider that more than 500 million people live in the EU and compare it to the numbers of people moving within Africa and Asia, it is far from the 'wave' of people some would have us believe.

While recent policies, particularly by Italy, have led to a resurgence of so-called 'ghost boats' reaching Italy undetected, and have increased the likelihood of shipwrecks or pullback operations to Libya remaining unregistered, there is no doubt that the number of sea crossings has plummeted, particularly as a result of outsourcing border control to Libya in 2017.

Despite these facts, some governments keep insisting that Europe is facing a "crisis" and that migrants and refugees are a threat to Europe, as are civilians who assist them, including by saving them at sea.

Fostering division and fuelling hate against foreigners, seizing on the visible spectacle of sea rescues - despite the fact that most people migrate via land and air - and blaming the EU for everything even when national governments are creating the problems, is a strategy employed by politicians more interested in getting votes than in solving problems. Men, women and children left suffering at sea are merely pawns in this political game.

## WHAT IS THE SOLUTION?

To address such a complex situation, European governments must work together on a joint solution that works for all states and that, crucially, works for people.

If they want fewer people to make irregular journeys to Europe, they need to offer safe and legal opportunities to come and seek asylum, look for employment, or reunite with relatives. This does not mean removing border controls, but rather expanding safe and regular pathways and improving migration governance.

Of course, some people will still make sea crossings in flimsy boats, so Europe must have a mechanism to respond. This involves having enough rescue vessels, but also setting up a swift and reliable disembarkation mechanism in line with international law, and a fair system to share responsibility for asylum-seekers among EU countries.

As European governments engage with Libyan authorities to help stabilize the country, emphasis should be geared towards promoting the protection of rights, including those of refugees and migrants. European support and assistance in Libya should help end the reliance on detention, ensure the prompt release of all those arbitrarily detained and guarantee that refugees can be resettled in a safe country.

## WE CAN DO BETTER

As the EU Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos said of the Sea-Watch/Sea-Eye debacle:

“This has not been Europe’s finest hour...The European Union is about human values and solidarity. And if human values and solidarity are not upheld, it is not Europe.”

It may seem as though this ‘other’ Europe he speaks of is already here. But human rights and solidarity are still supported by most Europeans and policies to block human movement at any cost are not supported as widely as their proponents suggest.

We need to cut through the rhetoric which demonises refugees and migrants, and those trying to help them, purely for political gain. Many Europeans believe in saving lives at sea, want a fairer asylum system and fairer governance of migration, and want to ensure the rights of people migrating to Europe are protected, not diminished.

There is no simple solution. But precisely because of the complexity of the situation, decision-makers must put scaremongering aside and work to adopt credible, effective, humane and realistic policies, which uphold - rather than erode - human rights.