

EU Policies In Balancing Border Control And Libyan Migrants Protection Under Humanitarian Law

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Abstract: The rights guaranteed by the European Convention are objective in nature, due to the fact that they cannot be called into question by subsequent agreements between states, just as the obligations of states are objective, established not in relation to other states, but in relation to individuals. This objectivity of the legal order based on the European Convention is reflected both in the absence of the principle of reciprocity, otherwise common in interstate relations, and in the recognition of its direct effect and supremacy, as well as the right to individual petition. Accordingly, the European Court itself sees the European Convention as a “constitutional instrument of European public order”.

Key words: Convention. Agreements, obligation. States.

Introduction

This profiling of European human rights law, thanks primarily to the activism of the European Court of Human Rights, as the highest judicial instance, is also confirmed by its various methods of implementing the European Convention. These include the binding force of precedent, autonomous concepts and other specific techniques of interpreting the European Convention, which have redefined the concept of legal remedies and the concept of access to human rights protection.

From a formal point of view, European human rights law is indisputably classified as a body of international law. Its basic source, the European Convention, is an international legal treaty of a regional nature, and its high parties are the states that signed and subsequently ratified it in 1950.¹

EU System of protection

The original system of protection, in which the European Commission of Human Rights and the European Court of Human Rights were the bodies deciding on violations of human rights and fundamental freedoms, was replaced in 1998, with the entry of Protocol No. 11 to the European Convention, by a system in which the Court is the sole decision-making body, with mandatory jurisdiction. The Committee of Ministers of the member states of the Council of Europe, established by the Statute of the Council of Europe, is responsible for the execution of the judgments of the European Court.

¹ The Convention provides that it is open for signature by the members of the Council of Europe, for ratification and for ratifications to be deposited with the Secretary General of the Council of Europe (Art. 59, paragraph 1). In accordance with its international legal origin, the Convention itself also provides for the possibility of denunciation by the High Contracting Parties (Art. 58).

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The changed international environment required a united Europe to take clearer positions on certain issues that were taking precedence in international relations, but also to deal with the newly emerging security environment ² in which it found itself, as well as to find adequate responses to some of the new security challenges and problems.

Migration and asylum seeking policy

A single asylum system must be accompanied by a clear legal migration policy, so that economic migrants seeking to enter the EU legally are not tempted to try to do so through asylum. Providing fair legal ways for people to enter the European Union will help to put an end to illegal immigration and human trafficking.

Combating illegal immigration also means strengthening the EU's external borders. These borders are managed by different national authorities, including border police and customs officers - several pilot programmes have been launched to improve cooperation between them. Countries with particularly long land or water borders can receive special assistance from the EU.³

With the enlargement of the EU, the new member states will become responsible for controlling a large area within the EU's external borders. Several new members have already received EU funding to bring the quality of their experts, equipment and procedures up to European (EU) standards. Once this is achieved, border controls between them and the rest of the EU will be removed and the Schengen free zone will be expanded.

The European Pact on Immigration and Asylum ⁴ (adopted in October 2008) and the Stockholm Programme ⁵ (adopted in December 2009), which define the political priorities of the European Union in the area of justice, freedom and security for the period 2010 to 2014, are two important documents of the European Union in which the idea of a Common European Asylum System is further developed.

Another important strategic document of the European Union in the field of asylum policy is the Charter of Fundamental Rights of the EU ⁶, which became a legally binding document for all EU institutions and Member States with the entry into force of the Treaty of Lisbon. Article 18 of the aforementioned document confirms that the right to asylum is guaranteed in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, as well as in accordance with the provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union.

The Mediterranean Sea, once celebrated as the cradle of civilization, has transformed into a graveyard for those seeking refuge from persecution, conflict, and destitution. The European Union's approach to managing migration flows from Libya reveals a profound contradiction between its stated commitment to human rights and the brutal reality of its externalization policies. This paper examines how EU border control measures, while achieving statistical reductions in irregular crossings, systematically undermine fundamental principles of international humanitarian law and perpetuate cycles of violence against the world's most vulnerable populations.

The Architecture of Containment: EU-Libya Cooperation Framework

The foundation of European migration control in Libya rests upon a complex web of agreements, funding mechanisms, and operational partnerships that prioritize deterrence over human dignity. The 2017 Italy-Libya Memorandum of Understanding

² The opening of borders to Central and Eastern European countries after the fall of the Berlin Wall, the issue of asylum, immigration and visas, the fight against organized crime, corruption, and human organ trafficking are just some of the issues the EU faced at the time.

³ http://europa.rs/upload/documents/publications/Freedom_-_Sloboda%2C_sigurnost_za_sve.pdf

⁴ <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>

⁵ http://www.pmlp.gov.lv/en/ES/PPD_Stockholm_program_EN.pdf

⁶ http://www.europarl.europa.eu/charter/pdf/text_en.pdf

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established the blueprint for what would become a comprehensive system of migrant containment, providing the so-called Libyan Coast Guard with patrol boats, training, and operational support.⁷ This cooperation framework has been reinforced through the EU Emergency Trust Fund for Africa, which allocated over €327.7 million between 2016 and 2027 specifically for border control activities in Libya and Tunisia.⁸

The EU Migration and Asylum Pact, adopted in May 2024, further institutionalized these deterrence-focused policies by making it harder to apply for asylum, increasing detention at borders, and allowing EU countries to suspend access to asylum in vaguely defined emergency situations.⁹ This legislative framework represents the culmination of nearly a decade of policies that have progressively weakened protections for asylum seekers while expanding the geographical reach of European border control far beyond EU territory.¹⁰

The statistics appear to validate this approach from a border security perspective. Mediterranean crossings dropped by 42% between 2023 and 2024, with Libyan Coast Guard interceptions increasing by 300% in 2024 alone, resulting in the return of over 23,000 migrants to Libyan detention centers.¹¹ However, these numbers mask a humanitarian catastrophe of unprecedented proportions, where the EU's pursuit of migration control has rendered it complicit in systematic human rights violations.

The EU is one of the largest provider of assistance in Libya. EU projects aim at strengthening civil society, human rights and free media, democratic governance, health services and COVID-19 response, entrepreneurship, youth empowerment, and gender equality. An important part of EU support to Libya goes to the protection and assistance of migrants, refugees and vulnerable groups, support to Libyan communities that host a particularly high number of migrants and actions for border management.

The EU immigration externalisation policy is implemented in Libya through various means. The most important are: a repressive migration policy,¹² border controls in the desert and at sea,¹³ police apprehensions of irregular migrants in Tripoli,¹⁴ and lastly, pre-expulsion detention for those arrested. Libya has tightened its immigration policy to meet its commitments to Europe,¹⁵ moving from a pan-African policy open to foreign citizens, towards a pan-European policy closed to the latter. Border controls on land and at sea are performed with the technical and material help of the EU.

The Erosion of Non-Refoulement

The principle of non-refoulement, enshrined in Article 33 of the 1951 Refugee Convention and considered a cornerstone of international refugee protection, has been systematically violated through EU-supported operations in Libya.¹⁶ The European Court of Human Rights established in the landmark case *Hirsi Jamaa and Others v. Italy* that returns to Libya constitute a violation of the European Convention on Human Rights, as Libya does not offer guarantees of treatment according to international standards for asylum seekers and refugees.¹⁷

⁷ SOS Humanity. End the EU's Externalisation Policy. Position Paper, 2024.

⁸ Ibid

⁹ Human Rights Watch. EU: Migration Policies Fuel Abuses Across Borders, 2025.

¹⁰ Amnesty International. EU: Migration and Asylum Pact reforms will put people at risk, 2024.

¹¹ European Council on Refugees and Exiles. EU External Partners: Libya and Tunisia Continue Crimes and Abuse, 2023.

¹² Planes---Boissac, V., André, M., Guillet, S. & Sammakia, N., 2010. Study on Migration and Asylum in Maghreb countries, s.l.: Euro---Mediterranean Human Rights Network.

¹³ Human Rights Watch, 2009. Pushed Back, Pushed Around. Italy's Forced Return of Boats Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers., s.l.: s.n.

¹⁴ Jesuit Refugee Service, 2009. Do they know? Asylum seekers testify to life in Libya, s.l.: s.n.

¹⁵ Global Detention Project, 2009. Libyan Detention Profile. [Online] Available at: <http://www.globaldetentionproject.org/countries/africa/libya/introduction.html>

¹⁶ Cambridge International Law Journal. Libya-EU Memorandum of Understanding: Implications for Non-Refoulement, 2017.

¹⁷ University of Padova Centre for Human Rights. The European Court of Human Rights condemns Italy, 2012.

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Despite this clear legal precedent, EU institutions have designed their cooperation with Libya specifically to circumvent direct responsibility while achieving the same prohibited outcome.¹⁸ Through capacity-building programs for the Libyan Coast Guard, the EU ensures that migrants are intercepted at sea and returned to Libya by non-European actors, creating what legal scholars term a "juridical fiction" that attempts to absolve European responsibility for subsequent human rights violations.¹⁹

The human impact of this policy is devastating. Of the 78% of asylum seekers intercepted by Libyan forces who face immediate detention without due process, many are subjected to conditions that international observers have classified as crimes against humanity.²⁰ Libya, which has not signed the 1951 Refugee Convention and offers no legal status for refugees, systematically exposes returned migrants to arbitrary detention, torture, forced labor, and sexual violence.²¹

The Frontex Factor: European Surveillance and Coordinated Returns

The European Border and Coast Guard Agency (Frontex) plays a crucial role in facilitating returns to Libya through its surveillance operations in the Mediterranean. Despite publicly refusing to conduct direct returns to Libya due to human rights concerns, Frontex continues to provide intelligence to Libyan authorities about migrant boat locations.²² This information enables the Libyan Coast Guard to intercept vessels and return their occupants to detention centers where systematic abuse occurs.

Internal documents revealed by journalists show that Frontex leadership was aware of the legal and moral implications of this cooperation as early as 2019, with former Director Fabrice Leggeri warning that information sharing with Libyan authorities could result in political questions about the lawfulness of EU operations.²³ Despite these concerns, the surveillance programs continue, with the EU signing a €100 million deal with Airbus and Israel Aerospace Industries in 2021 to operate surveillance drones over the Central Mediterranean.²⁴

The involvement of European agencies extends beyond passive intelligence sharing. The EU has provided Libya with a command center costing €858,221 to more effectively monitor and coordinate migrant interceptions.²⁵ European funds have also been used to repair and maintain Libyan Coast Guard vessels, with tens of millions invested since 2016 in ensuring the operational capacity of forces that routinely commit human rights violations.²⁶

Conclusion

In avoiding its human rights responsibilities by transferring the repressive aspect of its immigration policy to Libya, the EU has set the conditions for one of the most damaging detention systems in the world, whose main features—including inhumane living conditions, daily violence and cruel treatment amounting to torture, all in a context of arbitrary detention—impact in a dramatic way on the health of detained migrants.

The cruel, inhuman and degrading treatment in Libyan detention centers violate international law. EU institutions are aware of the mistreatment and inhumane detention conditions in Libya for those intercepted. The EU provides support intended to ameliorate these conditions in detention. However, even though that support has had minimal impact on the situation, the EU continues to pursue a flawed strategy to empower Libyan Coast Guards to intercept migrants and asylum seekers and take them

¹⁸ Avocats Sans Frontières. EU: Time to review and remedy cooperation policies facilitating abuse, 2022.

¹⁹ European Centre for Constitutional and Human Rights. Situation in Libya – Commission of Crimes Against Migrants, 2024.

²⁰ European Council on Refugees and Exiles. EU External Partners: Libya and Tunisia Continue Crimes and Abuse, 2023.

²¹ Refugee Law Initiative. The role of Courts in the era of EU externalization policies, 2024.

²² Libya Review. Frontex Refuses Migrant Returns to Libya Over Human Rights Concerns, 2025.

²³ Avocats Sans Frontières. EU: Time to review and remedy cooperation policies facilitating abuse, 2022.

²⁴ The Outlaw Ocean Project. Is the EU Funding a 'War on Migration'?, 2022.

²⁵ Ibid

²⁶ Ibid

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back to Libya. Where the EU, Italy and other governments have knowingly contributed significantly to the abuses of detainees, they have been complicit in those abuses.

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