

The Eclipse of Europe: Italy, Libya, and the Surveillance of Borders

Written by Fulvio Vassallo Paleologo

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FULVIO VASSALLO PALEOLOGO, MAR 30 2014

Bilateral Agreements between Italy and Libya: Security without Human Rights

Not much has been said about the Ministerial Conference held in Rome on the 6th of March 2014, where foreign ministers, high-level delegations from Libya, and representatives from international organisations gathered to discuss the current situation of Libya. At the forefront of the conference were the economic ties between Libya and its partners, the disarmament of paramilitary groups necessary to defend those ties, the patrolling of borders, and the subsequent issue of illegal migration. These last two points come as no surprise, given that Libya is among the signatories of the UN Convention against Transnational Organized Crime (CTOC) protocol to prevent human trafficking. Yet not even a word was spent on the life-straining conditions of Libyan migrants who – despite coming from countries such as Syria, Eritrea, Somalia, Togo, and Mali – are not regarded as potential asylum-seekers, but rather considered “illegal” and “unwanted” people, as they were under the Gaddafi regime.

In this context, methods of implementing the CTOC protocol by Libya and its partners have sparked some controversies, including the European Court of Human Rights’ (ECHR) condemnation of Italy for the rendition of hundreds of sub-Saharan migrants to Libyan authorities without due assessment of their needs for international protection. While this practice was against human rights laws, it was in line with Italy-Libya bilateral agreements on human trafficking. Following the ECHR sentence against Italy on the 23^d of February 2012 in *Hirsi Jamaa and Others v. Italy*, Italy has formally stopped its push-back policies, but has continued its collaboration with Libyan authorities – providing them with guard ships, training, and logistics – in a process that externalises Italy’s border controls and leaves respect of migrants’ rights at the discretion of Libya, which has no formal agreement with the UN High Commissioner for Refugees.

In the absence of new bilateral agreements between Italy and Libya, in May 2013, “practical cooperation” for border control was reactivated with the blessing and funds of the EU in the EU Border Assistance Mission in Libya (EUBAM Libya). As reported by the Libya Herald, “The mission mentors, trains and advises Libyans working in various areas of border security on ways to strengthen Libya’s land, sea and air borders.” Initiated at the request of the Libyan government during the G8 Compact, EUBAM Libya involves training 500 Libyan military personnel who, after the first stage of training *in situ*, are sent to Italy for the last stage. The selection process for the Libyan personnel is coordinated by 15 members of the Italian military. While officially funded by the EU, the project fits within the bilateral cooperation agreement on defence between Italy and Libya, as spelled out in the Memorandum of Understanding signed in Rome on the 28th of May 2012. The same Italian personnel involved in the EU project is also part of the Italian Military Mission in Libya, launched in October 2013 as a follow-up to the “Cyrene Mission” of organising, coordinating, and leading the training and support of Libya’s defence.

In October 2013, while the Italian and international press focused on the shipwreck of hundreds of Libyan migrants near Lampedusa, the Italian government was ratifying its military presence in, and cooperation with, Libya, a country with a low human-rights record and where migrants are illegally detained, abused, and trafficked, as testimonies from Kufra report. Despite the large number of appeals to protect migrants traveling through the Mediterranean Sea, following the tragedies in Lampedusa and Malta, externalisation of EU border control in the name of security and the

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economic interests underlying defence agreements has taken precedence over concern for human lives.

The “practical cooperation” between Italy and Libya is nothing new and, in many ways, has supplied for the absence of multilateral agreements between the EU and Libya that have been attempted several times, but have failed because of Libya’s political instability and humanitarian crisis. By “practical cooperation,” I refer here to the fact that, rather than ratifying agreements through Parliament, Italy has opted for pacts of understanding, such as the protocols signed in Tripoli in December 2007 that set forth a mutual chain of command for defence, and the treaty of friendship signed in 2008 between Berlusconi and Gaddafi.

With regard to Libyan migration, Italy’s “practical cooperation” was particularly necessary, given the difficulty in establishing formal agreements on migration with a country that has not signed the UN Convention relating to the Status of Refugees (CRSR). Implementation of cooperation on migration has thus been assigned to the local police forces of the two countries, under the supervision of the respective Ministries of Interior, often leaving open the possibility of forced repatriation and refoulement, the latter of which is forbidden under Article 33 of the CRSR. This was the case in October 2004, when collective repatriations from Lampedusa to Libya occurred, and when, in 2005, several deportation operations from Libya to other countries were carried out with the funding of the Italian government.

Frontex and EUBAM: New Development in Italo-Libyan Border Control Politics

Since 2004, collaboration between the EU and Libya on the Mediterranean Sea has changed several times, depending on governmental shifts in Europe and the internal situation in Libya that led to the execution of Gaddafi. It was this moment, in particular, which marked the beginning of severe uncertainty in the relationship between Europe and Libya, as it resulted in the dismantlement of a central authority and the subsequent formation of a power vacuum in some areas of Libya. In these areas, neither police force nor rule of law exist, and migrants must face arbitrary detentions and hasty legal processes, let alone frequent accusations of being mercenaries or Gaddafi supporters. Although the situation in Libya was widely known and denounced by several human rights organisations – such as Human Rights Watch, Amnesty International, and Pro Asyl – the EU has authorized EUBAM Libya to assist Libyan police force and authorities in their border control practices. With €30 million earmarked for its first year, the mission’s primary aim is to supply border management strategies to Libya in order to face the mounting issue of “illegal” migration, both in Libya and in Mediterranean EU states.

Moreover, as EUobserver reports, Frontex, the EU border management agency, is also planning “concrete activities in Libya under EUBAM’s flag.” Surely, at the beginning these activities will be very limited in scope, given that EUBAM personnel is currently confined to the Corinthia Hotel in Tripoli and is under protection of the French private security company ARGUS. However, in the long term, the EUBAM-Frontex synergy is intended to provide a full-scale patrol of Libyan borders to stop the influx migrants, most of whom are asylum-seekers, into Europe. In the meantime, though, while waiting to achieve some stability in the country, operations will be limited to military training, which currently does not favour the protection of asylum-seekers’ rights. Such military training only worsens migrants’ transit to Europe, as well as their human rights recognition, because implementation of border strategies is completely left to Libyan authorities. Moreover, security missions on the ground are often assigned to private security companies – such the English Aegis and the Canadian GardaWorld – which are allocated a fifth of the EUBAM Libya budget, thus externalising and privatising EUBAM’s monitoring activities, and limiting its role to training and the compiling of security reports that are sent to EU headquarters.

Towards the Somalisation of Libya?

Just before his kidnapping, Libyan Prime Minister Ali Zeidan announced that 1,600 policemen from Turkey, Italy, and the UK were being sent to Libya to train local forces and improve the country’s security. The US, Bulgaria, and even NATO are planning to send troops to Libya, fearing that terrorist groups might take control of some regions of the country, as has happened in the northern part of Mali. This, in particular, was a topic at the forefront of the International Conference on Libya held in Rome on the 6th of March 2014. The dismissal of Zeidan by the General National Congress – due to his perceived inability to manage the seizure of three ports in the east of the country by

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Cyrenaican rebel autonomist militias and their selling of oil tanks to North Korea-flagged ships – has drawn attention to the fact that the country is actually divided in three parts: eastern Cyrenaica, southern Fezzan, and western Tripolitania.

The perspective of the “Somalisation” of Libya – a vast country, population-dense, oil-rich, and that supplies energy to Europe – raises several concerns, among them the ability of multilateral institutions to manage migration. So far, multilateral policies have proven limited, as the tragedies in Lampedusa and Malta have shown. The economic crisis in Europe has contributed to a process of institutional forgetting, and the sensationalisation of events by the media has certainly not fostered the formation of a critical public opinion. Several proposals to tackle the issue have been rejected, such as the plan for humanitarian admission put forward by Luigi Manconi, President of the Human Rights Commission of the Italian Senate, or the visa request to European embassies in northern Africa proposed by Christopher Hein, director of the Italian Council for Refugees.

Moreover, it is important to note that the EU lacks a common foreign policy to tackle immigration. Thus, national foreign policies fill this gap, as highlighted in the University of Malta’s report “Migration in the Central Mediterranean.” According to the report, the EU states most affected by migration influxes deal with the issue as a matter of transnational terrorism. A parallel technocratic diplomacy often takes precedence over democratic European Parliamentary (EP) decisions, with the European Commission (EC) and Council being elevated above the EP in matters of migration, creating internal conflicts. This happened in 2012, when the EP brought the Council to the Court of Justice of the EU, following the Council’s decision to supplement the Schengen Borders Code with surveillance of sea external borders by Frontex (Case C-355/10). The same might happen if the EC takes over for the EP in directing the operations of EUBAM and Frontex. Given this, it is of paramount importance that the network of NGOs and humanitarian associations across Europe put forward not only their humanitarian support, but also political initiatives at the local level. This importance increases when faced with mounting security concerns that come at the expense of human rights and the rights of migrants, as set forth in both national constitutions and international law.

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