

# How Europe's Border Agency Works With Libya to Turn Back Migrants

Around 5 p.m. on Feb. 4, roughly 70 miles north of Libya, a white reconnaissance plane with a camera on its underside circled a raft that was carrying over a hundred desperate migrants trying to cross the Mediterranean Sea to reach Europe. The surveillance footage from the airplane's camera was transmitted live to an office in Warsaw, Poland, at the headquarters of Frontex, which is the European Union's border patrol agency.

Two hours later, thanks to this surveillance footage, a Libyan Coast Guard cutter caught up with the migrants and ordered them to stop even though they were well outside of Libyan waters. The armed officers then took the migrants on board, beat them savagely, and carried them back to the one place they did not want to go: Libya's gulag of detention centers.

Efficient and brutal, the at-sea capture and onland internment of these migrants is what European Union officials hail as part of a successful partnership with Libya in their "humanitarian rescue" efforts across the Mediterranean. For many, though, the true intent of this joint campaign, however, is less to save migrants from drowning than to stop them from reaching European shores.

Since the migrant crisis started in 2015 and hundreds of thousands of people began crossing the Mediterranean Sea, European officials have relied heavily on the Libyans to stem the flow. Not only did the EU equip and train the Libyan Coast Guard, it also lobbied the United Nations' maritime organization to recognize an enlarged search-and-rescue zone so that the Libyans could have wider reach off their coast. The result of this collaboration has been a precipitous drop in the number of people reaching Europe via the Central Mediterranean route: Around 20,000 migrants arrived in the first six months of this year, down from 70,000 during the same period in 2016. Without the support of aerial reconnaissance from Frontex, the Libyan Coast Guard would in effect be searching with its eyes closed.

Frontex has long denied direct cooperation with Libya, a failed state largely run

by militias. It has insisted its sole aim is to save lives, and it has said that it only directly alerts Libyan authorities of migrant boats in a true emergency.

A spokesperson for Frontex told me that the agency “International law obliges all vessels to provide assistance to any persons found in distress...[Frontex] has never engaged in any direct cooperation with Libyan authorities.”

But a mounting body of evidence shows otherwise.

Last year, for instance, Lighthouse Reports, a watchdog organization in Europe, documented 20 instances in which Frontex aircraft were in the vicinity of migrant boats later captured by the Libyan Coast Guard. In a dozen of those cases, Lighthouse determined, Frontex was the first to identify the boats, meaning that under international law, it was obliged to notify not just the Libyan Coast Guard, but the nearest vessel — government or commercial — so that a rescue might be promptly undertaken.

“There is a clear pattern discernible,” Lighthouse researchers asserted. “Boats in distress are spotted, communications take place between European actors and the Libyan Coast Guard. No notice is given to nearby commercial shipping or NGO vessels despite its proximity to urgent situations where boats are in distress on the open sea.” While the real numbers could be far higher, this representative sample showed that Frontex was present and watching while at least 91 people went missing and are presumed to have drowned.”

That same year, the Guardian, in collaboration with Lighthouse, published the actual recorded exchanges between a European surveillance plane and the Libyan Coast Guard as the Libyans sought to intercept two migrant boats. “OK sir, my radar is not good, is not good, if you stay [over the boat] I will follow you,” a Libyan Coast Guard captain radioed the plane. “We have approximately five minutes left on station,” said the plane’s pilot, as he tried to guide the Coast Guard to the migrant vessels. “We will go overhead the vessel, the rubber boat, and we will light our landing lights.”

Hussein Baoumi, Amnesty International’s Libya researcher, said he was not surprised by Frontex’s continuing denial of a formal relationship with the Libyan Coast Guard. “They want to separate themselves from the dirtiest aspects of migrant containment,” Baoumi said. “It doesn’t matter. They are cooperating. They are directly complicit.”

The E.U. has also denied directly funding the gulag of migrant prisons in Libya, and has consistently both conceded their barbarity and called for improvements. But it has resisted calls to date to end its work with Libya and take steps to rescue those caught up in the country's migrant jails.

But if the E.U. does not pay to build the detention centers or staff their guards, European money does pay for virtually everything else in the inhumane system where migrants are routinely tortured, raped, unlawfully held and sometimes murdered. Through Frontex drones and planes, the E.U. is first responsible for spotting the rafts and, via Italian and Maltese authorities, handing this intelligence over to Libya. Then E.U.-purchased boats operated by the Libyan Coast Guard capture the migrants and bring them back to shore.

An investigation by The Outlaw Ocean Project, a non-profit news organization in Washington DC, found that funds from the EU and member states, sometimes routed through aid organizations, pays for most of what happens next. These monies bought the shipping containers that double as port offices for the Libyan Coast Guard staff, and the touch-screen tablets used by aid workers who count the migrants as they disembark in Tripoli. This money pays for many of the buses used to transport the migrants from port to the detention centers, and the blankets, winter clothes, and slippers they often receive upon arrival. The bathrooms at some of the detention centers as well as the showers, toilets, soap, hygiene kits, toilet paper were bought with E.U. money. The same goes for the mattresses where the detained migrants sleep. E.U. money paid for the SUVs used by Libyan migration authorities to look for migrants if they escape detention or as they enter Libya in the south through the Saharan desert. When migrants in detention get sick, often the ambulances that take them to the hospital have been purchased by the E.U. And when migrants die — washing ashore or in detention — EU money often pays for the body bags and to train Libyan personnel how to handle the corpses in a religiously respectful fashion.

Much of this funding is well-intentioned, even life-saving. But it is beyond denial that the E.U. and its member states financially sustain the system in Libya by which thousands of migrants are being captured and held in ghastly conditions.

And since Frontex is the tip of the spear, more attention is being paid to the role it plays and the legality of its involvement.

A recent investigation carried out by the European Parliament produced a litany of allegations against the agency — that it turned a blind eye to human rights violations committed by coast guard personnel from both European countries and partner countries in Africa; that its own internal system for receiving and acting on complaints of misconduct was itself a failure; and that the agency's head, Fabrice Leggeri, had failed to act on four years of warnings made by his agency's own top human rights official.

In an interview with The Outlaw Ocean Project in late October, a senior Frontex official said Leggeri had engaged in a calculated and disingenuous game for years — insisting “evidence” of misconduct by E.U. border agencies were produced before he would act, all while failing to ensure that complaints of such potential abuse were aggressively investigated.

The senior official said they were no longer confident Frontex was meeting its most essential obligation: making sure the rights of some of the world's most vulnerable people were respected. The official said the angry and volatile emotions in Europe concerning the question of migration enforcement had eroded Frontex's complete independence.

“The influence of politics is a problem when you are handling the question of fundamental human rights,” the official said. Even if its participation in returning migrants to Libya is indirect, Frontex may be violating E.U. law.”

“No interest,” the official said of Leggeri and his other most senior aides. “It didn't matter what you told them. They didn't want to understand.” Leggeri denied repeated requests for an interview.

This year, two landmark cases are being brought by migrants against Frontex before the Court of Justice of the European Union, the E.U.'s chief judicial authority. The first case, filed in May, claims that Frontex has long been operating in violation of its obligations to report and halt criminal abuse of migrants seeking asylum in Europe. The case alleges that two migrants - a 17-year-old Congolese boy named Jeancy Kimbenga and a woman from Burundi who asked to remain anonymous - were part of a group of 13 that was rounded up by Greek authorities after arriving on the Greek island of Lesbos. They say they were forcibly transferred to a Coast Guard vessel, and brought back out to sea before being abandoned on a lifeboat, eventually ending up back in Turkey.

The allegations in the second case, filed in October, are arguably even more damning for Frontex. The case alleges that a Syrian family, with four young children between the ages of 1 and 7, were deported from Greece in 2016 without being given access to an asylum procedure, and were returned to Turkey on a flight arranged by Frontex, with the four young children separated from their parents while Frontex staff looked on. The family was detained on landing in Turkey, and now lives in northern Iraq.

The cases mark the first time Frontex has been brought before the Court of Justice of the European Union.

Human Rights Watch in a report published last summer issued a sweeping indictment of Frontex's performance, its organizational culture and its leadership. "Frontex has repeatedly failed to take effective action when allegations of human rights violations are brought to its attention," said Eva Cossé, Western Europe researcher at Human Rights Watch. "Its rapid growth into an executive agency of the EU, with increased powers, funding, and legal responsibilities makes it all the more urgent for Frontex to put in place effective tools to safeguard fundamental rights."

Created in 2004, Frontex now has a budget of more than half a billion Euros and it employs more than 1,400 staff members, including a uniformed force of roughly 600 officers. The agency is governed by a management board consisting of representatives of the 25 E.U. member States and two members of the European Commission. In theory, there are a range of mechanisms by which Frontex could be held accountable, but it has rarely, if ever faced any genuine sanction. Obtaining basic information from the agency, even for a member of the European Parliament, is difficult. "We really have problems with the lack of transparency," said Tineke Strik, a Dutch member of the European Parliament.

In an analysis of the history of Frontex's work, Human Rights Watch noted that under its own bylaws, the agency has a duty to suspend or end its operations in countries found to have committed serious abuses. In its entire history, Human Rights Watch said, the agency has only done so once, in Hungary, after a European court ruling.

Leggeri, Frontex's executive director, has faced calls for his resignation repeatedly in recent months. Protesters gathered outside Frontex's offices in

Brussels recently calling for the abolishment of the agency altogether. In a letter to his staff, Leggeri, who worked on migration enforcement as a member of the French interior ministry, called the protests a “hate campaign,” and vowed legal action.

In June, Human Rights Watch sent the agency’s top officials what it said was evidence of serious misconduct either committed or overlooked by Frontex in three European countries. It has yet to get a response. The organization accused Frontex of a cynical semantic game in avoiding responsibility for abuses taking place in both the Mediterranean and Aegean Seas.

“Over the years, Frontex has relied on its coordinating role and lack of executive authority to evade human rights responsibility,” Human Rights Watch wrote. “In December 2020 Frontex Executive Director Fabrice Leggeri told the European Parliament there was no evidence of Frontex’s involvement in abuses in the Aegean and that only member states had the authority to make operational decisions, implying that Frontex could not be held responsible.”

Frontex, under pressure, ordered an internal review of its operations. Its own investigators offered a withering critique of the agency’s systems for reporting problems in its ranks. The investigators said the agency needed to acknowledge its failures, and recommended what amounted to an overhaul of the agency’s culture concerning its responsibilities for identifying and acting on concerns about human rights violations. It suggested that Frontex take care to video record the enforcement work being done by E.U. member states and preserve them for investigation.

In June, a migrants rights organization that had for years been part of an independent board of advisers to Frontex, withdrew from the group. Saying it felt ignored and marginalized, the organization, the Platform for International Cooperation on Undocumented Migrants, said it had grown uncertain of Frontex’s role in “a civil society.”

On yet another front, in January, the European Anti-Fraud Office opened an investigation into Frontex, with media reports claiming it was looking at allegations of fraud, cases of illegal treatment of migrants pushbacks, and issues of workplace harassment, but the specific allegations have not been made public. Both Frontex and the European Anti-Fraud Office confirmed an investigation was

taking place, but did not offer further details. “[They] are operating very carefully,” said Strik. “But I spoke to them in August and they hope to finish within a few months.”

Frontex’s work with Libya, of course, is part of a much larger and more expensive European push to outsource immigrations enforcement to third-party countries. The E.U. has sent billions to countries such as Libya, Niger, Tunisia and others, ostensibly to help them improve conditions in their countries and thus limit the need for people to flee. But tens of millions of those dollars have gone to toughen immigration legislation and empower enforcement agencies in those countries.

In July, Amnesty International issued its latest dire report on the state of migrants in Libya. It noted that the Libyan Coast Guard, often alerted by Frontex to migrants trying to make it to Europe, then race to intercept the migrant boats and capture those aboard, sometimes firing guns at the rafts or dinghies, occasionally capsizing them. In February, for example, the Coast Guard fired on a raft, puncturing it and causing it to sink. Five people drowned as members of the Coast Guard filmed with their cell phones, the report said.

Frontex is surely aware of longstanding concerns about the Libyan Coast Guard it has found itself regularly assisting. The Coast Guard, really a hodgepodge of local port authorities, has for years been understood to be working in concert with the country’s militias, many of whom are involved in human trafficking. Indeed, the head of the Libyan government agency overseeing the crackdown on migrants has openly admitted in a series of recent interviews that corruption exists within the ranks of the Coast Guard.

The senior Frontex official who talked to The Outlaw Ocean Project said they had made clear doing any sort of business with the Libyan Coast Guard was unthinkable, in part because Europe “didn’t have a clue” as to the integrity of those purporting to belong to the Coast Guard. Things were simply too broken and opaque in Libya, a divided and violent country still struggling to emerge from years of civil war.

“It’s impossible,” the official said, “to have any vetting of who is who.”

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This article is based on a recent report produced by The Outlaw Ocean Project, “The Secretive Libyan Prisons That Keep Migrants Out of Europe.” The full piece may be found in The New Yorker and on The Outlaw Ocean Project’s Substack page.

The opinions expressed herein are the author’s and not necessarily those of The Maritime Executive.

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