

Eyes in the sky: European aerial surveillance

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Since 2017, aerial surveillance has become central to EU attempts to identify, deter and return intercepted migrants to Libya. As a result, struggles between the EU and civil society rescue actors have also shifted from the seas to the skies.

Since the 2015–16 peak in numbers of migrants crossing the Mediterranean, the European Union has sought to close off the Central Mediterranean route by enabling the interception and forced return of vessels carrying migrants. To facilitate this, the EU and Italy have gradually criminalised and expelled European rescue NGOs from the Central Mediterranean¹ while equipping and supporting the Libyan Coast Guard to become a key actor in the Mediterranean. European reliance on the Libyan Coast Guard for maritime rescue is only possible through increasing investment in European ‘aerial assets’ such as aeroplanes and drones. The Mediterranean airspace has now assumed a new role in European attempts to identify, track and contain maritime movement, and is fundamental to the EU’s strategy of outsourcing pullbacks to the Libyan Coast Guard.

Using air power to transfer responsibility

Prior to a landmark judgement in 2012, the EU had relied on the notion that human rights standards did not apply extraterritorially and had used this to justify intercepting migrants in international waters and returning them to third countries. However, the 2012 judgement by the European Court of Human Rights (ECtHR) against Italy declared that EU Member States had to observe their obligations under the European Convention for Human Rights (ECHR) even during extraterritorial operations.² As transfers of intercepted migrants could no longer be made to Libyan vessels, Europeans needed to find another method for intercepting and returning migrants, without being directly implicated.

A new contactless strategy has emerged and has been deployed by EU agencies such as Frontex and the European Naval Force

Mediterranean (EUNAVFOR MED), as well as by EU member States such as Italy and Malta. European aerial assets are used for spotting migrant vessels from above; details of the distressed boat are then radioed to their preferred rescue agency, which since 2017 has become the Libyan Coast Guard rather than European rescue vessels. Since the Libyans do not have their own aircraft patrols, drones or radar equipment, the aerial information and coordination passed on from European aerial assets are crucial.

Civilian aerial counter-surveillance

Challenging the state’s dominance of the airspace, civilian actors have also taken to the skies. Two European initiatives – the French *Pilotes Volontaires*, and a partnership between German NGO *Sea Watch* and the Swiss Humanitarian Pilots Initiative (HPI) – operate their own civilian reconnaissance aircraft to conduct civil aerial surveillance missions alongside the State actors policing the skies. These initiatives can spot boats in distress to advocate for a rescue to be launched, and can also document violations against migrants and cases of non-assistance at sea. *Sea Watch* and HPI have used their unique bird’s-eye position to hold European member States and agencies accountable for their actions at sea through campaigning, advocacy and building court cases against European authorities.

For example, the civilian reconnaissance aircraft *Moonbird* operated by HPI and *Sea-Watch* has witnessed and documented multiple failures of the Maltese authorities to protect and respect the rights of migrants, refugees and asylum seekers at sea. These failures include: delayed or denied rescues, failure to provide assistance within its own Search and Rescue (SAR) zone, pushbacks from the Maltese SAR zone to Italian waters,

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coordinated pushbacks to Libya, arbitrary detention at sea of intercepted migrants, and denial of a place of safety to disembark. These actions are variously in violation of international, refugee, human rights and maritime law, and NGOs are seeking to build legal cases against European authorities based upon what they have documented from the skies.³

The circulation of European aircraft also has an impact on those travelling in boats down below – creating a sense of anticipation that a rescue may be imminent. Anecdotal accounts by migrants include the timing of planes overhead, videos or photos of the planes, and at times identifying markers such as those on Frontex planes. For those on the boat, there is a desperate desire to be seen and the passengers may try to communicate with the plane by standing up and waving. The pilots undertaking civilian counter surveillance attempt to communicate with boat passengers by circling overhead so that those on board the vessel in distress will know that they have been seen. Over the course of 2020, the Moonbird crew alone spotted around 4,493 persons in 82 boats in distress at sea, reporting these cases to the relevant authorities and advocating to ensure a timely and legal rescue was undertaken. In 19 of these cases, the crew witnessed the boats being intercepted by the Libyan Coast Guard and the migrants illegally returned to Libya.

Embedded multi-dimensional cooperation

The current collaboration between European and Libyan authorities is taking place in three dimensions with complementary air,



Civilian aerial surveillance from the aircraft *Moonbird*.

maritime and submarine vessels working together. The Libyan Coast Guard is functioning as the maritime wing of the European authorities, while the European aircraft function as the aerial wing of the Libyan operation. The deeply embedded nature of the cooperation might lead one to question whether it still makes sense to think of this as externalisation. With such a high degree of coordination and augmenting of each other's pool of assets, perhaps we can consider Italy and Libya as part of one operation, rather than external to each other. And if we begin to think of the Libyan and European authorities as internal to each other's operations, what are the implications for accountability, for resistance, for justice?

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1. (2020) *Remote control: the EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean* https://eu-libya.info/img/RemoteControl_Report_0620.pdf
2. *Hirsi Jamaa and Others v Italy* (2012) ECtHR Application No. 27765/09 bit.ly/HirsiJamaa-v-Italy-2012
3. See for example the Sea-Watch archive on Crimes of Malta observed from the air: bit.ly/SeaWatch-Crimes-of-Malta