

## OPEN LETTER

Secretary General Kitack Lim  
International Maritime Organization  
4 Albert Embankment, London SE1 7SR

*Open letter requesting the International Maritime Organization (IMO) to repeal the Libyan SAR zone*

Dear Secretary General Kitack Lim,

After Libya and Malta signed a Memorandum of Understanding (MoU) on 28 May 2020 to provide a bilateral legal basis for unlawful practices, it is urgent for the IMO, as the UN maritime authority, to remove the Libyan SAR zone from official records. Italy also renewed its MoU with Libya in February 2020, despite acknowledging that it was problematic from a human rights perspective. This appeal builds on a submission to the IMO from Italian parties on 31 March 2020 for which the signatories are still awaiting a reply.<sup>1</sup> The complaint raises relevant and contentious points about the underlying irregularity of the Libyan declaration of a SAR zone in December 2017. It highlights the effects that this has had regarding unethical state practices in the Mediterranean Sea. Such practices amount to human rights violations, if not state crimes, that undermine the law of the sea as a universal insurance mechanism for people who are at sea and seafarers in general, as well as resulting in refoulements to Libya that are illegal under international law. Policies against so-called irregular migration are being used to dismantle international legal instruments and conventions in pursuit of strategic policy goals (nobody must enter the EU irregularly). This involves using pseudo-legal measures like MoUs to undermine normative frameworks enshrined in hierarchically prevalent national constitutions, international law and human rights conventions.

In concrete terms, apart from the issues raised in the March submission, this request to strike off the Libyan SAR zone from international records relies on the following elements:

1. Libya is unsafe and does not offer any safe ports in which to disembark migrants, considering the civil war that is underway and well-documented abuses and violence to which migrant detainees are subjected. This should rule out the possibility of it being assigned a SAR zone.
2. The Libyan Coast Guard is notoriously inadequate for the tasks assigned to it, in material and ethical terms. The Libyan MRCC often fails to answer or respond to distress calls; it is coordinated by Italian, Maltese (as has recently emerged) and EU assets; its membership includes people who have been identified as, or have links with, traffickers; ill-treatment of migrants during SAR operations and after “pull-backs” has been reported.

---

<sup>1</sup> Submitted to the OMI by el Comitato Nuovi Desaparecidos et Progetto Diritti et Open Arms, see " Esposto all'IMO per demolire l'alibi de la zone SAR Libica ", 31.3.2020, Emilio Drudi, Tempi Moderni, <http://www.tempi-moderni.net/2020/03/31/esposto-allimo-per-demolire-lalibi-della-zona-sar-libica/> in English here : : [Analysis Mediterranean: As the fiction of a Libyan search and rescue zone begins to crumble, EU states use the coronavirus pande.](#)

3. Even when the Libyan Coast Guard enacts successful rescue operations, they amount to catching fugitives from detention and mistreatment centres, and rescued people are returned to places in which they experience torture and inhuman and degrading treatment. National and international courts have repeatedly certified this, and the ICC is conducting an investigation for crimes against humanity regarding the treatment of migrants in Libya. As part of the United Nations system, the IMO can consult statements by UNHCR, UN special rapporteurs on human rights and on migrants' rights, IOM and the Council of Europe's Commissioner for Human Rights on these points. They consistently argue that migrants must not disembark in Libya.
  
4. The IMO declaratory procedure allows states to claim a SAR zone unless other state parties object. This system has been used opportunistically to create a fictional account that allows several states, and the EU, to relinquish their duties under the law of the sea, international, refugee and human rights law. This undermines fundamental principles like the right to life and states' duty to assist rescues (rather than delaying and obstructing them using any available pretext), thereby jeopardising maritime safety. Captains risk suffering negative effects from acting as is prescribed by the law of the sea. They also run the risk of being ordered by MRCCs to deliver people to places where they are likely to be abused. Although they should technically disobey, they face detrimental consequences for doing so.
  
5. The Libyan SAR zone is being used to justify the criminalisation of NGOs that have taken on a SAR role after the EU relinquished this function and pressured member states that were conducting it to stop, because of migration policy considerations. Beyond legal and ethical issues concerning the regularity of the SAR zone in question, its use to assert a systematic misreading of the law of the sea to benefit EU states and policies entails serial irregularities that should concern the IMO. In concrete terms, SAR zones are not meant to be exclusive, but Italy and Malta are using Libyan authority as a pretext to omit or delay rescues of vessels in distress beyond their own territorial waters, sometimes resulting in deaths. Coast guard authorities from Italy to Malta (and Greece in the Aegean) are often failing to intervene or, notably in recent weeks in Malta and Greece, they have intimidated people and/or sabotaged vessels carrying migrants, also enacting pushbacks from their territorial waters towards Libya and Turkey. The people attempting irregular border crossings may often be refugees, but they must be prevented from accessing relevant procedures, from national and EU institutional viewpoints. The nationality of rescue crews should be irrelevant to the duty to ensure the swift completion of rescue operations. However, nationality is being used as a pretext to keep people who are rescued and the crews saving them at sea for long periods, as a form of punishment and to waste the funds collected by civil society to counteract wilful shortcomings in states' SAR provision. Ships are being confiscated on spurious grounds because they may save people from drowning, and private ships are being hired to enact refoulements by proxy. The Covid 19 crisis appears to have emboldened state parties, which are now using ships as sites to keep people in quarantine at sea. States are not supposed to instrumentally work to make sea crossings more deadly in order to achieve their strategic migration policy objectives.

For the above reasons, and because we believe that the IMO does not appreciate states using its procedures instrumentally to undermine the law of the sea, maritime safety, human rights and international law, the undersigned ask that formal recognition of the Libyan SAR zone be revoked. This would be an important step towards fulfilling the IMO's function to uphold the SOLAS, SAR and UNCLOS conventions, because the EU and its states appear to consciously and insistently work to dismantle the law of the sea in pursuit of their migration policy goals. In the central Mediterranean, it appears obvious that the IMO's recognition of the Libyan SAR zone is used instrumentally for this end. We are aware that IMO does not wish to be pulled into political disputes but feel that this issue falls squarely within its remit as the guardian of the law of the sea at a global level, which is endangered by policies against human mobility.

Yours sincerely,

Statewatch & Osservatorio Solidarietà