

**The management of the Maltese SAR zone: from ‘traditional’ non-assistance
to new violences at sea in 2020**

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Introduction

On April 9th, 2020, to justify the closure of its seaports and therefore the impossibility to rescue and disembark people in distress in the Central Mediterranean, Robert Abela's government declared that the island couldn't be considered as a 'safe place' in the lights of the COVID-19 pandemic¹, while claiming to seek the right balance between 'the control over the Maltese territory and the compliance with Malta's international obligations'. These obligations had already been truncated by the island for nearly two decades, but the closure of its seaports and the cessation of all rescue operations in the Maltese Search and Rescue zone (SAR Zone) has sounded like the latest step in the process of the European Union's smallest member state using international maritime law '*à la carte*'.

¹ 'Malta shuts its ports to asylum seekers, citing COVID-19 pandemic', *Times of Malta*, April 9th, 2020 <https://timesofmalta.com/articles/view/malta-says-it-cannot-guarantee-migrant-rescues.784571>

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When asked on what criteria the country would rescue and disembark migrants stranded in its area of responsibility, an official from the Maltese Ministry of Home Affairs claimed that Malta applied the ‘nearest safe place criteria’². The island hasn’t adopted the 2004 amendments to the SOLAS (1974) and SAR (1979) conventions stating that the responsibility for disembarkation lies with the authorities responsible for the SAR zone, not with the nearest safe place solution. The Armed Forces of Malta (AFM) officially carry out rescue and disembarkation operations when they are ‘requested to do so’, when it is ‘evident that the persons are in distress’ and when the AFM can’t request the participation of third parties close-by³.

Half ratifying international treaties, delegating rescue and disembarkation to European and non-European, official and unofficial stakeholders: this is how Malta has converted its Search and Rescue zone in an area ruled outside of the scope of law. An overview of the practices used by the Maltese Rescue Coordination Centre (RCC) all along 2020 shows the political instrumentalisation of the international health crisis. If some « traditional » practices are still in use, new ones have been implemented with the government benefitting from the COVID-19 situation to emphasise the use of exceptional and crisis measures breaching human rights, as these measures are not foreseen in the legal corpus that Malta has ratified⁴.

I) Pushing back to Libya

A ‘pushback’ is a violation of the provision of *non refoulement* stated by Article 33 of the 1951 Convention relating to the Status of Refugees (‘Geneva Convention’), by pushing back persons to the ‘frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion’⁵. Direct pushbacks to war-torn Libya carried out by Italy and Malta have been sanctioned in 2012 and 2013 by the European Court of Human Rights, in the *Hirsi Jamaa and others v. Italy* case⁶ and the interim measure issued against Malta to prevent from the refoulement of 51 people⁷.

Southern European states have been deploying strategies to push exiles back to Libya, switching from direct *refoulements* to pushbacks « by proxy ». These practices require the intervention of third parties (commercial vessels, fishing boats, foreign coastguards) to make sure that the European RCCs would not be held accountable. A set of more or less formal agreements, financed by European funds, have been developed over the past two decades between Libya, Italy and Malta. Informal agreements between Italy and Libya, Malta and Italy and Malta and Libya to push back departing boats carrying migrants to Libyan coasts have been a pattern in the Central Mediterranean since the late 1990’s. Efforts have been intensified on the Maltese side as from 2018, with Italy refusing to bear the Maltese responsibilities of rescue and disembarkation at sea any longer. A secret deal was therefore concluded in the summer of 2018 between Malta and Libya, allowing so-called Libyan coastguards (LYCG) to enter the Maltese SAR zone, intercept and pull back migrants upon RCC Malta’s orders⁸. The first reported cases of Libyan coastguards intervening in the Maltese

² Extract from an interview with an official from the Ministry of Home Affairs, National Security and Law Enforcement, March 4th, 2021

³ *idem*

⁴ Among which the Geneva Convention (1951), SAR and SOLAS Conventions

⁵ <https://www.unhcr.org/3b66c2aa10>

⁶ <https://www.asylumlawdatabase.eu/en/content/ecthr-hirsi-jamaa-and-others-v-italy-gc-application-no-2776509>

⁷ European Council on Refugees and Exiles, ‘ECTHR blocks pushback of Somali migrants from Malta to Libya following outcry from civil society’, July 12th, 2013

<https://www.ecre.org/ecthr-blocks-pushback-of-somali-migrants-from-malta-to-libya-following-outcry-from-civil-society/>

⁸ Martin Ivan, ‘Exposed: Malta’s secret migrant deal with Libya’, *Times of Malta*, November 10th, 2019

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zone date from October 2019⁹. The international situation due to COVID-19 and the global desertion from the Central Mediterranean have left a window of opportunity for Malta to increase such operations in 2020.

A) Libyan coastguards in the Maltese SAR zone

Thanks to information gathered by Sea-Watch’s Crimes of Malta campaign¹⁰, we can estimate that RCC Malta coordinated at least four push backs from its own SAR zone in 2020, allowing so-called Libyan Coast Guards to enter, intercept and bring at least 224 people back to Libya. This list is non-exhaustive, other such operations probably occurred in the greatest secrecy. One of them, documented by a Moonbird crew member (reconnaissance aircraft chartered by Sea Watch), took place on July 2020 with the Armed Forces of Malta giving instructions to the Libyan vessel *Ras Jadar* and guiding LYCG to intercept a group of migrants in the Maltese SAR zone¹¹. On the day after, UNHCR stated that 86 people had been pushed back to Libya without providing details as to the framework of this operation and the effective control exercised by Malta.

In 2020, Malta had an opportunity to use LYCG in order to ‘fill the gap’ in the Central Mediterranean due to the successive closures of European seaports, the immobilisation of NGO rescue vessels and the abandonment of operation EUNAVFOR Med. Italy declared its ports ‘unsafe’ on April 8th and blocked the four main NGO rescue vessels in its ports. The *Aita Mari*, *Sea Watch 3*, *Alan Kurdi* and *Open Arms* were all immobilised, forced to check their ‘technical and operational irregularities’¹² at some point during the year. In May 2020, no rescue ship was sailing across the Central Mediterranean. At the same time, Sea Watch notes that ‘the so-called Libyan Coast Guard was equipped with more ships, which it then has maintained independently and deployed in the Central Mediterranean’¹³.

B) Privatised pushback to Libya : disembark migrants in an open port

Privatised pushbacks have been defined by the Forensic Architecture as a ‘new strategy [firstly] implemented by Italy in collaboration with the LYCG since mid-2018 as a new modality of defeated rescue, intended to enforce border control and contain the movement of migrants from the Global South seeking to reach Europe’¹⁴. Contrary to the claims of the political leaders who use it, a privatised pushback is not a rescue operation, but an interception and containment of people at sea by a private actor (upon instructions of an MRCC or European authorities patrolling), before instructing it to sail these individuals back to their zone of departure. In the case of Libya, it is clearly not a place of safety as required by the definition of a rescue operation by the SAR Convention.

<https://timesofmalta.com/articles/view/exposed-maltas-secret-migrant-deal-with-libya.748800>

⁹ Dumont Julia, ‘Malte permet à des garde-côtes libyens d’entrer dans sa zone de sauvetage pour intercepter des migrants’, *Infomigrants*, October 24th, 2019

<https://www.infomigrants.net/fr/post/20377/malte-permet-a-des-garde-cotes-libyens-d-entrer-dans-sa-zone-de-sauvetage-pour-intercepter-des-migrants>

¹⁰ <https://sea-watch.org/en/crimes-of-malta/#:~:text=In%20the%20first%20half%20of,and%20migrants%20are%20systematically%20abused.>

¹¹ <https://sea-watch.org/en/crimes-of-malta-04/>

¹² Carretero Leslie, ‘L’Aita Mari saisi, plus aucun navire humanitaire ne patrouille au large de la Libye’, *Infomigrants*, May 7th, 2020

<https://www.infomigrants.net/fr/post/24602/l-aita-mari-saisi-plus-aucun-navire-humanitaire-ne-patrouille-au-large-de-la-libye>

¹³ ‘#CrimesofMalta IV, I will stay with you, no problem’, Taz blogs, October 6th, 2020

<https://blogs.taz.de/finiskleinerliefererservice/2020/10/06/i-will-stay-with-you-no-problem/>

¹⁴ Forensic Architecture, *Privatised push-back of the Nivin*, December 18th, 2019, available at: <https://forensic-architecture.org/investigation/nivin>

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To justify the use of private actors in the management of their SAR zone, the Maltese authorities have been relying on the concept of the *nearest*¹⁵ (the nearest seaport, the nearest ship), on the grounds of rendering faster assistance to people in danger at sea. Nonetheless, the privatised pushback of the Easter weekend in 2020 doesn’t rely on this concept. On April 13th, 63 people called the activist platform *Alarm Phone* to indicate their position and distress at sea after leaving Garabulli, east of Tripoli¹⁶. After four days at sea, a Libyan-flagged fishing boat, *Mae Yemenja*, was sent out at sea to intercept them upon Maltese RCC's orders. The *Mae Yemenja* wasn’t in the vicinity, but anchored in Marsa harbour, which it left after switching off its radars and allegedly erasing its registration from its side¹⁷. During the interception and pushback of more than 50 individuals, this ‘ghost fleet’¹⁸ was invisible and operating in the greatest secrecy. Out of the 63 people in distress, five lost their lives before the arrival of the *Mae Yemenja*, and another seven individuals died on board. The fishing vessel eventually docked in Libya, at Abu Sitta the next morning, and all 51 survivors were then transferred to the Tarik Al Sikka detention camp¹⁹. UNHCR was present at Abu Sitta to intercept the 51 survivors before their transfer to detention. Nonetheless, none official statement was issued to condemn this privatised pushback.

The circumstances of this operation remained unknown until declarations under oath in Court were made by Neville Gafà, member of the Office of the former Maltese Prime Minister and responsible for the 2018 secret deal with Libya. Interrogated for the criminal investigation requested by NGO *Repubblika*, he declared that he coordinated this operation with the Libyan Home Affairs Ministry under Robert Abela’s instructions. He stated that he had coordinated missions in the Central Mediterranean to prevent exiles from entering the Maltese SAR zone but he denied the existence of any pushbacks²⁰. The Maltese Prime Minister stated against evidence : ‘*This was no pushback. This was us saving tens of lives [...], coordinating their rescue [...] and taking them to the port that was open*’²¹.

The closure of Maltese ports has thus allowed the government to further restrict its interpretation of international maritime law : the criterion for disembarking migrants is not the nearest or the safest port, but now the « open port ».

On April 15th, NGO *Repubblika* filed a request for an interim measure (rule 39) before the European Court of Human Rights, in order to oblige southern European states to rescue and disembark the group of people endangered at sea. The legal bid was turned down, therefore stating that the refusal of disembarkation doesn’t constitute a breach of human rights²²...

¹⁵ Klepp Silja, *A double bind: Malta and the rescue of unwanted migrants at sea*, Exploratory Workshop « The Human Costs of Border Control in the Context of EU Maritime Migration Systems », Amsterdam, October 2009, p. 4

¹⁶ Alarm Phone, ‘Twelve Deaths and a Secret Push-Back to Libya’, April 16th, 2020, available at:

<https://alarmphone.org/en/2020/04/16/twelve-deaths-and-a-secret-push-back-to-libya/>

¹⁷ Alarm Phone, ‘Malta, the ghost fleet against migrants. Frontex blames the countries’, February 24th, 2020, available at:

https://alarmphone.org/en/2020/04/24/malta-the-ghost-fleet-against-migrants-frontex-blames-the-countries/?fbclid=IwAR2Sd2nPWVJeskAy1DA5EqSG_mo5C1PHsm-3jAC2guBeGgGxMTlk63vqS5o

¹⁸ *idem*

¹⁹ Amnesty International, ‘Malta: Waves of impunity. Malta’s human rights violations and Europe’s responsibilities in the Central Mediterranean’, September 7th, 2020, p. 7, available at:

<https://www.amnesty.org/download/Documents/EUR3329672020ENGLISH.PDF>

²⁰ Times of Malta, ‘Anger as Neville Gafà says he coordinated Libya pushback on OPM orders’, 30/04/2020, available at:

<https://timesofmalta.com/articles/view/neville-gafa-says-he-coordinated-libya-pushback-on-opm-orders.788951>

²¹ Xuereb Matthew, ‘Abela admits coordinating private boats that returned migrants to Libya’, *Times of Malta*, May 1st, 2020

<https://timesofmalta.com/articles/view/abela-admits-coordinating-private-boats-that-returned-migrants-to.789362>

²² Delia Manuel, ‘Repubblika statement after the prime minister’s press conference yesterday’, *Truth to be told*, April 18th, 2020

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C) The 2020 MoU with Libya : a ‘soft’ tool to systematise pushbacks

In order to reinforce the cooperation with Libya, the Maltese government signed a Memorandum of Understanding (MoU) with the Libyan Government of National Accord on May 28th, 2020. This arrangement is officially meant to ‘combat illegal immigration’²³, creating two ‘coordination centres’ which official mandates are to ‘liaise between the two capitals and offer the necessary support relating to combatting illegal immigration in Libya and the Mediterranean region’, therefore formalising the *modus operandi* at stake in the Central Mediterranean. These two coordination centres have been managed by six Maltese and Libyan officials since July 1st, 2020.

Regarding the financial point of this MoU, the Republic of Malta said it will ‘finance in full both these centres’. At the same time, it offers to the EU and its Member states to enhance their financial support to Libya, already established by the Italy-Libya Memorandum of Understanding of 2017 (and renewed in 2020 for three years), securing both the southern borders and the maritime coast of Libya²⁴. According to a source at the Maltese Ministry of Home Affairs, the EU hasn’t funded any part of this arrangement so far²⁵.

The main issue is obviously the absence of any reference to human rights in this five-page memorandum. In its 2020 report, Amnesty International recommended that Malta withdraw from this MoU and ‘ensure that any form of cooperation with Libya focuses on protecting the human rights of refugees and migrants rather than on their containment in Libya’²⁶. Nonetheless, Malta officially affirms that this agreement respects the country’s legal framework, particularly with regard to human rights.

This text has no legal value. It is a non-binding bilateral arrangement, which has not been ratified, read nor reviewed by any legislative body. This makes its compliance with international law all the more uncertain. Through this kind of arrangements, it seems that soft law is gaining more and more importance in the member states’ migration managements, bypassing a too-restrictive EU set of laws according to many European governments.

II) ‘Smuggling’ towards Italy

Between diplomatic crises such as the ‘tuna-pen incident’ in 2007 - one of the first crises in the Central Mediterranean between Italy and Malta, resulting in 27 migrants being clung to tuna nets towed by a Maltese fishing vessel for three days before being eventually disembarked in Lampedusa²⁷ - and informal arrangements, the relationships between Malta and Italy have been shaping the rescue landscape in the region. Endless wanderings of exiles at sea or, on the contrary, rapid rescue and care

<https://manueldelia.com/2020/04/repubblika-statement-after-the-prime-ministers-press-conference-yesterday/>

²³ ‘Memorandum of Understanding between the Government of National Accord of the State of Libya and the Government of the Republic of Malta in the filed of combatting illegal immigration’, Tripoli, March 28th, 2020

<https://www.statewatch.org/media/documents/news/2020/jun/malta-libya-mou-immigration.pdf>

²⁴https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

²⁵ Extract from an interview with an official from the Ministry of Home Affairs, National Security and Law Enforcement, March 4th, 2021

²⁶ Amnesty International, ‘Malta: Waves of impunity. Malta’s human rights violations and Europe’s responsibilities in the Central Mediterranean’, September 7th, 2020, p. 31

<https://www.amnesty.org/download/Documents/EUR3329672020ENGLISH.PDF>

²⁷ Hooper John, ‘UN rebuke as governments squabble over immigrants found clinging to tuna nets’, *The Guardian*, 29 May 2007

<https://www.theguardian.com/world/2007/may/29/libya.johnhooper>

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following their departure from Libya are due to the power relations at stake between these two neighbouring states.

Between 2015 and mid-2018, an informal accord was at stake between Italy and Malta²⁸, combining Italian oil exploration and exploitation in Maltese territorial waters in exchange of the care and disembarkation of migrants theoretically under Maltese responsibility²⁹. For three years, the number of migrants arrived by boat to Malta have significantly decreased from 104 in 2015, 25 in 2016, 23 in 2017 and finally reaching 1,445 in 2018 when Italy decided to officially close its ports³⁰.

Even if the unofficial agreement has not been at stake since 2018, Maltese reading of maritime law keeps on promoting disembarkations in Lampedusa or Sicily. On April 12th, 2020, southern Europe was surprised as 101 migrants reached Pozzallo, Sicily, allegedly on their own after having left Zliten, Libya. The mayor of Pozzallo, Roberto Ammatuna, affirmed that this was due to a ‘new strategy of the traffickers’, without knowing that it was actually a strategy of the officers from the Armed Forces of Malta³¹. From testimonies gathered by Alarm Phone, the individuals were not only in the Maltese SAR zone on the first place, but they penetrated the Maltese territorial waters as they could see the island at a distance. After being threatened by an AFM patrol boat to be sent back to Libya, the group told Alarm Phone that they had been distributed water, 40 litres of fuel, an engine and Italy’s GPS coordinates. The Armed Forces of Malta have been acting as a ‘refueller’ on the way to Italy, justifying this “supply” operation by the closure of Maltese ports due to COVID-19.

In the name of a victimising rhetoric (too many arrivals per capita, not enough space on the island, the constant fear of becoming a hotspot), Malta acts as if it has no duty towards people in distress in its SAR zone. Whatever the legal and political framework, the Armed Forces tend to overuse all possible solutions to avoid landing of new migrants. When the truncated reading of the SAR and SOLAS convention is no longer sufficient, informal and deadly practices take over. Without any surprise about this operation led by the AFM, the Italian foreign ministry considers charges after investigation³².

Thus, in the case of a ‘deadlock’ in the Maltese SAR zone and a refusal by the Maltese RCC to let people disembark, they often end up landing in Italy, whether in Lampedusa or Sicily. In fact, Italy continues to take charge of persons under Maltese responsibility. In January 2021, the United Nations Human Rights Office of the High Commissioner declared that Italy failed to rescue 200 migrants in the Central Mediterranean in 2013. But a reading of the facts shows that the 200 people were in distress in the Maltese SAR zone³³.

III) From non-assistance to active attacks against migrants at sea

In 2020, not only did the Armed Forces of Malta endanger migrants by not rescuing them, but it also used piracy-like practices to deter them from continuing their journey. An increase in such acts has

²⁸ Although it was never made official, the Maltese Interior Minister Carmelo Abela confirmed the existence of an informal arrangement between Italy and Malta on the authority responsible for SAR operations in 2015

²⁹ Grech Elena, ‘Italian MEP asks Brussels about ‘secret Malta-Italy migrants-for oil deal’, *The Malta Independent*, October 18th, 2015

<https://www.independent.com.mt/articles/2015-10-18/local-news/Italian-MEP-asks-Brussels-about-secret-Malta-Italy-migrants-for-oil-deal-6736143776>

³⁰ UNHCR database

https://www.unhcr.org/mt/wp-content/uploads/sites/54/2021/05/Malta-Sea-Arrivals-and-Asylum-Statistics_UNHCR_Apr2021.pdf

³¹ Alarm Phone, ‘Malta’s Dangerous Manoeuvres at Sea’, 20/05/2020, available at:

<https://alarmphone.org/en/2020/05/20/maltas-dangerous-manoevres-at-sea/>

³² Tondo Lorenzo, ‘Italy considers charges over Malta’s ‘shocking’ refusal to rescue migrants’, *The Guardian*, May 29th, 2020

<https://www.theguardian.com/global-development/2020/may/29/italy-considers-charges-over-maltas-shocking-refusal-to-rescue-migrants>

³³ United Nations Human Rights Office of the High Commissioner, ‘Italy failed to rescue more than 200 migrants, UN Committee finds’, January 27th, 2021

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26691&LangID=E>

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been observed throughout Europe on land (Croatian border) and at sea, especially between Greece and Turkey.

A) ‘The Malta military cut the cable’

‘Malta is not a safe place’ is the justification used by the authorities to close national ports to migrants due to the pandemic. On the same day, this argument was also applied to directly attack people in distress at sea and sabotage their boat. After five days adrift and having been left unattended by the AFM patrol boats passing by in the Maltese SAR zone, 66 people who fled Libya reiterated their distress calls to hotline Alarm Phone. One of them declared that they had been attacked by a Maltese military from the P52 patrol vessel, who climbed on board the dinghy to damage their engine. They were about twenty miles southwest of the island and could spot the Maltese coasts.

I see Malta. The Malta military is coming and cut the cable of electricity for the motor. And the Malta military knows that the water is in the boat right now. [...] And when he moved, he said ‘I leave you, I leave you die in the water but nobody come to Malta’³⁴

After this sabotage, the AFM abandoned them at sea, according to the testimony that Alarm Phone received, transcribed and shared with international media³⁵. Although the 66 people were eventually rescued and could disembark on the island the following day, this was an event of violence far beyond the "traditional" methods of non-assistance and delaying answers of the Maltese Rescue Coordination Centre. When asked by the press about the case, not only did the spokespersons for the Armed Forces and the Office of the Prime Minister refuse to deny the incident³⁶, but they stated that ‘Malta, with its limited resources, had always saved lives, assumed disproportionate burden and observed international obligations’, before concluding that the 66 people had been eventually rescued and disembarked on the island.³⁷

Maltese NGO Repubblika filed a criminal complaint against the Prime Minister, an AFM Brigadier and the P52 crew for this sabotage. A few days later, a ministerial inquiry was asked. None of them has been convicted so far.

B) Dangerous manoeuvres at sea

It seems that the closer exiles get to the country, the more violent the Maltese coast guards become when they can’t use a third-party stakeholder to pushback, detain or disembark people elsewhere. The use of violence seems like the last resort for coastguards. In Malta, the AFM have been reported using their patrol vessels to create a hostile sea environment in order to deter people from swimming to the coast when they come closer. A video taken by an individual on April 11th, 2020 and sent to Alarm Phone³⁸ shows evidence of the P02 AFM vessel driving dangerous manoeuvres to deter people from making their way to the island. A testimony from a person on board

³⁴ Alarm Phone, ‘Sabotage, Delays and Non-Assistance: Another day in Malta’s SAR zone’, May 3rd, 2020 <https://alarmphone.org/en/2020/05/03/sabotage-delays-and-non-assistance/>

³⁵ Kingsley Patrick, ‘Malta Accused of Sabotaging Migrant Boat’, *The New York Times*, April 9th, 2020 https://www.nytimes.com/2020/04/09/world/europe/malta-migrant-boat.html?fbclid=IwAR1ey5iV6VGE7SQPdECPJID4pSdNRw79IZuD9R-SWpJH2uUbWpg_CO0zLWg

³⁶ Xuereb Matthew, ‘OPM refuses to deny claims that AFM sabotaged migrant boat’, *Times of Malta*, April 11th, 2020 <https://timesofmalta.com/articles/view/opm-refuses-to-deny-claims-that-afm-sabotaged-migrant-boat.784772>

³⁷ *idem*

³⁸ <https://www.youtube.com/watch?v=O0Trx2eAKk0>

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the same dinghy added that the crew pointed them with firearms, threatening to shoot if they wouldn’t climb back on the dinghy instead of swimming towards the Maltese coast.

They had arms, three clashes [rifles] and three guns. The guns were tight to their arms and the clashes were in their hands. When they put their arms up, we got scared. We took the ropes and got back to our boat.³⁹

The use of firearms to deter migrants from approaching European coast isn’t a new practice. It seems that Malta is following its Greek neighbour’s dangerous manoeuvres to put in danger lives under its responsibility⁴⁰.

IV) Privatised monitoring without disembarkation planned

The Maltese SAR zone has become a trap for commercial vessels, which can end up waiting for a place of disembarkation for endless periods due to Malta’s reluctance to allow any type of ship to reach its shores.

At the beginning of summer 2020, the Maltese SAR zone turned into a floating detention zone with several commercial ships hosting migrants and waiting for a place of safety to disembark. This floating detention constitutes a breach of human rights for both migrants and the vessels’ crews, who become *de facto* hostages in the Central Mediterranean. In June 2020, 425 people were simultaneously detained at sea, crew not included, near Malta.

A) Using private vessels nearby

From three days to a month on board the *MV Talia*, the *Marina* or the *Maersk Etienne* : this is how long some people had been waiting on livestock vessels or oil tankers in Maltese waters in 2020. Out of these three cases, a pattern is strongly appearing. RCC Malta first favours the intervention of a third party in the vicinity whatever the conditions on board may be. This party receives the order to ‘monitor’ the situation, meaning transferring people on its own board. As Sea Watch analysed⁴¹, orders given by RCC demand a ‘monitoring’ rather than a ‘rescue operation’, because Malta will probably not offer the disembarkation port to make the rescue operation complete⁴². Once the crew has transferred individuals on board, RCC Malta stops answering and waits for its Mediterranean neighbours - may they offer safe or unsafe ports - to offer a landing point.

On May 3rd, 2020, Alarm Phone indicated that a merchant vessel picked up 90 people in distress in Malta’s SAR zone. *The Marina*’s intervention was required by Malta. As Italian and Maltese ports were officially closed, NGOs as Mediterranean Saving Humans expressed concerns about the possibility of a pushback, as Malta did in April⁴³.

On July 4th, 2020, RCC Malta requested help from livestock carrier *MV Talia* to transfer 50 individuals on board. The vessel had just delivered animals to Libya before heading towards Spain when its captain was asked to ‘monitor’ a group of migrants stranded at sea. For three days,

³⁹ Alarm Phone, ‘Malta’s Dangerous Manoeuvres at Sea’, May 20th, 2020

<https://alarmphone.org/en/2020/05/20/maltas-dangerous-manoevres-at-sea/>

⁴⁰ Daragahi Borzou, ‘Coastguard seen apparently trying to capsize boat full of refugees before attacking them with stick, as child drowns off coast’, *Independent*, March 2nd, 2020

<https://www.independent.co.uk/news/world/europe/migrant-child-killed-greek-coast-lesbos-syria-refugee-deaths-a9369826.html>

⁴¹ #CrimesofMalta IX, ‘Who will be saved?’, Taz blogs, November 10th, 2020

<https://blogs.taz.de/finiskleinerliefererservice/2020/11/10/glueck-auf-leben/>

⁴² <https://sea-watch.org/en/crimes-of-malta-09/>

⁴³ ‘90 migrants picked up by merchant vessel now outside Lampedusa’s waters’, *Times of Malta*, May 3rd, 2020

<https://timesofmalta.com/articles/view/90-people-seeking-rescue-in-maltas-sar-alarm-phone.789683>

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individuals were detained where animals had been kept a few days earlier, before being allowed disembarkation in Malta⁴⁴.

On August 5th, 2020, 27 exiles were maintained on board the *Maersk Etienne*, a Danish-flagged oil tanker. The captain anchored the vessel on the Hurds Bank, right outside Maltese territorial waters. After several suicide attempts, an official letter written by MEPs asking Malta’s Prime Minister to allow disembarkation, official statements by the UN, negotiations between Malta and Denmark and a transfer to NGO Mediterranean’s *Mare Jonio*, the 27 people could eventually disembark in Italy. Their floating detention was sadly qualified as a ‘record’, as they spent more than a month waiting for a disembarkation point. The Maltese Prime Minister officially declared that Malta wasn’t responsible for their situation, considering Tunisia as the responsible port, therefore completely disregarding the rule of disembarking in a safe port⁴⁵.

B) Captain Morgan Cruise Ships: Malta using migrants to pressure the EU

Between April 28th and June 6th, the Maltese government used a containment strategy targeting 425 people previously rescued at sea at the border of Maltese territorial waters. The Hurds Bank, a maritime zone where non-transparent practices as oil traffic have been occurring⁴⁶, became a zone of *de facto* detention on board four cruise line vessels from a national company, Captain Morgan cruise ships.

The Captain Morgan episode has been one of the biggest crises in this region in 2020, crystallising longstanding tensions between Malta and the rest of the European Union. Despite many official statements from the Maltese civil society⁴⁷ and the UN (UNHCR, IOM)⁴⁸, the 425 migrants became blackmail tools for relocations in the EU. Without any access to medical care nor asylum procedure, deprived of their right to testify publicly about their detention, they became hostages from a period ranging from a week to a month as rescue operations were carried out by private vessels in the Maltese SAR zone. Malta spent several weeks arguing that these groups weren’t under its responsibility and reiterated calls for pledges for *ad hoc* relocations around Europe under the European solidarity banner, displayed on one of the Captain Morgan ships before its departure to the Hurds Bank. According to an interviewed person, they weren’t told they were under Maltese jurisdiction but under the EU’s, and were asked to choose where they wanted to seek asylum.

In the meantime, Abela’s government asked for the European Commission to pay for the Captain Morgan bill⁴⁹, i.e. about €3,000 per day, which the Commission denied. In addition to blackmail endangering hundreds of human lives, and in order to speed up the relocation pledges, Malta also decided to use the European operation Irini as a diplomatic lever to secure European

⁴⁴ ‘Migrants stranded on livestock ship brought to Malta’, *Times of Malta*, July 7th, 2020

<https://timesofmalta.com/articles/view/migrants-stranded-at-sea-expected-to-be-allowed-in-malta-in-next-hours.803529>

⁴⁵ Carabott Sarah, ‘Denmark says Tunisia responsible for oil tanker migrants’, *Times of Malta*, September 8th, 2020

<https://timesofmalta.com/articles/view/denmark-says-tunisia-responsible-for-oil-tanker-migrants.816870>

⁴⁶ Camilleri Neil, ‘Hurd’s Bank ‘out of our jurisdiction’, government says’, *The Malta Independent*, 16 November 2019

<https://www.independent.com.mt/articles/2019-11-16/local-news/Russian-chemicals-to-Venezuela-Hurd-s-Bank-out-of-our-jurisdiction-government-says-6736216277>

⁴⁷ Aditus foundation, Jesuit Refugee Service Malta, integra foundation, ‘Open Letter to EU Commissioner Johansson regarding the migrants held on the Captain Morgan boats’, May 16th, 2020

https://aditus.org.mt/open-letter-to-eu-commissioner-johansson-regarding-the-migrants-held-on-the-captain-morgan-boats/?fbclid=IwAR3vdNAvwcgfnmUV7kt58at5g9_vjwbUOYPgso_OL2P18eTcvBz64SXPfc

⁴⁸ United Nation High Commissioner for Refugees, ‘UNHCR, IOM urge European states to disembark rescued migrants and refugees on board the Captain Morgan vessels’, May 21st, 2020

<https://www.unhcr.org/mt/13951-unhcr-iom-urge-european-states-to-disembark-rescued-migrants-and-refugees-on-board-the-captain-morgan-vessels.html>

⁴⁹ Micallef Keith, ‘€3,000-a-day for Captain Morgan vessels to house migrants offshore’, *Times of Malta*, May 11th, 2020

<https://timesofmalta.com/articles/view/captain-morgan-vessels-housing-migrants-costing-3000-each-daily.791378>

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solidarity in the Captain Morgan crisis⁵⁰. As only France accepted the relocation of 30 to 162 people detained on these boats, the Maltese government vetoed the appointment of head of operation Irini before withdrawing from the naval mission and freezing its financial and material contributions (including military aircraft)⁵¹.

V) Cherry-picking people to disembark on ‘humanitarian grounds’

On board dozens of boats denied disembarkation in the Maltese SAR zone each year, some people experience evacuations on an *ad hoc* basis, exceptionally justified by their vulnerability in the framework of humanitarian operations.

Evacuations of three or four ‘vulnerable’ passagers at sea become more and more common in the Maltese RCC’s management of the Search and Rescue zone. During the Captain Morgan Cruise Ships episode, some people were evacuated and disembarked on the basis of their vulnerability, assessed by the Maltese authorities. Among the 120 individuals on the *Bahari* (the second Captain Morgan ship used), eight were allowed disembarkation on ‘humanitarian grounds’⁵² soon after their transfer onboard. Two were children, some adults were their parents and one was a pregnant woman.

This tendency was confirmed at the beginning of 2021. In the first three months, Alarm Phone had been referring dozens of dinghies stranded in the Maltese SAR zone, but none of them has been allowed disembarkation in Maltese ports. An official source from the Ministry of Home affairs, national security and law enforcement indicated that as of March 4th, 2021, only a small amount of people were transferred through a medical evacuation on February 6th.

Cherry-picking on vulnerable people can be read as a way for Malta to choose whom the government would allow on its territory, while giving the illusion of respecting human rights. But in the Mediterranean - the deadliest migration route in the world - all migrants are vulnerable. Their distress and urgent need for rescue and disembarkation cannot be questionable nor questioned.

While the delegation of responsibility and non-rescue are constant in Maltese waters, 2,281 people actually disembarked on the island in 2020. Media coverage of these « crises at sea » seems to focus more on strategies to prevent disembarkation rather than on the AFM (non)rescue operations. It seems, therefore, that some disembarkations are kept more secret, while impasses and crises of solidarity are widely exposed. They can help the Maltese government reinforcing the illusion of total control of its borders.

⁵⁰ Balzan Saviour, ‘Malta gives ultimatum to EU with threat to veto Irini force commander choice’, *Malta Today*, May 20th, 2020

https://www.maltatoday.com.mt/news/national/102460/malta_gives_ultimatum_to_eu_with_threat_to_veto_irini_com_manderinchief_choice#.YFzzjUhKj-Z

⁵¹ Vella Matthew, ‘Malta vetoes Irini spending after withdrawing from EU naval mission’, *Malta Today*, May 8th, 2020

https://www.maltatoday.com.mt/news/europe/102202/malta_withdraw_eu_naval_mission_irini_veto_spending#.XrUvJhMzb-Y

⁵² ‘Small group of migrants, including children, allowed to land’, *Times of Malta*, May 7th, 2020

<https://timesofmalta.com/articles/view/small-group-of-migrants-including-children-allowed-to-land.790607>