

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants**

Ref.: AL OTH 88/2025  
(Please use this reference in your reply)

29 July 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 58/14, 51/8, 53/4 and 52/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the role of the European Union's (EU) Joint Operation EunavforMed Sophia in contributing to the attempted *refoulement* of migrants rescued in international waters in the Mediterranean Sea to Libya in 2019, where they feared serious human rights violations.

According to the information received:

In the early morning of 25 March 2019, over 100 people, including 20 women and at least 15 children, left Garabulli, Libya, on board a rubber boat, in an attempt to cross the Mediterranean Sea to reach Europe. Not long after their departure, their boat began to deflate.

According to radio transcripts documenting the rescue mission, an aircraft deployed by the European Union's (EU) Joint Operation EunavforMed Sophia, a naval operation to combat refugee smuggling in the Mediterranean, spotted the sinking boat. It requested the *El Hiblu 1*, a Turkish-registered commercial oil tanker on its way from Istanbul, Türkiye, to Tripoli, Libya, to proceed to the area to help the boat, rescue the migrants and take them to Tripoli.

The rescue took place in international waters (at position 33°37'N 014°21'E), but within the Search and Rescue Region for which Libya was responsible under the international law of the sea.

While most of the migrants agreed to board the *El Hiblu 1* for fear of drowning, six men refused as they were too scared at the prospect of being taken back to Libya, where they were informed the *El Hiblu 1* was scheduled to sail. Their fate is unknown and they are presumed drowned.

Permanent Delegation of the European Union  
to the United Nations Office  
and other international organizations in Geneva

On board, it is alleged that the chief officer of the *El Hiblu 1* provided assurances that he would not take them back to Libya but would bring them to Europe.

That evening, the chief officer informed the EunavforMed Sophia aircraft by radio that the situation on board was “a big problem” because the migrants “want to go to Europe, Spain or Italy”. The aircraft nonetheless gave instructions by radio to the *El Hiblu 1*, on behalf of the Libyan Coast Guard, to go to Libya, in words to the following effect:

El Hiblu 1: Airplane, El Hiblu 1.

Aircraft: Sir, we are cooperating with the Libyan coast guard. They tell us to say to you that you can move those people to Tripoli.

El Hiblu 1: I take the people to Tripoli?

El Hiblu 1: Airplane, airplane navy, El Hiblu 1.

Aircraft: Sir, we are coordinating – we are under the coordination of the Libyan national coast guard. Don’t go and rescue the other boat. You can proceed to Tripoli.

At about 6 a.m. the next day, as the migrants began to wake up, they realised that they were approaching the Libyan coastline and panic ensued. People started crying, screaming and shouting that they refused to go back. Some threatened to jump overboard and many banged their fists or metal objects found onboard against the sides of the ship in protest.

Concerned at the reaction of the migrants, the chief officer asked some of the migrants how to calm down the situation. Three of the migrants who spoke English explained to the chief officer that if the migrants were sent back to Libya, some of them feared that they would certainly die. They suggested he take the boat towards Europe, as he had originally promised. According to his subsequent testimony to Maltese authorities, the chief officer agreed to take them to Valletta, Malta.

As the *El Hiblu 1* approached Malta, Maltese authorities dispatched a special operations unit of the Armed Forces of Malta to intercept *El Hiblu 1* as soon as it entered Maltese waters.

It is further noted that the Libyan Coast Guard receives funding from the EU. In 2024 the European Court of Auditors identified significant deficits in human rights risk mitigation, training and monitoring in relation to EU-funded maritime border management activities in Libya.<sup>1</sup>

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<sup>1</sup> [https://www.eca.europa.eu/ECAPublications/SR-2024-17/SR-2024-17\\_EN.pdf](https://www.eca.europa.eu/ECAPublications/SR-2024-17/SR-2024-17_EN.pdf).

While we do not wish to prejudge the accuracy of these allegations, if true the conduct of EunavforMed Sophia raises concerns about the European Union's respect for the principle of *non-refoulement* under international law, which prohibits the return of a person to any place where there are substantial grounds for believing that the person is at risk of arbitrary deprivation of life (International Covenant on Civil and Political Rights (ICCPR), article 6, and European Convention on Human Rights (ECHR), article 2), torture or cruel, inhuman or degrading treatment or punishment (ICCPR, article 7, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3(2), and ECHR, article 3), persecution (article 33(1) of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol), and certain other serious violations of human rights. The principle of *non-refoulement* is binding on the European Union, as an international organization, under customary international law and European Union law (e.g. Charter of Fundamental Rights of the EU, article 19(2)) and binding on its member States under treaties and custom.

From 2018 onwards, the United Nations High Commissioner for Refugees (UNHCR) considered that no one should be forcibly returned to Libya under any circumstances and that returning people to Libya constitutes a breach of the obligation of *non-refoulement*.<sup>2</sup> It was widely reported that in conflict-affected Libya, refugees and migrants who entered the country, either to find work or to attempt the journey toward Europe, remained trapped in a cycle of serious human rights violations and abuses, including unlawful killings, arbitrary detention, torture and inhumane detention conditions, alarming rates of malnutrition, sexual and gender-based violence including gang rape, slavery, extortion, forced labour and exploitation at the hands of State and non-State actors in a climate of impunity.<sup>3</sup> These violations and abuses have been extensively documented, including by international human rights organisations, various United Nations bodies such as the Human Rights, Transitional Justice and Rule of Law Service (HRS) of the United Nations Support Mission in Libya (UNSMIL), and the European Court of Human Rights.<sup>4</sup> We note that Libya is not a signatory to the 1951 Geneva Convention relating to the Status of Refugees or the 1967 Protocol, nor does it have any domestic asylum legislation and there is an absence of effective protection in practice.

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- <sup>2</sup> OHCHR, “*Lethal Disregard*”: *Search and rescue and the protection of migrants in the central Mediterranean Sea*, May 2021, p. 3, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>; see also, UN, Report of the Secretary-General on the United Nations Support Mission in Libya, 20 May 2022, para. 106, available at: <https://unsmil.unmissions.org/reports-secretary-general>; and UNHCR, *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, September 2020, available at: <https://www.refworld.org/docid/5f1edee24.html>.
- <sup>3</sup> See for example, OHCHR, “Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya” 20 December 2018, available at: <https://www.ohchr.org/sites/default/files/Documents/Countries/LY/LibyaMigrationReport.pdf>; OHCHR, “Unsafe and Undignified: The forced expulsion of migrants from Libya”, 2 November 2021, available at: <https://www.ohchr.org/en/documents/reports/unsafe-and-undignified-forced-expulsion-migrants-libya?utm>; and OHCHR, Nowhere but Back Assisted return, reintegration and the human rights protection of migrants in Libya, November 2022, [Report-on-assisted-return-and-reintegration.pdf](https://www.ohchr.org/en/documents/reports/nowhere-but-back-assisted-return-reintegration-and-the-human-rights-protection-of-migrants-in-libya).
- <sup>4</sup> E.g. *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Grand Chamber, European Court of Human Rights (ECtHR), 23 February 2012.

Under the international law of the sea, a vessel registered in a State has a duty to rescue persons in distress at sea.<sup>5</sup> Rescued persons must be disembarked at a “place of safety” under the amendments to the International Convention on Maritime Search and Rescue<sup>6</sup> and the International Convention for the Safety of Life at Sea.<sup>7</sup> A “place of safety” is not defined but the IMO Guidelines 2004 provide that it is a location where the rescue ends, the person’s life is no longer in danger, their basic human needs (such as food, shelter and medical needs) can be met, and their onward transport can be arranged.<sup>8</sup> Refugees and asylum seekers must also not be disembarked where they have a well-founded fear of persecution.<sup>9</sup> There was broad international agreement<sup>10</sup> at the time of the rescue by the *El Hiblu 1* that Libya could not be regarded as a “place of safety” where refugees and migrants rescued at sea can be disembarked.

Additionally, under international refugee law and human rights law, wherever a State exercises jurisdiction, including on the high seas or at the frontier, it must not return a refugee or asylum seeker to a country where he or she is at risk of persecution or other serious harm.<sup>11</sup> The instruction to disembark the rescued migrants in Libya, which was initially acted upon by the chief officer of the *El Hiblu 1*, emanated from the Libyan Coast Guard, in the exercise of Libya’s responsibilities for its Search and Rescue Region under the law of the sea. Such degree of control was sufficient to attract Libya’s international law obligation of *non-refoulement*, namely not to return the rescued migrants from international waters to Libya, where they feared and would face serious human rights violations. Türkiye, as the flag State, also bore its own obligation to regulate ships of its nationality to respect *non-refoulement*.

The EunavforMed Sophia aircraft appeared to relay instructions from the Libyan Coastguard to disembark the rescued migrants to Tripoli, Libya. Even in the absence of conventional territorial or personal jurisdiction over the migrants by the EU, we emphasize that the obligation to protect the right to life under article 6 of the ICCPR requires ensuring that all activities within jurisdiction – such as the operation of a European Union controlled aircraft – which have “a direct and reasonably foreseeable impact on the right to life of individuals outside their territory” are consistent with the right to life (general comment No. 36, para. 22). This functional understanding of jurisdiction obliges the European Union, under customary international law, to ensure that it must not relay instructions identifying a port of disembarkation that would result in a violation of *non-refoulement*. This is particularly the case in the present situation, where due to operational constraints the Libyan authorities were not in the position to coordinate directly with the *El Hiblu 1* and the European Union aircraft thus assumed a critical role in facilitating the rescue, in a context where the EU exercised extensive

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<sup>5</sup> UN Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3) art 98(1)(b).

<sup>6</sup> Opened for signature 1 November 1979, 1405 UNTS 109 (entered into force 22 June 1985).

<sup>7</sup> Opened for signature 1 November 1974, 1184 UNTS 278 (entered into force 25 May 1980); 2004 Amendments to the International Convention for the Safety of Life at Sea, IMO Doc Resolution MSC 153(78), Annex 3, adopted 20 May 2004.

<sup>8</sup> IMO Guidelines on the Treatment of Persons Rescued at Sea (20 May 2004), para. 6.12.

<sup>9</sup> Ibid para. 6.17. See also UNHCR, Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum, para. 2.1; IOM, OHCHR, UNHCR, UNICEF, UNODC, and UN Special Rapporteur on the Rights of Migrants, The concept of place of safety under international law and the respect of the rights of migrants and refugees rescued at sea by all States (2022).

<sup>10</sup> E.g. including OHCHR, UNHCR, the International Organization for Migration (IOM), the European Court of Human Rights and international human rights bodies.

<sup>11</sup> UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, paras. 24-43.

surveillance over the Mediterranean Sea.<sup>12</sup> “*Refoulement* by proxy” is unlawful. Even if the EU did not exercise jurisdiction,<sup>13</sup> under international law the European Union still had an obligation not to aid or assist Libya in the commission of an internationally wrongful act by that State, if it has knowledge of the circumstances of the wrongful act and the act would be internationally wrongful if committed by the European Union itself (see article 14 of the International Law Commission’s 2011 Draft articles on the responsibility of international organizations). The relaying of the disembarkation destination made a “significant” contribution to the attempted return to Libya, as article 14 is understood to require.

We note that the above-mentioned doctrine of complicity in the wrongful act of another only applies if the wrongful act actually occurs. In this instance, while the *El Hiblu 1* came close to reaching Libya with the rescued migrants, it did not appear to enter Libyan territorial waters before it turned around and headed to Malta. As such, the Libyan instruction to return the migrants to Libya did not result in a breach of *non-refoulement* since the return was thwarted by the intervening conduct of the chief officer. Nonetheless, we are deeply concerned that the European Union cooperated with the Libyan authorities in an attempt to facilitate the return of the migrants to Libya in breach of *non-refoulement*. The European Union had been informed by the chief officer by radio that the migrants had opposed return to Libya and did not seek to investigate those concerns, in a context where the European Union knew, from authoritative sources such as the UNHCR and the European Court of Human Rights, that migrants could not be returned to safety in Libya.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please detail how the European Union’s Joint Operation EunavforMed Sophia’s instruction to the *El Hiblu 1* to proceed to Libya complied with the principle of *non-refoulement* under international law.
3. Please indicate what legal, training and operational measures have been taken by the European Union to ensure that all of its maritime border security and rescue at sea operations respect the principle of *non-*

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<sup>12</sup> See also the report of the former Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, A/72/335, para. 64: “The European Union and its member States have put in place an extensive surveillance system focused on security and border patrol, which now includes the North Atlantic Treaty Organization (NATO). Having chosen to provide security in the Mediterranean, the States members of the European Union cannot escape their obligation to protect. They are exercising sufficient functional control to be subject to the one obligation inextricably linked to ocean surveillance: an adequate and effective system of rescue. This includes the implementation of the principle of non-refoulement, including to unsafe third countries...”

<sup>13</sup> See *S.S. and Others v. Italy* (Application no. 21660/18), ECtHR Judgment, 12 June 2025.

*refoulement* and ensure that people rescued at sea are only disembarked at a “place of safety” under the international law of the sea.

4. Please explain how human rights risk mitigation, training and monitoring for EU-supported maritime border management activities in Libya will be improved to prevent EU facilitation of human rights violations.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Further, we would like to inform your Excellency that after having transmitted the information contained in the present communication, the Working Group on Arbitrary Detention may also transmit a case to the concerned Government(s) through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The concerned Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

Please be informed that a related communication has been sent to the Governments of Malta, Libya and Türkiye.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Matthew Gillett

Vice-Chair on communications of the Working Group on Arbitrary Detention

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Gehad Madi

Special Rapporteur on the human rights of migrants

## Annex

### Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the legal principles and standards applicable to this communication.

The principle of *non-refoulement* prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations,<sup>14</sup> such as arbitrary deprivation of life, enforced disappearance, arbitrary detention, or flagrant denial of fair trial. Where such risk exists, *non-refoulement* prohibits all forms of removal and transfer of any individual, regardless of his or her status. All border governance measures taken at international borders, including those aimed at addressing irregular migration, should comply with the principle of *non-refoulement* and the prohibition of arbitrary or collective expulsions.

Under customary international refugee law and the Convention Relating to the Status of Refugees (“Refugee Convention”) 1951 and its Protocol 1967, States parties are prohibited from expelling or returning (“refoulement”) a person to persecution. Article 33(1) of the Refugee Convention specifically provides that: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion. Non-refoulement applies to any form of forcible removal, including deportation, expulsion, extradition, informal transfer (“rendition”), and non-admission at the border.”<sup>15</sup>

Under international human rights law, the prohibition on *refoulement* is enshrined in various instruments. Article 3(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) states that: “No State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he [or she] would be in danger of being subjected to torture.” Article 3(2) provides that “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. The Committee against Torture has determined that the prohibition on refoulement is as absolute as the prohibition on torture itself.<sup>16</sup> The absolute prohibition against refoulement to torture is broader than under refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee status under article 33 of the 1951 Refugee

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<sup>14</sup> UNHCR, ‘Complementary Forms of Protection’, EC/50/SC/CRP.18 (2000); UNHCR, ExCom Conclusion No. 103 (LVI) (2005); Global Compact for Migration, Objective 21; OHCHR, The Principle of Non-refoulement under International Human Rights Law 2018; OHCHR, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations 2018.

<sup>15</sup> See also A/62/263, para. 49; UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1976 Protocol, 26 January 2007, para. 7. See also UNHCR, Note on Diplomatic Assurances and International Refugee Protection, August 2006, at [www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44dc81164](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44dc81164).

<sup>16</sup> Committee against Torture, General Comment No. 4 on the implementation of Article 3, para. 9.

Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee status determinations.

Article 7 of the ICCPR provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In accordance with general comment No. 20, States parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement” (para. 9).

The Human Rights Committee has also affirmed that the duty to respect and ensure the right to life under article 6 of the ICCPR requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life would be violated (general comment No. 36, para. 30).

Article 8 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearances provides that: “No State shall expel, return or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance”. The Working Group on Enforced Disappearances has expressed concern about the increasing practice of forced returns by States in violation of article 8 and the principle of non-refoulement (A/HRC/48/57).

Human Rights Council resolution 9/5 “requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party.” Resolution 9/5 also “reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants”.

Finally, *non-refoulement* is recognized under the European Convention on Human Rights (ECHR) and European Union law. Article 3 of the ECHR provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The European Court of Human Rights has consistently held that article 3 prohibits the expulsion, deportation, extradition or any form of return (direct or indirect) of an individual where there are substantial grounds for believing that the person would face a real risk of torture or inhuman or degrading treatment.<sup>17</sup> In addition, article 19(2) of the Charter of Fundamental Rights of the EU provides that: “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” Article 78(1) of the Treaty on the Functioning of the EU emphasizes the obligation to comply with the principle of *non-refoulement* and article 21 of Directive 2011/95/EU of 13 December 2011 states that “Member States shall respect the principle of *non-refoulement* in accordance with their international obligations” and sets out limited exceptions to that obligation under article 21(2).

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<sup>17</sup> See European Court of Human Rights, *Case of Soering v. the United Kingdom*, application no. 14038/88, 7 July 1989, paras. 88 and 91; *Case of Chahal v. the United Kingdom*, application No. 22414/93, 15 November 1996, para. 74; *Case of Saadi v. Italy*, application No. 37201/06, 28 February 2008, para. 125; *Case of Hirsi Jamaa and others v. Italy*, application No. 27765/09, 23 February 2012, paras. 114, 123 and 146-147.

The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add.13 (2004), para. 10). In addition, article 2(1) of the ICCPR establishes a general duty to exercise due diligence to prevent violations by non-State actors or third States against individuals within its jurisdiction, and not to facilitate (by aiding or assisting) the commission of human rights violations by third States (see, for example, general comment No. 36, para. 63).

The report of the former Special Rapporteur on Extrajudicial Summary or Arbitrary Executions on unlawful deaths of refugees and migrants (A/72/335) emphasizes that States should abide at all times with the principle of non-refoulement, including on the high seas and at borders and that States should ensure that interception measures at sea do not, *de facto*, deny access to international protection or lead to anyone being returned, directly or indirectly, to territories where their life or freedom would be threatened.