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28 May 2009

Sir,

In advance of the Justice and Home Affairs Council meeting of 4/5 June 2009, I would like to share with you my reflections and concerns regarding irregular migration across the Mediterranean Sea toward the European Union, and more specifically in respect of the recent action taken by Italy to return persons to Libya after they were rescued or intercepted at sea.

I am very cognizant of the challenges which irregular migration poses, in particular to States located at the external borders of the European Union. It is nevertheless essential that migration control policies are designed and implemented so as to ensure respect for the rights of asylum-seekers and refugees. The fundamental right to seek and enjoy asylum from persecution set out in Universal Declaration of Human Rights is also guaranteed in the EU Charter of Fundamental Rights. International and Community law also enshrine the duty of States to respect the fundamental principle of *non-refoulement*.

There have been many discussions at EU and international level about responsibilities for persons intercepted or rescued at sea. International law makes clear that there is a responsibility to ensure that persons intercepted or rescued are disembarked in a safe port. It is my view that the disembarkation of people rescued in the Search and Rescue (SAR) area of an EU Member State should take place either on the territory of the intercepting/rescuing State or on the territory of the State responsible for the SAR. This will ensure that any asylum-seekers among those intercepted or rescued are able to have access to fair and effective asylum procedures. The disembarkation of such persons in Libya does not provide such an assurance.

For these reasons, I would like to seek your support for the admission to Italy and/or other EU Member States of persons who were forcibly returned to Libya by Italy in early May, and who appear to be in need of international protection.

UNHCR has maintained a presence in Libya for a number of years. We are redoubling our efforts to carry out our mandate responsibilities there. However, the provision of asylum remains a State responsibility, for which the activities of UNHCR cannot substitute. This is particularly relevant in view of the fact that Libya does not at present have national asylum legislation or institutions. There is no procedure by which asylum may be sought or granted in Libya and there is no formal agreement between UNHCR and Libya with respect to our presence and operation there.

His Excellency  
Mr. Martin Pecina  
Minister of the Interior  
Nad Stolou 3, P.O.Box 21  
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Together with partner organizations and governments, UNHCR is seeking to build Libya's capacity to provide refugees with the protection they need, and to deal with the very large mixed migratory flows with which Libya is confronted. We welcome further support from the European Union toward this end, and in particular efforts to encourage Libya to formalize UNHCR's presence in the country, to adopt and implement asylum legislation, and to put in place institutions to deal fairly and effectively with asylum claims. We also seek support to ensure that UNHCR has full access to persons in Libya who are or may be seeking international protection, including those held in detention, and to achieve immediate improvement in the conditions of detention. We naturally also wish to encourage Libya to accede to the 1951 Convention relating to the status of refugees and to respect fully its obligations under the 1969 Organisation of African Unity Refugee Convention, including in particular that Convention's provision on *non-refoulement*.

My Office will continue, to the extent possible, to assist persons seeking international protection in Libya, and will seek durable solutions – principally resettlement – for those whom we identify as refugees. In this respect I would welcome a commitment from EU Member States to provide resettlement places for persons in Libya who are identified by UNHCR as needing international protection.


I would also like to reiterate that we continue to work in partnership for the implementation of UNHCR's 10 Point Plan of Action in the Libyan context as well as elsewhere in North Africa, and stress our readiness to collaborate with the European Union, the International Organization for Migration (IOM) and other partners to respond to the challenges posed by irregular migration on both sides of the Mediterranean Sea.

Within the European Union, UNHCR is prepared to lend its support to responsibility-sharing arrangements for people identified as refugees or beneficiaries of subsidiary protection. We understand that discussions will be initiated on this subject in the coming weeks and will continue under the Swedish Presidency, with a view to finding ways to assist Member States whose reception and asylum systems face particular strains. My Office is ready to contribute to those discussions and, as appropriate, to the implementation of responsibility-sharing arrangements that may be agreed. In this connection, I believe that commitments and positive measures will also be needed to continue strengthening the Common European Asylum System and improving the quality of asylum procedures, facilities and protection, including notably in Member States which might benefit from such arrangements.

In view of the strong interest of Member States and other stakeholders in this important subject, I would be grateful if you would distribute this letter among the members of the Council ahead of next week's meeting.

Please accept, Sir, the assurance of my highest consideration.

with my warmest personal regards



António Guterres