



DRAFT

Proposal for a Central Mediterranean Sea Initiative: EU solidarity for rescue-at-sea, protection and comprehensive responses

Background

The movement of refugees and migrants by dangerous means across the Mediterranean Sea towards Europe continues to exact a devastating toll on human life. UNHCR estimates that in 2011 alone, over 1,500 people died, many crossing from North Africa to Italy or Malta to escape the conflict in Libya. Since that time, refugees and migrants, including an increasing number of Syrian refugees, have continued to take to the sea, resulting in casualties on a deplorable scale. In October 2013, several shocking incidents have occurred in the stretch of sea between Libya, Malta and Italy, in which hundreds of lives have been lost in tragic circumstances. Despite the best efforts of the Italian Coast Guard and the Armed Forces of Malta to aid the vessels in distress, only a limited number of survivors could be rescued and brought to safety in Italy and Malta. These tragedies illustrate that existing mechanisms and arrangements need to be strengthened further to respond more effectively and prevent deaths at sea.

In all, since 2007, over 175,000 individuals have arrived by sea in Italy, peaking in 2011 with over 60,000 arrivals. Malta has seen arrivals of over 18,000 individuals since 2002. The majority of these new arrivals come originally from Eritrea and Somalia, and more recently, an increasing number are from Syria (Syrian nationals and Palestinians) and Egypt. Many, though not all, of the recent arrivals are in need of international protection. Reasons for undertaking these journeys include lack of protection in first countries of asylum as well as a desire to reunify with family members. The absence of security, economic opportunities and education are also important elements. Very often a combination of these factors prompts movements.

Several countries in North Africa are also increasingly affected by the displacement caused by the Syria crisis, which places additional demands on their infrastructure and resources. Given the ongoing and dramatic needs of Syrian refugees, which are likely to continue and grow in the immediate future, reinforcement of capacity to receive them in North African countries is increasingly urgent.

States located at the southern sea borders of Europe, such as Greece, Italy, Malta and Spain, are confronted with frequent arrivals by sea of refugees and asylum-seekers within mixed migratory movements. Irrespective of their need for international protection, the people arriving by boat through the Mediterranean Sea are often traumatised and have dire humanitarian needs not least because of their exhausting and dangerous journeys. As

recognized by Member States and the European Union (“EU”), this dramatic situation at the EU’s sea borders demands urgent and concerted European action in accordance with the principle of *non-refoulement*. Comprehensive measures need to be explored with concerned countries on both sides of the Mediterranean to offer credible alternatives to perilous journeys by boat.

The serious challenges around maritime movements, rescue, and comprehensive responses arise in numerous locations along the EU’s sea borders. This paper puts forward proposals for actions which could be taken by the EU and Member States, as well as other European countries, to address the situation in Italy, Malta and their southern neighbours in particular. It sets out, firstly, actions which could be undertaken within the EU, including strengthening rescue at sea, disembarkation and responses to protection and other needs. Secondly, it highlights areas where EU cooperation with countries outside the EU could be reinforced and expanded, with the aim of addressing causes of displacement in regions of origin, as well as further developing protection systems, institutions and broader responses in regions of transit.

1. Possible actions within the EU

The following actions are proposed by UNHCR as elements which may be considered by and developed as an initiative in collaboration with concerned States, the European Union, the International Organization for Migration (IOM), the International Maritime Organization (IMO) and other relevant partners. Their objective, among others, is to assist and inform the work of the Task Force proposed by Italy and endorsed by the EU Justice and Home Affairs Council in its meeting of 8 October, which aims *‘to identify the tools that the EU has at its disposal and that could be used in a more effective way.’*¹

Building on the Model Framework developed by the 2011 Djibouti Expert Meeting on Distress at Sea,² and on achievements of the Common European Asylum System, it is suggested that this initiative would include a set of activities aimed at enhancing cooperation and dialogue between States. It could focus initially on Italy and Malta, as key EU Member States directly affected by larger-scale sea movements in the Central Mediterranean. Recent decisions of the European Court of Human Rights clarifying

¹ Press Release, Justice and Home Affairs Council, Luxembourg, 8 October 2013:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/138925.pdf

² UNHCR, Expert Meeting on Rescue At Sea, November 2011. See Concept note (<http://www.unhcr.org/4ec144999.html>); Background Paper (<http://www.unhcr.org/4ec1436c9.html>), Summary Conclusions (<http://unhcr.org.au/unhcr/images/Attachment%20D%20Summary%20Conclusions%20Djibouti.pdf>) referring also to Model Framework for Cooperation following Rescue at Sea Operations involving Refugees and Asylum-Seekers at Annex I to the Summary conclusions. See also UNHCR’s ‘Working Paper – A revised ‘EU prong proposal’, December 2003 (<http://www.refworld.org/docid/400e85b84.html>)

applicable legal obligations,³ and recommendations by the Parliamentary Assembly of the Council of Europe (PACE),⁴ are relevant in this regard.

Areas of immediate focus for such an initiative could include:

a. Measures to strengthen search and rescue (SAR) at sea: On the rescue front, international law of the sea establishes clear obligations for shipmasters to rescue those in distress at sea. In practice, however, gaps remain regarding responsibilities for disembarkation which are particularly evident in rescue operations involving refugees and undocumented migrants. Differing views on disembarkation are directly linked to the question of which State or States would carry longer-term responsibility for the provision of asylum or other outcomes for those not in need of international protection.

In this context, there is an immediate need to strengthen SAR capacity for rescue at sea in the Mediterranean. This could be done, inter alia, by:

- (i) Reinforcing and maintaining SAR patrols along Mediterranean routes towards Italy⁵ and Malta, with support of other States in the region. SAR activities need to be initiated wherever there are indications that a vessel, or the conditions of the people on board, do not allow for safe travel, creating a risk that people may perish at sea. Relevant factors include: severe overcrowding, the poor condition of vessels, lack of necessary equipment and absence of professional personnel. In addition, weather conditions may also need to be considered. SAR operations are required to identify distress situations, including for boats with migrants and refugees, and undertake and/or coordinate SAR operations when necessary, as well as facilitate the identification of a place of safety for disembarkation. National maritime patrol activities, as well as Frontex's work in coordinating joint patrols, could be reinforced, as has been proposed in recent EU discussions, notably with regard to rescue capacity and disembarkation arrangements. Practical cooperation between Member States and support by IMO would be useful⁶.
- (ii) Encouraging shipmasters of commercial vessels to undertake SAR operations, including by ensuring the facilitation of disembarkation of rescued persons without delay or diversion, without the risk of prosecution following their life-saving actions. To the extent possible, such rescue must ensure minimal financial impact on commercial ships.

³ Hirsi Jamaa and Others v. Italy, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, available at: <http://www.refworld.org/docid/4f4507942.html>.

⁴ Council of Europe: Parliamentary Assembly, Lives lost in the Mediterranean Sea: who is responsible? 5 April 2012, Doc. 12895, available at: <http://www.refworld.org/docid/4f7be86b2.html>.

⁵ In this regard, UNHCR welcomes the recent "Mare Nostrum" initiative by Italy to increase its SAR patrols

⁶ Also potentially useful would be the predictable involvement, in accordance with international legal standards, of NATO Member States with a presence in the Mediterranean.

(iii) Building on the work of IMO, the development of further guidance for shipmasters on the definition of what constitutes a distress situation is considered essential. Other actors such as Frontex could also include appropriate guidance in their operational plans.

(iv) In line with the Djibouti Conclusions, Mobile Protection Response Teams, composed of experts and including States, international organizations and NGOs, could be created to provide multi-disciplinary support to and capacity-building for States undertaking disembarkation and/or processing in addressing the needs of irregular mixed groups. The teams could also have a role in reception arrangements, profiling and referral and, where appropriate, asylum or other status determination procedures

b. Disembarkation: In order to ensure effective SAR operations, it is important to develop effective and predictable mechanisms for identifying without delay places of safety for the rapid disembarkation in Europe of rescued refugees and migrants. This must take into account availability of capacity to address immediate post-disembarkation needs.

c. Arrangements for the immediate post-disembarkation phase: Strengthen arrangements for initial reception, potentially involving qualified state and other organizations who can offer specific services and expertise. These should be expandable to respond in flexible and effective ways to changing arrival patterns. Additional facilities could supplement the existing capacity in Lampedusa. Strict limits and safeguards should regulate the use of detention, combined with the application of alternatives to detention and any measures improving the conditions for asylum-seekers who are awaiting processing for asylum. Speedy responses will be needed to address the immediate humanitarian needs for those rescued, through the provision of basic information packages in several languages, and assistance (food, medical assistance, clothing, trauma relief, effective interpretation support) in humane and dignified conditions. Based on the existing Italian Red Cross model, a centralised hotline to respond to inquiries from relatives could also assist Member States, inter alia with initial family tracing, potentially drawing on the services of non-governmental bodies with experience in providing such services.

d. Reception facilities: For people seeking international protection, cooperative arrangements might be explored between Member States to ensure sufficient capacity and treatment in accordance with the Reception Conditions Directive. Additional initial reception facilities could potentially be established with EU support in Member States receiving sea arrivals where capacity is overstretched. Wider responsibility-sharing arrangements to provide additional reception capacity in other Member States could also be explored, where additional space is needed for rescued asylum-seekers. At this stage, activities should also aim to identify people with specific needs, including victims of trafficking, severely traumatised people, and unaccompanied or separated children, and ensure that they are speedily referred to competent bodies.

e. Profiling and referral mechanisms are a useful means to promptly identify those who may be in need of protection, and should be developed and put in place in relevant European ports, potentially building on the Djibouti Model Framework for Cooperation.

Such arrangements would be based on the understanding that disembarkation does not necessarily imply sole responsibility for processing and solutions by the State on whose territory persons rescued at sea are disembarked. An EU pilot could, for example, be put in place, including with support from European Asylum Support Office (EASO) coordinated support teams that would be responsible for processing the claims of such sea arrivals. UNHCR, IOM and other international or national actors could also support such arrangements.

f. Access to fair and effective asylum procedures for asylum-seekers could be ensured, initially on a pilot basis through collaborative or joint processing focusing on persons rescued at sea. This will draw upon concepts proposed in the EC's study of February 2013 on the feasibility and implications of possible mechanisms for joint processing of asylum claims.⁷ UNHCR could provide technical assistance and other forms of support as required.

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g. Durable solutions: People in need of international protection will be in need of a durable solution. In addition to integration support for those granted protection, this could include piloting the use of mechanisms for an equitable distribution or relocation of those recognized as refugees or beneficiaries of subsidiary protection within and beyond the European Union (taking into account effective links, such as family, educational or cultural ties, absorption capacity), building on the experiences gathered from previous relocation and resettlement activities. Durable solutions could also be enabled through expedited processing especially in situations of family reunification and for those with specific needs. In this context, there may be a need to transfer some of those in need of international protection who have family links outside the EU or in other EU Member States for potential family reunification or resettlement processing.

h. Return and other outcomes: Support is required for the timely return in safety and dignity of those found not to be in need of international protection or without compelling humanitarian needs. Collective practical cooperation efforts and European funding could facilitate the return of persons determined not to be in need of international protection to their countries of origin, including through assisted voluntary return programmes with meaningful incentives, coordinated by IOM. For those who do not need protection but are not removed, other avenues might be considered, including potentially other legal grounds for stay in the country of arrival, regular movement to a third country for humanitarian reasons, or for work, education, labour or family reunification.

2. Cooperation with countries beyond the European Union

Renewed concrete and practical engagement by the European Union, Member States, as well as other actors, to address the root causes of displacement in countries of origin, and to improve responses in countries of first asylum and transit countries will complement efforts within the EU. There remains a strong political and institutional commitment within the EU and among Member States to extend and deepen partnerships with other States,

⁷ http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/common-procedures/docs/jp_final_report_final_en.pdf

including on issues of common concern around migration, refugee protection, development and human rights, as well as to provide humanitarian assistance to respond to refugee emergencies.

Beyond Europe, further work on other aspects of the complex phenomenon of forced displacement and sea movements will be required, to further actions within the EU as suggested above. A comprehensive regional approach, informed by UNHCR's 10 Point Plan, might include, amongst others:

- **Supporting and encouraging countries of first asylum and transit countries to strengthen efforts to fulfill their obligations under international law**, including with respect to rescue at sea, protection of refugees and asylum-seekers and respect for fundamental rights, including in the treatment of migrants and of those seeking protection. In particular, practical options would need to be discussed on how SAR could be enhanced, including in countries in North Africa. These could include creating additional capacity within national Coast Guard services, among other areas.
- **Promoting data and information gathering and analysis**: The reinforcement of comprehensive quantitative and qualitative data on movements by sea to and through the central Mediterranean region will contribute to enhanced knowledge of routes, motives, profiles of arrivals and other aspects of the phenomenon, as a potential basis for developing shared assessments and responses. This could build on work undertaken by States, as well as by Frontex and EASO; projects implemented by IOM and others (such as Altai Consulting who under UNHCR sponsorship recently conducted a field study in Libya and neighbouring countries on mixed migration); and the work of research and academic bodies.
- **Combating human smuggling and trafficking** - Dedicated international cooperation efforts and resources to combating human smuggling and trafficking in the region could help reduce the exploitation and creation of dangerous situations for vulnerable people. The focus of such measures will be to identify and prosecute perpetrators alongside the protection of the victims and their families.
- **Large scale information programmes**: Measures aimed at preventing harmful onward movements are needed, including through information campaigns targeted, inter alia, at displaced populations and other marginalized groups. These could be undertaken through local/international media in countries along migratory routes in key locations, in relevant languages, aimed at informing people at risk of onward movements, of the conditions and dangers involved, including risks crossing the Mediterranean and available alternatives to seek protection. This mass information campaign could be complemented by –people-to-people information-sharing/counseling.
- **Structured and informal dialogue with community-based diaspora organizations** as well as other NGOs in Europe linked to the nationalities of the persons arriving by sea, could help in disseminating accurate information on risks

and alternative protection mechanisms, understanding the dynamics and evolving causes of the movements and the common need to combat trafficking and exploitation.

- **Creation of legal migration alternatives to dangerous irregular movements** - Legal migration programmes developed and managed by Member States and IOM in sub-Saharan Africa, including for unskilled workers, could reduce the incentives for people to embark on dangerous irregular travel. This could also help boost local economies and in the medium term, and in the longer run create labour opportunities. The EU has already undertaken a number of migration policy dialogues with several African countries. For example, in June 2013, a comprehensive Mobility Partnership with Morocco, incorporating great potential for more mobility to and from the EU, was concluded. As part of this, the need to develop a functioning asylum system is crucial and Morocco has already taken positive steps in this regard.
- **In countries of first asylum and of transit – strengthening capacity and access to protection**: Building on existing cooperation between the EU and African countries, further and reinforced actions could be considered in the following areas:
 - **Refugee protection capacity- and institution-building**: Steps towards establishing functioning asylum and migration systems have been undertaken in many countries neighbouring the EU and beyond, but more needs to be done. Institutional capacity and resources remain limited. In North Africa in particular, due to the significant political and economic changes which they have faced in the last two years, this presents a challenge. Enlarging the protection space for persons in need of international protection, and migration management responses for others, will be an ongoing priority in the North African countries from where boats begin their journey. Such reinforced capacity and institution-building could be undertaken through a reinforced EU Regional Protection Programme (RPP) in North Africa, with a substantial focus on Libya, as well as through other regional or bilateral initiatives. Concomitantly with this, capacity development of civil society and NGOs needs strengthening.
 - The feasibility of arrangements based on international standards for **reception, screening or processing outside the EU** of persons who may be in need of protection, by UNHCR in cooperation with other partners such as IOM, but who cannot find a durable solution in a country of first asylum or a transit country, could be examined further. Such arrangements, in complementarity to the provision of protection in the EU, could also ensure that those who need protection are identified and provided access through orderly movement, including the use of enhanced and strategic resettlement, without the need to undertake hazardous journeys to secure asylum in Europe.

- **Exploring use of humanitarian visas, protected entry procedures and screening or processing:** In specific cases or as part of limited programmes, some Member States in the past have provided visas at Embassies in individual cases, to enable people in need of protection to travel from countries of transit to Europe in order to receive protection. The potential to further develop such arrangements should be explored, including on the basis of past experience and research conducted by the EC in 2004.
- **In countries of first asylum - reinforced protection strategies:** In countries such as Kenya, Ethiopia and Sudan, reinforcement of protection strategies could include livelihood opportunities through enhanced access to urban centres in dignified conditions, to education, vocational training opportunities and formal access to the labour market, potentially targeting populations at risk of movement. It could also include enhanced resettlement efforts, facilitated access to family reunion options and other legal entry mechanisms for refugees. The EU is developing targeted policies to further address African protracted refugee situations jointly with UNHCR, and, in addition, EU Regional Protection Programmes in the Horn of Africa as well as in Tanzania have also helped address some of the longer term needs. UNHCR and partners have worked closely with the EU and other donors to contribute to strengthening the link between relief and rehabilitation to development, including supporting refugee host communities. Continuation and reinforcement of these efforts with clear strategic practices is essential. Access to these solutions in the countries of first asylum may not dissuade all populations at risk to move on, but may provide to some populations at risk (in particular women, unaccompanied children and young adults) a credible alternative to a perilous journey which may lead to exploitation, various forms of abuse and loss of life.
- **In countries of origin - measures to address humanitarian, human rights, and development needs:** Continued investment is needed in humanitarian, cooperation and development aid programmes in the countries and regions from which people move irregularly, including from sub-Saharan Africa to North Africa and across the Mediterranean. The EU, Member States and other European countries have invested significantly in programmes aimed at improving humanitarian, socio-economic conditions, stability and development in countries of origin in Africa and elsewhere over recent years, which need to be strengthened. A human rights dialogue on selected specific aspects such as child protection mechanisms could also be explored with some countries of origin.

The above proposals are put forward as a basis for discussion with the European Commission and among States and other concerned stakeholders. UNHCR is ready to discuss these and other potential measures to address these complex challenges, and contribute in line with its mandate and capacity.

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