

LIVES ADRIFT

REFUGEES AND MIGRANTS IN PERIL
IN THE CENTRAL MEDITERRANEAN

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Cover photo: Asylum seekers and migrants from Africa being rescued at sea and taken aboard an Italian navy ship, 8 June 2014. © Massimo Sestini / eyevine

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GLOSSARY

“Migrant”: a person who moves from one country to another to live and usually to work, either temporarily or permanently. Migrants may move to take up employment, or to be reunited with family members. Many move for a combination of reasons.

“Regular migrants”: foreign nationals whose migration status complies with the requirements of domestic immigration legislation and rules, i.e. non-nationals who, under domestic law, are entitled to stay in the country. It is used as short for “migrants in a regular migration status” and as a synonym for “documented migrants”.

“Irregular migrants”: foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules, i.e. non-nationals who, under domestic law, are not entitled to stay in the country. It is used as short for “migrants in an irregular migration status” and as a synonym for “undocumented migrants”. The term “irregular” refers only to a person’s entry or stay and does not express a quality of the individual.

“Refugees”: foreign nationals who cannot be returned to their country of origin because of a real risk of persecution, as defined in the 1951 Convention Relating to the Status of Refugees.

“Asylum-seekers”: individuals whose claim to be a refugee has not yet been definitively evaluated.

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1. INTRODUCTION

“I tried going to a number of embassies in Cairo, the German, Belgian, Swedish, trying to get refuge in those countries... We tried our best to travel to Europe in a legal way, but no matter how hard we tried, we were not allowed.”

Mohamed, 47, from Syria¹

A survival test is being imposed by the EU and European governments on refugees seeking sanctuary and on migrants desperate for a life with dignity. In the absence of safe and regular routes into Europe, accepting the risk of drowning in the central Mediterranean is the price many refugees and migrants must pay to access asylum or job opportunities.

In the first nine months of 2014, at least 2,500 people died in the Mediterranean. Of these, 2,200 died between the beginning of June and 15 September 2014.² But the real number will never be known, as many bodies are lost at sea. Other deaths were narrowly prevented. Three shipwrecks in October 2013, together claimed the lives of over 500 people, many of them children. They moved public opinion and politicians.

In the immediate aftermath of the October 2013 shipwrecks, Italy, sole among EU member states, took concrete steps to avoid further deaths at sea. It launched Operation Mare Nostrum (OMN), deploying a significant part of its Navy to rescue refugees and migrants at sea. The European Commission reinforced the 2013 budget of Frontex (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) by allocating an additional €8.2 million, to intensify operations in the central Mediterranean, including to contribute to search and rescue capacity.³ (The cost of OMN is about €9 million per month).

Between 18 October 2013 and September 2014, the Italian Navy rescued well over 100,000 people. However, even its best efforts were insufficient to prevent the dramatic loss of life occurred over the 2014 summer months.

In this report Amnesty International argues that until safe and regular routes into Europe are in place for refugees and migrants, the priority for the EU and its member states must be to protect their lives and ensure access to asylum for those who need it, as they attempt the sea crossing. A strengthened collective EU search and rescue (SAR) system and a review of the

Dublin system are needed.

After assisting refugees and migrants at sea for nearly one year on its own, the Italian government is looking for a way out of the operation. For months, it lobbied the EU to take over OMN or to help Italy with it. The EU and its member states avoided any decisions which could help refugees and migrants leaving North Africa for as long as they could. Finally, on 27 August 2014, the European Commission announced that Frontex would implement a new operation, named Triton, to complement Italy's OMN. But Frontex' capacity to respond to search and rescue needs in the central Mediterranean remains in doubt. The effectiveness of the Triton operation will largely depend on the resources – financial and logistic – that member states will offer. Concerns remain also as to the ability of Frontex – an agency created for controlling borders – to focus its operations on rescuing people and guaranteeing access to asylum.

What is clear is that if Italy decides to significantly scale down or even stop OMN altogether, before an operation of comparable scale is in place, with at least the same level of resources, assets and dedicated staff, many more lives will be lost at sea.

A further consequence would be that access to asylum in Europe for many who desperately need it will also be reduced. The number of *prima facie* refugees trying to reach safety in Europe by boat has significantly increased in the past two years. It is essential that access to protection in the course of search and rescue operations, including by private shipmasters, is ensured. In 2013, 48% of all irregular entrants and 63% of all those arriving irregularly by sea to the EU came from Syria, Eritrea, Afghanistan and Somalia, countries torn by conflict and widespread human rights abuses.⁴ In the first eight months of 2014 about 40% of people reaching Europe irregularly through the central Mediterranean route were Eritreans (23%) and Syrians (17%), which were also the two top nationalities.⁵ The majority of those fleeing these countries are clearly fleeing generalized violence or persecution and are *prima facie* in need of international protection.

The numbers of those trying to reach Europe are unlikely to go down. Undeterred by the EU's measures to keep them out at all costs,⁶ and unable or unwilling to go back to their war-torn, rights violating or economically struggling countries of origin, refugees and migrants continue to risk their lives and the lives of their children. With the Syrian conflict raging, and violence spreading in the Middle East and Sub-Saharan Africa on one hand, and the sealing of the land borders into "Fortress Europe", especially via Turkey, Greece and Bulgaria on the other, many refugees and migrants consider that the only route still open to them is a perilous sea crossing towards Italy or Malta.

Tens of thousands are currently trapped in Libya, the main departure country for Europe, with UNHCR deeply concerned about their safety. For years, Libya has been a destination country for sub-Saharan Africans and nationals from the Middle East and North Africa, who are looking for economic opportunities or for international protection as they flee persecution, violence and armed conflicts. Others have used Libya as a transit route towards European shores. But as the country descends into deeper lawlessness and militia infighting increasingly poses a threat to the lives of all, many more are seeking a way out. According to UN estimates, some 150,000 people, including many migrant workers, have left Libya as a result of five weeks of indiscriminate shelling in parts of the Libyan capital, between mid-July

and the end of August 2014. Amid political instability, foreign nationals, particularly those from sub-Saharan Africa, remain vulnerable to abductions, arbitrary arrests, exploitation, torture and ill-treatment by both state and non-state actors. Refugees and migrants interviewed by Amnesty International described their stay in Libya before the sea crossing as an ordeal. All of those interviewed reported having experienced human rights abuses and violations at the hands of smugglers, militias and state security forces. Amnesty International's research confirms that human rights violations and abuses against foreign nationals remain rife in Libya, including in immigration detention centres under the authority of the Libyan Ministry of Interior.⁷ Amnesty International documented arbitrary arrests, including of unaccompanied children as young as 10, and indefinite detention for migration control purposes by both state and non-state actors. Men and women reported torture and ill-treatment including electric shocks, beatings and whipping with cables.⁸

In Egypt, from where many refugees and migrants also depart to reach Europe, people who have fled the conflict in Syria, including both Syrian nationals and Palestinian refugees who were living in Syria, are now fleeing discrimination and human rights violations in that country. Refugees have been subjected to verbal attacks and threats in the media and by public figures, arbitrary arrests, unlawful detention and – in some cases – refoulement to Syria. Their situation in Egypt has become so desperate that many are taking the huge risk involved in a sea crossing to Europe.⁹

Ultimately, the death toll in the Mediterranean will decrease only if safe and regular routes into the EU are opened. European states should start by significantly increasing the number of resettlement and humanitarian admission places for refugees, as Amnesty International has repeatedly recommended. They could also increase the offer of family reunification and other special visas. They should facilitate asylum applications at Europe's land borders.

But until that happens, the EU and its member states have an obligation to protect the lives of those at sea and to ensure access to asylum for the many among them who need it. Failing to act now to prevent deaths at sea and ensure access to asylum to people in need of assistance at sea amounts to a violation of international human rights law, refugee law and the international law of the sea.

In this report Amnesty International argues that two areas need to be addressed: the search and rescue at sea (SAR) regime under the international law of the sea and the EU Dublin Regulation. These systems currently overlap in ways that disincentivise the effective co-ordination of search and rescue operations between Malta and Italy, as both face the responsibility, post rescue, of receiving, screening and possibly returning rejected asylum-seekers and irregular migrants, who for the most part have other European destinations in mind.

The increasing numbers of refugees and migrants attempting the crossing is putting the SAR regime in the central Mediterranean under pressure and exposing its systemic weaknesses. Rescue operations are hindered, potentially leading to loss of life. It is urgent that SAR capacity is strengthened, that systemic flaws are addressed and that inconsistent and differing interpretations of the law of the sea by Malta and Italy are resolved.

One major problem is identifying safe ports for disembarkation of those rescued at sea. This

is where the EU Dublin Regulation has become an obstacle. The Dublin Regulation, whereby the EU member state of first arrival is responsible for processing asylum claims, and returning irregular migrants and rejected asylum-seekers to their countries of origin, is effectively deterring coastal states from accepting people rescued at sea.

Italy, with OMN, has for the moment unilaterally resolved the problem of disembarkation, by allowing all those rescued to be brought to Italian territory. But the Italian authorities have repeatedly indicated that this situation is not sustainable in the long term and have announced that OMN will stop soon. When it does, the reluctance of countries to engage in search and rescue and accept responsibility for people rescued is bound to return. Furthermore, the fact that large numbers of asylum-seekers – especially Eritreans and Syrians – appear to move onwards irregularly from Italy towards northern European countries also points to the fact that the responsibility-attribution mechanism forged by the Dublin Regulation is unsuitable to deal with mixed migration flows of this nature and scale and needs reviewing.

A strengthened SAR system and a reviewed Dublin system are urgently needed if European states want to save the lives of refugees and migrants.

This report gathers testimonies from refugees and migrants, including survivors of shipwrecks, who travelled to Europe from North Africa, to expose the reality of the journey they had to endure to access protection and better life opportunities in Europe. It also identifies the weaknesses of the SAR system and makes the case for its urgent strengthening and for the equally urgent review of the Dublin Regulation.

METHODOLOGY

This report is the result of three research visits to Italy in February, July and August 2014 (the latest including five days on board the Italian Navy vessel *Virginio Fasan* to observe the implementation of Operation Mare Nostrum) and one visit to Malta in May 2014. Authorities, refugees, asylum-seekers and migrants, inter-governmental and non-governmental organizations, experts and lawyers were interviewed.

In Italy, in February 2014, Amnesty International spoke to Admiral Mario Culcasi, head of Operation Mare Nostrum at the Comando delle Forze da Pattugliamento per la Sorveglianza e la Difesa Costiera (COMFORPAT) of Augusta, Siracusa, Sicily. Amnesty International visited one of OMN vessels at Augusta harbour. In August 2014, one of the organization's researchers spent five days on board the *Virginio Fasan* to observe the implementation of rescues by OMN.

In February 2014, Amnesty International spoke also to Admiral Chief Inspector Felicio Angisano, head of the Italian coastguard (Comandante Generale del Corpo delle Capitanerie di Porto - Guardia Costiera), at its headquarters in Rome. On that occasion, the organization's researchers also visited the Rome Maritime Rescue Co-ordination Centre (RCC) and spoke to the officers on duty.

During missions in February, July and August 2014, Amnesty International conducted over 50 interviews with refugees and migrants at the Umberto I first reception centre in Siracusa; at first reception centres in Pozzallo and Comiso, Ragusa; at the centre for asylum-seekers of Mineo, Catania; at La Zagara reception centre for migrant families in Melilli, Siracusa; and at

La Scuola Verde centre for unaccompanied minors, Augusta, Siracusa. Shorter conversations were held with many more refugees and migrants, including aboard a Mare Nostrum vessel.

In Malta, in May 2014, Amnesty International spoke to Emmanuel Mallia, Minister for Home Affairs and National Security; and to Air Wing Commanding Officer Lt Col Claudio Spiteri, head of Malta RCC and other officers of the Armed Forces of Malta (AFM), at Luqa Barracks. The organization's researchers visited the migrants' detention centres at Safi and Lyster barracks accompanied by Lt. Col. Mario Schembri, Head of Operations of Detention Services.

In Malta, researchers interviewed five Syrian refugees, survivors of the 11 October 2013 shipwreck, including three who at the time were detained in Corradino Prison, Paola, convicted of having used false identification documents to leave Malta.

Amnesty International also spoke to UNHCR representatives in Malta and Italy, as well as to representatives of the International Organization for Migration (IOM) in Italy and the European Asylum Support Office (EASO) in Malta. The organization interviewed representatives of civil society, lawyers and academics in both countries.

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2. THE SEA CROSSING AND ITS TOLL

NUMBERS IN PERSPECTIVE

Between 2009 and 2012, on average, over 1.7 million long-term immigrants entered the EU.¹⁰ In comparison, the numbers of those smuggled by sea have been quite small.¹¹ It has been estimated that between 1998 and 2013, 623,118 refugees and migrants reached the shores of the EU irregularly – an average of almost 40,000 people a year.¹² According to UNHCR, total arrivals by sea through the Mediterranean amounted to 69,000 in 2011 (of these, between February and early April 2011, 51,000 arrived in the Italian island of Lampedusa and 1,500 in Malta¹³); 22,500 in 2012; and 60,000 in 2013.¹⁴ Out of these 60,000, in 2013, 43,000 people arrived in Italy.¹⁵

In 2014, the number of seaborne refugees and migrants irregularly crossing Europe's southern border reached 130,000 as of 15 September 2014. Of these, UNHCR estimates that over 118,000 arrived in Italy.¹⁶ The vast majority of these people departed from Libya – at least 77,000 out of the 88,000 who had arrived as of 5 August 2014.¹⁷

Malta experienced a drop in irregular boat arrivals coming from Libya in 2014 compared with previous years as a result of OMN disembarking in Italy all refugees and migrants it intercepts and rescues. As of the end of August 2014, 565 individuals were rescued and brought to Malta by the Armed Forces of Malta (AFM).¹⁸

While the number of arrivals by sea in 2014 is large, arrivals by sea started increasing significantly already in 2013, including as a result of the Syrian crisis, bringing the total for that year not far from the previous record number of sea arrivals in 2011, in connection with the uprisings in North Africa.

Observing the phenomenon of irregular arrivals by sea and land along the whole EU southern border over a period of a decade, it emerges that routes changed very rapidly to respond to external circumstances, including migration control measures in specific countries (such as joint patrolling with third countries).¹⁹ Enhanced border control measures by EU states along land borders (including the construction of fences and increased border control co-operation with neighbouring countries) appear to be encouraging more and more refugees and migrants to risk perilous sea crossings, including along the central Mediterranean route. While it is difficult to establish with certainty the reasons behind shifts in migratory routes, data appear to suggest that sealing land borders is at least contributing to leading people towards the sea routes. For example, in 2013, there was a 33% decrease in the detection of irregular border crossings on the Eastern Mediterranean route, which includes Greece, Bulgaria and Cyprus - from 37,224 to 24,799. Along this route, the decrease in the detection of irregular crossings on the land border was 61% from 32,854 to 12,986, whereas the detection of irregular sea crossings along the same route increased by 171% from 4,370 to 11,831.²⁰ Much stronger border controls along the Bulgarian/Turkish border may also have led many refugees and migrants to turn to the sea routes. Between 1 January and 11 July 2014, 1,360 people were apprehended while attempting to cross this border irregularly. In 2013, 2,332 people had been detected attempting to cross the same border in September, 3,626 in October and 1,662 in November.²¹

The numbers of those who die at sea have steadily increased since the early 2000s, and especially since 2006. Because the deaths officially recorded include only those where corpses are retrieved (and this is the case only for a small proportion of deaths at sea), only estimates are available, rather than hard data. According to the EU Agency for Fundamental Rights (FRA), “Civil society estimates are the only publicly available figures that allow for a comparison over the years.”²² A blog, Fortress Europe, which has been gathering media reports on incidents at sea, puts the number of recorded deaths at sea in the Mediterranean at 20,257 between 1988 and August 2014.²³ According to UNHCR, which already in 2011 had described the Mediterranean as “the most deadly stretch of water for refugees and migrants”²⁴, in 2011 there were around 1,500 deaths; in 2012, around 500; in 2013, over 600; and as of 15 September 2014, 2,500. Of these, 2,200 occurred between the beginning of June and 15 September 2014.²⁵

According to the Migration Policy Centre, a think-tank,

“The ratio of those who died to all those who crossed ... provides a proxy of the probability of dying during the sea journey... It stands constantly above 3% (30 dead per 1,000 persons crossing) except for a short-lived drop in 2010. In other words, the maritime route to Europe is amongst the most dangerous routes in the world. Moreover, the last section of the route, at the gate of the EU, is the most lethal, and mortality during the journey has increased considerably in the last decade... What our data show ... is a sharp increase over time in risk of dying...”²⁶

Applying the same analysis to the most updated data available, it can be noted that following the deployment of OMN the ratio has decreased to about 1.9%, or one death per 53 persons crossing. OMN is therefore clearly working in reducing the death toll and increasing safety at sea, but the Mediterranean crossing remains an extremely dangerous route for refugees and migrants.²⁷

Amnesty International considers that the lack of data collected in a consistent manner regarding deaths at sea and missing persons is a major problem which requires a coordinated response from relevant Mediterranean authorities, not only to make better informed policy decisions but also to provide information to families of possible victims of shipwrecks.

LIVES LOST AT SEA

The list below details incidents involving the large scale loss of life of refugees and migrants in the central Mediterranean between May and August 2014, based on the blog Fortress Europe’s data,²⁸ as well as on UNHCR reports and media reports:

On 24 August 2014, a fishing boat carrying some 400 people capsized north of the Libyan coast in bad weather conditions. The Italian navy and coastguard, and a merchant ship, rescued 364 people. 24 bodies were recovered and more were feared dead.²⁹

On 23 August 2014, 73 people were rescued by the Italian Navy 20 miles from Libyan territorial waters. 18 bodies were recovered and 10 people were reported lost at sea. The passengers were mainly from Mali, Ivory Coast, Guinea and Sudan. The dinghy on which they were travelling was already partially deflated when spotted by an Italian search and rescue aircraft and life rafts were dropped to people already in the water.³⁰

On 22 August 2014, a boat reportedly carrying at least 270 people overturned near Garabulli to the east of Tripoli. 19 people were rescued by the Libyan coastguard, and 100 bodies were recovered, including five children under the age of five. Many more were reported lost at sea.³¹

On 2 August 2014, The Italian Navy and coastguard rescued 268 people and retrieved the bodies of a woman and a child following the shipwreck of a boat at 40-50 miles off Libyan coasts. Survivors reported that up to 400 people were lost at sea.

On 15 July 2014, 29 people were found dead from apparent asphyxiation in the hold of a fishing boat. Some 60 people were reportedly stabbed and thrown overboard as they sought to escape from the hold. 131 people were reported lost at sea, including a newborn baby.³²

On 14 July 2014, Italian authorities rescued 12 people 40 miles off the coast of Libya. Survivors said their rubber dinghy had been carrying 121 people, when it started to deflate on one side, and capsized. 109 people were reported lost at sea.³³

On 30 June 2014, Italian authorities assisted a boat carrying some 600 people in the Sicily Channel. Below deck, they found 45 bodies of people who probably died of asphyxia. Investigations into the cause of death were opened by judicial authorities in Sicily. The boat was towed to Pozzallo, Sicily.³⁴

On 14 June 2014, the Italian coastguard and Navy rescued 40 people and retrieved 10 corpses following the shipwreck of two dinghies. Some 40 people were reportedly lost at sea. The shipwreck happened about 40 miles off the Libyan coast.³⁵

On 12 May 2014, the Italian Navy rescued 206 people and retrieved 17 corpses from a shipwreck in international waters, south of Lampedusa. The victims included three children. Some 60 people were reported lost at sea. Many passengers were Eritreans and Syrians.³⁶

On 11 May 2014, reports emerged of a shipwreck off Tripoli's coasts occurred the previous week. Libyan officials said 36 people died and 42 were missing after a boat carrying 130 people capsized just off the Libyan coast, about 30 miles east of Tripoli. Some 52 people were rescued.³⁷

October 2013 was a tragic month for deaths at sea in the central Mediterranean, with over 500 lives lost in the space of nine days, in three separate shipwrecks. The first of these, on 3 October 2013 was probably the biggest reported shipwreck of a refugee and migrants' boat since records started.

LAMPEDUSA, 3 OCTOBER 2013

On 3 October 2013, a trawler reportedly carrying between 518 and 545 people sank off the coast of Lampedusa. Most of the passengers were Eritrean and Somali asylum-seekers. The boat had left two days earlier from Misratah, in Libya. According to accounts of survivors, when the motor stopped working, some passengers set fire to a blanket to attract the attention of passing ships. The fire spread and so did the panic. Most of the passengers moved to one side of the boat, causing it to capsize. Private vessels and the Italian coastguard went to the rescue, but only 155 passengers survived. 366 bodies were retrieved. Some 20 people may have been lost at sea. Following the shipwreck, it emerged that some of the women survivors were raped and tortured by the organizers of the journey. At the time of writing, judicial investigations were ongoing against several individuals accused of trafficking and other offences.³⁸

Public outrage over the shipwreck prompted political reactions. The EU Commission set up a Task Force for the Mediterranean (TFM), involving member states, EU agencies and the European External Action Service, with the aim of coming up with concrete actions to save lives at sea. The TFM reported to the December 2013 Justice and Home Affairs council meeting. Instead of addressing the need to strengthen search and rescue obligations and capacity, and of offering other, legal, routes to safety, the TFM recommended measures focussed on engaging the co-operation of countries of departure in patrolling and preventing arrivals to Europe.³⁹

WHO ARE THE PEOPLE TRYING TO REACH EUROPE THROUGH THE MEDITERRANEAN?

Migratory flows into Europe include refugees, asylum-seekers and economic migrants and are therefore called “mixed migratory flows”. People trying to reach southern Europe by sea have included both nationals of the countries where the crossing starts, for example Egypt, as well as nationals of countries further away. The countries from which most of those attempting the crossing originate are in Sub-Saharan Africa or in Asia (mainly Afghanistan and Pakistan), and, since the last quarter of 2013, Syria. According to Frontex, “The number of Syrians escaping the armed conflict in their country and detected on this [the central Mediterranean] route grew from just 96 in the last quarter of 2012 to a massive 3,432 a year later, thus closely following Eritreans as the most detected nationality in the central Mediterranean.”⁴⁰

Although the need for international protection depends on individual circumstances, the conditions prevailing in the individual’s country of origin contribute to their circumstances and need to be taken into account when determining refugee status. Many of the countries of origin of those attempting to reach Europe by sea are characterized by weak or absent state structures, repressive regimes or internal conflicts, with their neighbouring countries in similar situations. Nationals of these countries in need of protection can hardly find it nearby. They also have little chance of getting documents to reach a safe country regularly and end up leaving by very dangerous routes.⁴¹

In recent years, the number of refugees attempting to reach Europe by sea has become significant, especially due to the crisis in Syria. The victims of the major shipwrecks of 3 and 11 October 2013 were in the vast majority refugees from Eritrea and Syria.

In 2013, the FRA stated:

“...it is undisputed that significant numbers of arrivals by boat originate from countries such as Afghanistan, Eritrea, Ethiopia, Iraq and Somalia. There is a considerable likelihood that nationals from these countries are in need of international protection. In 2011 national asylum authorities in the 27 EU Member States recognized the following percentage of applications made: for Afghanistan 45%, for Eritrea 70%, for Ethiopia 39%, for Iraq 54%, and for Somalia 68%, according to Eurostat.”⁴²

According to data published by Frontex, in 2013, out of a total of 107,365 people detected while attempting to cross a border irregularly, 25,546, about 24%, were Syrians, and 11,298, about 10%, Eritreans.⁴³ Both Eritreans and Syrians were among the top nationalities of asylum applicants in the EU in 2013.⁴⁴

THE SEA CROSSING

"I was expecting the journey to be hard but I never imagined that it would be as bad as it was and that there were going to be hundreds on the boat." Abdel, 37, from Syria⁴⁵

The sea crossing is often described by refugees and migrants as a terrifying experience. Hardship and extreme risks to life and safety are the typical features of the journey. The average crossing time from Libya to European shores is one to three days, but the speed of the boat, sea conditions and other circumstances can increase its duration significantly.

Refugees and migrants' accounts of how departures from Libya to cross the central Mediterranean are organized and the circumstances of the sea journey are quite consistent.

MOHAMED JANIL, FROM SYRIA⁴⁶

Mohamed, 33, and his wife Rada Ramadan, 25, are from Damascus, Syria. They have two children, Shahad, 7, and Mohamed, 4. When the conflict started in Syria, Mohamed became worried for the safety of his family and decided to leave for Libya where he had a friend. "I left my family with my in-laws and flew to Cairo and then Tripoli on 27 May 2012. Once I was settled and had the money, I sent for my family to join me, in December 2012." But life in Libya became increasingly difficult. The family was harassed by a landlord. In December 2013 Mohamed was abducted and robbed and felt traumatized by the experience. Work was not so good anymore and living costs too high. "It reached a point I could no longer live there. I decided to leave."

The family was picked up from home by the smugglers. "I paid a total of \$2000. They took us to a four-room house with a small garden, where there were 40 other people staying. On Thursday 26 June 2014, they told us that the boat was going to depart that day. We prepared. They took us in groups to a place really far from the sea and closer to the desert. There were about 300 people of all nationalities.

Some people were noisy and the smugglers would hit them with metal bars. They mostly hit the Africans and Pakistanis. We thought that we were going to go on the same day, but we ended up staying there for the night. There were no bathrooms. They gave us water, bread and a triangle of cream cheese. My wife was 5 months pregnant. It was very difficult for her.

On 27 June 2014, they took us in groups, starting with the Africans, to a farm about 1km away from the beach and then told us to follow them on foot. We saw a group of about 150 Africans coming towards us. We all then made our way to the shore. I had to pay an extra US\$1500 because one of the smugglers refused to take me unless I gave him extra money. They took us in groups using small inflatable motor boats onto a larger ship offshore. There was a big crack across the boat and it wasn't very sturdy. They separated me from my family and slapped me. They didn't give us any food or water for the journey. The Africans were below deck while the others were on top. Moroccan passengers were given orders by the Libyans not to let the Africans come up. If they tried to come out, the Moroccans were told to hit them. They had no water or anything. I will never forgive myself for putting my family through this."

Many describe being held in "houses" by the smugglers, where all the passengers due to board a boat are gathered for several days, until the number of passengers is deemed

sufficient and the boat is ready. Often a car journey follows, organized by the smugglers, to reach the beach from where they will depart; others were instructed to walk in long lines towards the beach.

The situation at the beach is described by many as frightening and violent, as the smugglers threaten refugees and migrants with firearms, including machine guns.

Departures tend to happen at night, when refugees and migrants are boarded on small boats to be taken to a bigger boat which they cannot see from the shore. Several refugees and migrants interviewed said that when they saw the boat they were meant to cross the sea on they wanted to go back because they could see it was clearly overcrowded and unsafe, but were threatened with firearms and told they had to board.

The boats used are consistently described as visibly unseaworthy and extremely overcrowded. Old fishing boats or dinghies are used for the crossing, while smaller boats are used for the transfers from shore onto the bigger boat. Different prices apply to sit in different parts of the boat, with higher prices for the top decks (most people surviving shipwrecks were sitting on top decks). Many interviewees report that Africans, who often lack the extra money needed for “better” seats, are generally boarded first and placed below deck, including in the engine room (the most dangerous place in case of shipwreck and for the risk of becoming intoxicated by fumes) and are beaten if they attempt to go above deck.

ABDEL, FROM SYRIA⁴⁷

Abdel, a 37-year-old marble worker, father of six, fled Aleppo, Syria, for Libya in 2012: “The situation in Aleppo was tragic. The government shelled the area daily. Young men were rounded up by the government forces and killed. My house was 50m from a road. Once, a tank shell hit it. So we went to Libya, because I had some family there.”

In 2014, Abdel became worried for the safety of his family in Tarhouna, where they were living, as the violence in the town escalated. He decided to move to Zuwara. As he was visiting a flat to rent, one of his children was injured by an explosion in one of the rooms. The child was taken to hospital and had to undergo surgery. But Abdel was unhappy with the medical care he could get in Libya and decided to leave. He told Amnesty International:

“The smuggler organized for my family and me to be picked up and taken to Zuwara beach. He told me that we would leave on the same day, but it took three days for the boat to leave. My family and other Syrian families stayed on the beach waiting without shelter for three days. My children didn’t even have blankets or jackets and had to sleep on the sand, in the open. There were approximately 300 Syrians in the group and around 500 Africans from various nationalities. Libyan men involved in the operation would come to the beach every day with guns and would terrorize us. I saw some Africans get beaten and some were even beaten to death with wooden and iron pieces. The Africans had it the worst because they treated them as if they weren’t human beings.”

Eventually, on Saturday at 9:00pm, armed men ushered everybody closer to the shore where inflatable boats were waiting. “There were two small boats and the first group that was taken to the larger boat in the sea were Africans. We could not see the larger boat we were going to board because it was dark and the boat was far from the shore. After taking on board about 150 Africans, they started taking the Syrians. There were

approximately 300 Syrians when I first arrived to the shore but only about half boarded. I don't know what happened to the rest, but I think they were taken onto another boat. When my family and I were taken onto the larger boat, we expected it to be bigger because there were so many of us. We immediately felt uneasy about the journey. There were too many people on the boat. The captain was one of the African passengers on the boat and not a real captain. We left thinking that it would take about six or seven hours to arrive, but by noon on Sunday, we still had not arrived. We were lost."

Several interviewees, both Syrians and sub-Saharan Africans, reported that sub-Saharan Africans are treated far worse than Syrians and other Arabic speakers by smugglers. Palien, 20, from Serekunda, Gambia, told Amnesty International:

"At the beach there were about 170 Arabic speaking people, probably Syrians, many families, and 70 Gambians, Senegalese, and other black people. They [the smugglers] put the black people down in the engine room of the boat and the white people up. There were no windows. We did not see the sea. ... The people who took us to the boat were beating and insulting us, because we did not want to go down in the boat, where it was hot. An Arabic speaking man sat on the hole to make sure we didn't get up. If we tried to get out of the hole, the Syrians would beat us. We stayed down in the boat for two days and one night. There was no food and very little water."⁴⁸

Food and water are typically not provided or only in insufficient quantities for all passengers as smugglers try to fit as many people as possible in the boat and limit the amount of baggage allowed to almost nothing. Lifejackets are never provided by smugglers, although some refugees and migrants buy them.

Individuals interviewed by Amnesty International report that the captain of the boat is often not a smuggler but a passenger who is chosen and given instructions on how to operate the boat and what to do to call for rescue. A satellite phone is generally given by the smugglers to the captain with a few numbers to call for rescue already saved in it. Adequate navigation equipment, beyond a simple compass, seems absent in most cases.

While private vessels have assisted and rescued many refugees and migrants in recent months and years, despite the problems private vessels may face for doing so (see below, under Disembarkation), interviewees frequently report that they tried to approach one or more ships encountered during the crossing and that the crews of these ships refused to assist them and in some cases even signalled that they should go away.

Abdel told Amnesty International:⁴⁹

"We came across a large ship. It was docked next to what seemed like an offshore rig. We approached the ship and called for help. We saw people coming out of a cabin of the large ship. They signalled for us to go away. We stayed close to the ship for about 30 minutes pleading for help. We thought we were going to die because of our condition and the condition of the boat. Many people were crying and the women were screaming. There was no food and only a little water. We left the large ship and continued. We kept going until we came across another ship. People on our boat said that it was Tunisian. They didn't want to come close or try to help us. One of the men from our boat, I think he was Tunisian, jumped into the water and swam to the ship. We went on our way and I didn't see whether he was saved. We then saw another large ship with a Libyan flag. It

was carrying containers. We were going straight and the ship was cutting across us. It did not try to help us and we couldn't catch up with it. We went on our way again. Finally, a large blue ship approached us. It did so slowly, otherwise the waves would capsize us. I think it was an Egyptian boat because some of our Egyptian passengers were speaking with the crew. This ship stayed with us for three hours until an Italian Navy ship arrived."

The risks to life in such journeys are obvious: in addition to the hardship of the crossing, in these exceptionally overcrowded, unseaworthy boats and with inexperienced captains, refugees and migrants often lose their way, run out of fuel, experience engine breakdowns, start taking on water, get dehydrated because drinking water is hardly ever available, get intoxicated with the fumes of the engine or asphyxiated due to overcrowding and lack of air in the engine rooms in the hull of the boats. Life jackets or other safety equipment are never available and many cannot swim. Deadly incidents are far from rare, even when a boat does not sink.

WILSON, FROM GHANA⁵⁰

Wilson is 19, from Koforidia, Ghana. As a small child he did not go to school. He broke stones with a hammer and sold them to help his mother. He left home aged 11 and went to work in farms, hoping to be able to save enough money to leave his country. After a few months in Accra, he left Ghana in December 2010, when he was still a child of 15 years. He travelled through Togo, crossed Burkina Faso, and arrived in Agadez, Niger, where he spent six months working for a smuggler to earn money to continue the journey. He reached Dirkou, Niger, where he stayed for a month while waiting for the smuggler to gather enough people to continue the trip towards Libya. Eventually, after bribing guards and paying more smugglers, he crossed into Libya at Qatroun. He paid more money to be taken to Sabha and then Tripoli. There, he worked for a while, washing cars, as a decorator and cooking meals. He painstakingly put together the one thousand dollars he knew he needed for the sea crossing, until he was ready to leave.

He left Libya on 28 June on a boat carrying approximately 600 people. "When we boarded the big boat, there were Arabs with guns who threatened us. An Arab man told us where to sit. Initially we were placed in the middle level, but then he told us to go up. He said he was giving us a safe place. When we arrived, other people were already on the boat. I didn't know that there were others at the bottom. Once the transfer was completed, the Arab men left. We left at about 10 pm."

"After about seven hours, people inside the boat started shouting 'water, water!'. We gave some water to people who were asking for it, because us Ghanaians had a few bottles. "Some people are dying down there, they need water", we were told. Then, around 1am on Sunday, the water finished." At about 6 am the boat reached international waters. "We saw three big ships for containers. Everyone screamed to go towards them. We got closer to one with a French flag. The captain of the ship, a white man, came out. With his hands he signalled that we should wait. The Syrians had life jackets, which they had bought in Libya. Four of them jumped into the water to swim to the ship. The captain told them to go back. He was speaking French. We helped the Syrians back on board of our boat. People from the ship took pictures of us and went back into the boat. They were about six, wearing a pink uniform, one was black. They didn't help, though. The ship remained in position without moving. It was tied to something in the sea, like a small platform or container. Women in our boat started shouting "we have babies!" The captain of the ship said we should go, indicating a direction. He said he had called the Italians, who would arrive in 20 minutes to rescue us. At 10am we left in that

direction. We told the captain of the big ship that people were dying, but they did not help us.”

Down in the hull of the boat, meanwhile, the situation was deteriorating. “Down there it was hot because of the engine. We used sea water to wet clothes and pass them to those in the hull. When someone tried to come out, the Syrians gave them sea water but told them to stay there, because they were afraid that the boat would capsize. Someone tried to leave the bottom of the boat. At least seven managed. One died as soon as he came out. I spoke with one of those who made it, whom I had known before, and he told me “people are dying”. It was because of the heat, the lack of water and air.”

At some point, they sighted a big fishing trawler, white and blue, with “Valletta” and “Rosnik” written on it. The fishing boat stopped. “All those aboard, eight men, came out. Syrians started talking to them, showing their children. Two jumped in the water but they were told to go back, and we took them back on board. The fishermen wanted to throw bottles of water, but people said ‘wait’ because they were afraid to be hit. The fishermen called the Italians to rescue us. It was about 7pm. They didn’t allow us to tie our boat to theirs, they were afraid people would move and make the boat capsize. They spoke Arabic and English. They waited with us. After about one hour, with the telescope, a fisherman saw the rescuers arriving and he told us to relax. Two men, for the excitement, jumped in the water and then came back on board. At that point, all those in the hull had managed to come out, except for those who had died. Initially there were about 200 people down there.”

On 30 June 2014, the boat on which he had embarked two days earlier, on 28 June, was assisted by the Italian Navy.

“The Italian boat arrived, white as the uniforms of the people on board. A small boat was sent to approach us. The people on board told us we should calm down. They threw life jackets at us and took women and children first, then the elderly, then the young. They gave us a small number to put on the wrist. They gave us water. We were asked our name, country and age – they wrote these down.”

“It took a day and a half to arrive in Pozzallo [in Sicily]. We slept one night on the Italian ship. On the pier when we arrived, there were journalists. After we were disembarked, we were given a new number. Officials took pictures of us”.

Following the disembarkation of the passengers, the authorities found the bodies of 45 people in the hull of the boat, who appeared to have died of asphyxia or intoxication. Judicial investigations on the causes of death were ongoing at the time of writing.

The lack of the most basic safety conditions for sailing inevitably results in shipwrecks. Sometimes there are survivors. Their horrific accounts of the moments their boat went down and of the time spent in the water desperately hoping for rescue lift a veil on the reality of deaths at sea. This is how refugees and migrants die at sea, in their thousands.

ALIEU AND MAMADOU, FROM GAMBIA⁵¹

Alieu and Mamadou survived the shipwreck of the boat they were travelling on in June 2014.

Alieu, 28, is from Sinchu, in Gambia. He wanted to escape the poverty in his country and travelled to Senegal, where he worked as a fishmonger for a year. He then travelled to Bamako, Mali, and worked as a small tradesman for a couple of months. Eventually, he travelled to Libya, crossing through Burkina Faso and Niger, paying smugglers to avoid being beaten and abused along the way. But once there, he realized he could not

stay.

“Libya was much different from what I had been told. In Libya you can find a job, but it’s too dangerous. Going to Italy was cheaper. My uncle had money for me to go to Italy (1000 dinars), not enough for me to go back home (2500 dinars). Other people go back, if they have enough money.”

So, Alieu contacted a smuggler. For a week, he was kept at a house in Garabulli, near the beach. On 27 June 2014, after confiscating phones, belts and anything in iron, the smugglers took Alieu and the others to the beach, with trucks and minibuses. They all were told to walk along the beach until they saw the boat.

“It was not very big and could get close to the beach, so we walked in the water, with the water up to our knees, to get on board. There were 101 of us on the boat. It was a one-floor fiberglass and rubber boat, all open. Some Libyans were there to arrange things. They gave us a satellite phone, compass and fuel, water and bread. No lifejackets. We sailed at 1:50am on Saturday.”

At some point the passengers in the boat realized that the fiberglass was damaged. “Some joints were not glued well, so the rubber was losing air. We made the first call for help at 10am, to the Italian coastguard. A Gambian boy spoke to the Italians in English, because the captain was Senegalese and only spoke French. The Gambian boy gave our position, latitude and longitude, I heard it myself. Three hours later, at about 1pm, the boat stopped. Water started to get in the boat very quickly, as the boat deflated. The boat went down in less than 30 seconds, and we were all in the water. I can swim, others could not. There was a Gambian woman, her name was Adama, she said: ‘Adama, today it is your last day in this world’. She and about 30 others remained trapped in the middle of the boat, which folded in two and went down in seconds.”

“I saw fuel jerrycans floating, I held on to one. A Senegalese man, who didn’t know how to swim, grabbed my neck. I told him to turn around and put his hands on the jerrycan. He did. We held on to it together for some five hours. “

Mamadou, 27, was on the same boat. He is also from Sinchu, Gambia, where he worked as a taxi driver. He left Gambia in 2012, for a mixture of economic and political reasons. “In Gambia there is no free speech. The information is passed to the secret service. They can throw you in jail. I cannot risk going to jail. My mum and dad are dead, so I have to provide for my family.” Mamadou has had to support his siblings – a brother and two sisters – since he was 18.

First he went to Senegal, where he worked for 10 months in a garage. Then he moved to Bamako, Mali, where he did a similar job for about two months. But he still was not earning enough to support his siblings and decided to head to Libya. He travelled through Burkina Faso and Niger and crossed into Libya at Qatroun. Like many others before him, he paid smugglers and bribed officials on the way.

He reached Tripoli and lived there for about four months, working to send money to his siblings and to save the sum needed for the sea crossing. “I called my sister, I said ‘I thought it was better, but it’s worse [in Libya]’. I told her that I had decided to go to Italy and asked her to pray for me. She asked ‘Is that safe?’, I said ‘Just pray, if I’m lucky I’ll arrive’. One hears about the incidents [at sea], but for two or three months there had not been any. On Facebook I saw that others had made it. If I had known that it was that risky, I would not have come. When I called my sister, to tell her about the shipwreck [after arriving in Italy], she cried.”

After the shipwreck, Mamadou saw an oil tanker and managed to swim towards it. “I was swimming faster

than the others [survivors of the shipwreck] as I had a jerrycan just to myself. I saw the ship. It was a big oil tanker. People working on the ship had uniforms, orange and white, with an "M" written on it. They were Bangladeshi. I didn't see anything written on the boat. I waved for rescue. When the ship stopped, other six people who had been swimming after the shipwreck were closer to it and were taken on board first. Then I was picked up, with a smaller boat. I told the crew where to look for others who needed to be rescued. They gave use water, clothes and towels. Some of us had our skin burnt because they had emptied fuel from the jerrycans. It was very cold. It was 6:00pm. Within one hour, 27 people were rescued, all by this boat. When we left Libya, we were 101. About 30 went down immediately. Others didn't make it because they couldn't swim, or didn't have jerrycans, or were tired. The captain and the 'compass man' died with the others. At about 8 or 9 pm the Italian coastguard arrived. We were transferred on their boat."

"I have a bracelet on the right wrist. My mum gave it to me before she died. I managed to save it from robberies, hiding it. When I was in the water I put it back on, as it reminded me of my mum."

The migrants Amnesty International interviewed were lucky. They were all rescued, mostly by the Italian Navy and coastguard or in some cases by commercial vessels. They described the rescue with relief and gratitude and in the vast majority spoke well of the treatment received on board the Italian ships.

OPERATION MARE NOSTRUM

Since it began on 18 October 2013,⁵² over 100,000 people have been rescued through the Italian Operation Mare Nostrum (OMN). OMN constitutes the only concrete step taken so far by a European state to assist migrants who face the perilous sea crossing to seek safety in Europe. Without OMN, it is certain that the death toll at sea in the past year would have been much higher.

Amnesty International was able to gain an understanding of its work through interviews with the head of OMN, Admiral Culcasi, and other Navy officers at OMN base in Augusta, Sicily, as well as with the head of the Italian coastguard, Admiral Angrisano, and officers of the coastguard headquarters and Maritime Rescue Co-ordination Centre in Rome (Rome RCC) in February 2014. An Amnesty International researcher was also allowed to spend five days at sea on one of OMN vessels, the frigate *Virginio Fasan*, and to document the rescue, embarkation and disembarkation of 1,004 refugees and migrants by this vessel in August 2014.

HOW OMN WORKS

OMN is described by the Italian navy as a military and humanitarian operation. The stated aim of the operation is twofold: safeguarding life at sea and combating human trafficking. It takes place in international waters, with Navy assets in advanced positions to identify migrants and so called "mother ships" of smugglers as early as possible.⁵³ The area patrolled by OMN, which measures about 43,000km², extends south of Lampedusa along 400 nautical miles by 150 nautical miles in the eastern part, thus overlapping with the Maltese SAR zone south of Malta as well as with the Libyan SAR zone.

OMN relies on staff and assets from the Italian Navy, air forces, customs police, coastguard and state police. The Navy alone has over 900 personnel dedicated to the operation.⁵⁴

Italy is spending over €9 million per month on the operation.⁵⁵

With the exception of Slovenia, which in December 2013 lent a Slovenian Navy patrol boat with 40 officers to OMN for a few weeks,⁵⁶ no other country has contributed to the Italian operation so far, although Malta has been involved in rescue operations co-ordinated with OMN in the Maltese SAR zone.

OMN operates in close co-ordination with the Italian coastguard. The Italian coastguard, through the Rome RCC is responsible for the co-ordination of SAR operations in Italy's territorial waters and SAR zone. The Rome RCC receives all requests of assistance via a telephone helpline and attends to them according to the provisions of the UN Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR), on which the international SAR system is based (for a description of the operations of RCCs and of the SAR zone system, see below).

Since the establishment of OMN, the Italian coastguard has been able to rely on the additional resources provided by the Navy to respond to requests of assistance. OMN vessels therefore go to the rescue of boats upon the request of the Rome RCC, which maintains the overview of all requests received, of assets still available or already deployed, and of the position of commercial vessels which could be asked to direct to a specific situation. The added value of OMN consists in the number of assets patrolling the high seas, including areas which are part of other countries' SAR zones (especially Malta's and Libya's), and which are therefore ready to assist boats in distress quickly.

Crucially, the Italian Navy and coastguard regard all refugees and migrants' boats, because unseaworthy and overcrowded, as "being in an emergency situation" requiring assistance, which is therefore provided as quickly as operationally practicable. As Admiral Culcasi put it to Amnesty International: "For us, they are all SAR situations, all overcrowded rickety boats, all in need of rescue."⁵⁷

OMN vessels can also intercept boats they encounter at sea and provide assistance as appropriate. Assistance can involve towing boats to port, but in the majority of cases has implied taking refugees and migrants aboard Navy's vessels.

Navy officers stress that conditions aboard a military vessel are inevitably basic and space is tight. The Italian Navy has, nevertheless, made provisions for adapting its vessels to operations involving taking on board very large numbers of individuals, very often including women and children. Arrangements to meet the basic needs of refugees and migrants and guarantee their safety included for example adding chemical loos and upgrading medical equipment to respond to medical emergencies on board. Some cultural mediators were recruited to assist with communications with those rescued, including in some cases at the moment of rescue to reassure people and avoid panic on overcrowded boats.

As soon as those rescued are taken on board, they are cursorily identified by Navy staff, by being requested to provide name, age and nationality. They are also photographed. A doctor identifies people requiring urgent medical care and assesses whether this can be provided on board, or whether transfer to land is needed. The deck and hangars of the vessel are used to host those rescued. Families and women and children are kept separate from single men. Refugees and migrants are also provided with a bracelet indicating the boat from which they

were rescued. An attempt is made to keep people rescued from different boats separate, but this is often difficult.

OMN officers reported that they strive to deliver people they rescued at sea to a safe port, as quickly as possible, but OMN vessels may need to remain at sea to assist other boats until they have reached full capacity before heading back to land. Refugees and migrants may therefore spend a few nights on a OMN vessel. In some cases people rescued and taken on board OMN vessels are transferred onto the OMN flagship to free the smaller vessels to go to other calls.

The OMN flagship has on board staff from the Central directorate for immigration of the Ministry of Interior and the border police to carry out full identity checks, including photographing and fingerprinting refugees and migrants.

Refugees and migrants intercepted and rescued by OMN vessels have been brought to ports in Sicily (such as Pozzallo, Porto Empedocle, Augusta and Catania), as well as in other southern regions including Apulia, Calabria and Campania. Those rescued have occasionally been briefly taken to Lampedusa, where reception facilities were still officially closed for refurbishment at the end of August 2014.

THE CONTINUING NEED FOR OMN

Loss of life was drastically reduced in the area patrolled by OMN from the start of the operation until the shipwreck of 12 May 2014 (see above). Many other fatal shipwrecks have followed since then, demonstrating that, for all the considerable outlay involved, OMN is still not enough to ensure the safety of refugees and migrants, as more boats attempt the crossing in ever worse safety conditions. While OMN has decreased the fatality rate amongst departing migrants and refugees, in absolute terms the number of deaths has risen markedly over the last few months, as the number of those prepared to risk the perilous journey has increased.

UNHCR, Amnesty International and other NGOs have all welcomed OMN as the only practical measure that has been put in place to rescue refugees and migrants since the shipwrecks of October 2013. Amnesty International is therefore concerned about the declared intention of the Italian government to close the operation in the course of the Italian presidency of the EU, which ends in December 2014, in the absence of clear commitments by other states and the EU to employ at least the same amount of resources for search and rescue, to take over from OMN.⁵⁸

Amnesty International calls on all European states to strengthen their search and rescue capacity and assist Italy or devise other ways to ensure that adequate means and resources are available to SAR in the Mediterranean, including on the high seas, for as long as necessary.

By disembarking all those rescued in Italy, OMN has been able to temporarily resolve the thorniest problem affecting SAR operations in the central Mediterranean, which is the interpretation of “place of safety” where people should be delivered according to the SAR Convention (Chapter 1.3.2). However, a durable solution to this long running dispute between Italy and Malta has yet to be found, and the disagreements, with their potentially fatal impact on rescue operations which are delayed or dragged while the two countries

negotiate case by case where refugees and migrants should end up could start all over again soon.

The failure of the EU to agree on adequate measures to prevent deaths at sea in the past year has been shameful. The complexity of the phenomenon of boat migrants from Libya and of its root causes must be acknowledged. But precisely because solutions are not in sight, OMN must go on. Migrants interviewed by Amnesty International have repeatedly told us that the situation in Libya is so dangerous that the risk of the sea crossing is worth taking. People will attempt the crossing, with or without OMN in place. But without it, many, many more will die. In praising Italy for its unique effort in saving lives at sea over the past year, Amnesty International urges it not to stop OMN until an effective and properly resourced pan European response has been established to replace it.

3. HUMAN RIGHTS AT SEA

OMN has temporarily papered over the problems which have hampered the effectiveness of the SAR system in the central Mediterranean for a long time. Such problems are bound to resurface should OMN be stopped before adequate measures have been set up to take its place. This section contains an analysis of the problems of the current SAR system in the central Mediterranean, of their impact on the human rights of refugees and migrants, and of the failure over time of the states involved, especially Italy and Malta, to address these in a durable manner. The 11 October 2013 shipwreck, which will be analysed in the next section, as well as other incidents described in this section, illustrate the consequences – in some cases fatal – to which unresolved juridical disputes can contribute.

HUMAN RIGHTS AT THE BORDER

Borders are complex spaces where states' jurisdictions, prerogatives and obligations cross with one another and with the rights and duties of individuals. Sea borders are especially complex due to the varying intensity of state jurisdiction in different areas of the sea. Tensions and inconsistencies arise from the simultaneous applicability of sets of rules originating in international human rights law, refugee law, EU immigration regulations and the law of the sea.

Sovereign states' prerogative to control entry into their territory must be exercised consistently with international human rights and refugee law and in a manner which is not arbitrary nor discriminatory. The human rights of the individuals attempting to cross borders must be respected, protected and promoted at all times. The right to life has particular implications at sea, as it relates to the obligation of shipmasters and states to render assistance to those in distress at sea, regardless of nationality, status or other circumstances. The right to be treated with dignity and not to be subjected to torture or cruel, inhuman or degrading treatment also applies at sea, where rescued persons should be treated with humanity.⁵⁹ All individuals at borders have the right to seek asylum and not to be returned to countries where they would be at risk of human rights violations.

In this respect, and with regard to interceptions of refugees and migrants' boats at sea, the European Court of Human Rights, in the case of *Hirsi v Italy*⁶⁰, found that the prohibition of collective expulsion of aliens enshrined in Article 4 of Protocol No. 4 to the European Convention on Human Rights applies outside the national territory of a state when the state exercises its jurisdiction extra-territorially. The Court considered that the special nature of the maritime environment could not justify an area outside the law where individuals were covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention.

THE SEA AND ITS AREAS OF JURISDICTION

States' sovereignty extends into the sea although their prerogatives and obligations vary according to the areas of maritime jurisdiction.

The 1982 UN Convention on the Law of the Sea (UNCLOS) codifies the structure of maritime territory and the rights and obligations of states.

According to the UNCLOS, a state has full sovereignty and jurisdiction over its inland waters which form a part of the country's territory, as well as within its territorial waters, which may extend up to 12 nautical miles from the base line.⁶¹ In a zone contiguous to its territorial sea, called the contiguous zone, and which cannot exceed 24 nautical miles from the baselines, a state can exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; and to punish any such infringements committed within its territory or territorial sea.⁶² A state has exclusive powers of exploring and exploiting, conserving and managing the natural resources within an exclusive economic zone of a maximum of 200 nautical miles from the baselines.⁶³

Beyond these areas, the maritime area is called "high seas". No state can exercise its full sovereignty and jurisdiction over any part of the high seas. According to the law of the sea, the high seas are free for all states and reserved for peaceful purposes.⁶⁴ The jurisdiction of states fully applies to boats flying their flag.⁶⁵

The sea, including the high seas, is further divided in areas of competence of different states to ensure the provision of SAR services. These are the so-called SAR regions, and they will be considered below.

THE SAR SYSTEM: STATES AND SHIPMASTERS' OBLIGATIONS AT SEA⁶⁶

It is a commonly accepted and longstanding maritime tradition that shipmasters have an obligation to render assistance to those in distress at sea, regardless of their nationality, status or the circumstances in which they are found. The integrity of the maritime SAR system depends upon it. This obligation is accepted as customary international law and has been codified in the international law of the sea. The UNCLOS states that "Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; and (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him." (Art. 98 (1))

In addition, the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) states that the "master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so...." (Chapter V, Regulation 33(1)).

The 1979 International Convention on Maritime Search and Rescue (SAR Convention) obliges states parties to "... ensure that assistance be provided to any person in distress at sea ... regardless of the nationality or status of such a person or the circumstances in which that person is found" (Chapter 2.1.10) and to "... provide for their initial medical or other needs, and deliver them to a place of safety." (Chapter 1.3.2)

The UNCLOS (Article 98.2)⁶⁷, SOLAS convention (Chapter 5, Regulation 7)⁶⁸, and SAR Convention (Chapter 3) also require states to ensure that they make arrangements for the rescue of people in distress at sea around their coasts and that they co-operate with neighbouring states where necessary, with the aim of reducing the risk of non-rescue. Furthermore, the SAR Convention, which aims to create an international maritime search and

rescue system, requires states to ensure that there are sufficient search and rescue regions established in each sea area; that these are contiguous and as far as possible not overlapping; and that they are established by agreement among the parties concerned (SAR Annex, Chapter 2).

In May 2004, the Maritime Safety Committee of the International Maritime Organization (IMO)⁶⁹ adopted Amendments to the SOLAS and SAR Conventions (Amending SOLAS Regulation 33 and SAR Chapter 3.1.9),⁷⁰ to further strengthen the SAR system, while minimizing the inconvenience for the assisting ship. They entered into force, for states which ratified them, on 1 July 2006. The Amendments require states parties to co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking people in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage; and arrange disembarkation as soon as reasonably practicable. They also oblige masters who have embarked persons in distress at sea, to treat them with humanity, within the capabilities of the ship.

Releasing shipmasters of their obligations quickly, minimizing any economic loss, is key to avoid discouraging them from upholding their obligation to render assistance to boats in distress in the first place. Their participation in the SAR system is in fact essential to its effectiveness. It is also in the best interest of those rescued as well as of the crew of the vessel who carried out the rescue, that rescued people are delivered to a place of safety as soon as possible, including for safety and health risks. It should be noted, in fact, that often even big commercial vessels have small crews, no medical personnel on board, and limited food and water available.

To assist state parties and shipmasters in implementing the May 2004 Amendments, the IMO Maritime Safety Committee adopted also Guidelines on the Treatment of Persons Rescued at Sea (Resolution MSC.167(78)). The Guidelines state that:

- The government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided (para. 2.5).
- A place of safety is a location where rescue operations are considered to terminate, and where: the survivors' safety or life is no longer threatened; basic human needs (such as food, shelter and medical needs) can be met; and transportation arrangements can be made for the survivors' next or final destination (para. 6.12).
- While an assisting ship may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made (para. 6.13).
- Disembarkation of asylum-seekers and refugees recovered at sea, in territories where their lives and freedom would be threatened, should be avoided (para. 6.17).
- Any operations and procedures such as screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress should not be allowed to hinder the provision of such assistance or unduly delay disembarkation (para. 6.20).

While Italy has ratified the 2004 Amendments, Malta has not. Divergent interpretations of their obligations by the two countries, and the tensions created as a result, have historically

undermined their co-operation when it comes to organising search and rescue operations.

THE SAR SYSTEM: THE CO-ORDINATION OF RESCUE OPERATIONS⁷¹

In order to achieve the development, co-ordination and improvement of search and rescue services, the SAR Convention requires that states establish “rescue co-ordination centres” (RCCs) for their search and rescue services. Each RCC is tasked with arranging for the receipt of distress alerts originating from within its search and rescue region; for communications with persons in distress, with search and rescue facilities, and with other RCCs. RCCs are required to be operational on a 24-hour basis and to be staffed with trained personnel with a working knowledge of English.⁷²

The SAR Convention provides the basic framework within which RCCs are requested to operate. It describes the preparatory measures that RCCs must put in place and maintain to be able to perform their tasks, including a detailed plan of operation. It guides RCCs in assessing the information received regarding a situation of emergency at sea by distinguishing three emergency phases, the “uncertainty” phase, the “alert” phase and the “distress” phase, to determine the extent of operations required. It also describes the procedures to be followed by RCCs during each phase, and when and how SAR operations should be terminated. The SAR Convention also tasks the RCC with initiating the process of identifying the most appropriate place for disembarking those rescued at sea.

Detailed international protocols regulate the handling of requests of assistance. The International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual provides guidelines for a common aviation and maritime approach to organizing and providing SAR services.⁷³

THE SAR SYSTEM: GAPS AND WEAKNESSES

The SAR regime in the central Mediterranean, intended to maximize the protection of life at sea, is currently challenged by a very different phenomenon from the one it was supposed to address, that is migration and the attempt of refugees to flee persecution using unseaworthy and extremely overcrowded vessels, rather than maritime accidents. The dangerous circumstances in which refugee and migrants cross the sea have led to the presence in the Mediterranean of a large number of boats in need of assistance. Unfortunately however, the response of the states faced with this phenomenon, primarily Italy and Malta, has been influenced and undermined by preoccupations relating to migration control.

States that rescue or accept the disembarkation of rescued migrants and refugees are also faced with the longer term cost and responsibility of meeting their needs. This responsibility is significantly aggravated by the EU Dublin Regulation. The principle underpinning the Dublin Regulation is that asylum-seekers, refugees and irregular migrants must be taken in charge by the state whose borders have been first crossed. Notwithstanding the principle of intra-EU solidarity, there is no permanent and automatic mechanism of burden sharing among EU member states with regard to irregular migratory flows. As a result, the state which carries out the rescue operation or which accepts disembarkation will end up facing the consequences associated with the influx of refugees and migrants, including reception, processing of protection claims, management of the presence of irregular migrants and their return.⁷⁴ Such rules create a disincentive for southern European states, including Italy, and especially Malta, to assist and take refugees and migrants to their ports. Both Italy and Malta

worry about the strain on resources that allowing the disembarkation of refugees and migrants inevitably causes. Understandably, given its size, such worries are particularly acute for Malta.

The inevitable temptation for Italy (before OMN) and, to an even greater extent Malta, has been to try to limit their responsibilities towards refugees and migrants and to avoid bringing large numbers of them onto their territory. This in turn risks resulting in breaches of the rights of refugees and migrants to life, safety and access to protection.

In order to limit their responsibilities to protect refugees and migrants, Italy and Malta have been able to use some gaps and weaknesses present in the SAR regime, that Malta in particular has shown little inclination to address.

Notwithstanding the detailed procedures described in the SOLAS and SAR Conventions and in the IAMSAR Manual, the key concepts of “distress at sea” and “place of safety” for disembarkation, on which such detailed procedures rest, are worded in a manner that allows for differing interpretations. Following the entry into force of the 2004 Amendments to the SOLAS and SAR Conventions, different states are bound by different versions of the same conventions. Both problems are relevant in the central Mediterranean, where Malta and Italy follow different interpretations of “distress at sea” and of “place of safety” for disembarkation, and where Malta has not ratified the 2004 Amendments to the SOLAS and SAR Conventions, whereas Italy has. Furthermore, the two countries have been unable to reach an agreement over the extension of their respective SAR regions, which partially overlap.

Until the start of OMN, on several occasions these differences between the two countries have undermined the timely and effective delivery of search and rescue services, sometimes with tragic consequences.

Both the AFM and the Italian coastguard vigorously stressed in their interviews with Amnesty International, that co-operation between their RCCs and SAR services is excellent. However, the examples of delayed rescue and disembarkation illustrated below, as well as the case of the shipwreck of 11 October 2013, indicate that there have been disputes and that in those cases the consequences for migrants and refugees have been dire.

As the Parliamentary Assembly of the Council of Europe (PACE) noted in a report adopted in June 2014 on the deaths of 63 people, including children, left adrift in a boat off the coast of Europe for 15 days in March/April 2011: “Disagreements between Malta and Italy – the one geographically closer to effect a rescue, the other having primary responsibility for the zone in question – appear to continue to arise regularly, resulting in long delays in any intervention. Co-ordination between the SAR operations needs considerable improvement if lives are to be saved...”⁷⁵

In recent years, acknowledging the gravity of the dramatic loss of life in the Mediterranean, international organizations and experts have tried to identify the causes contributing to it and propose a way forward. In 2011, UNHCR promoted an expert meeting to identify the best responses to the situation of refugees and asylum-seekers in distress at sea.⁷⁶ The expert meeting, while acknowledging that the 2004 Amendments to the SOLAS and SAR

Conventions contributed significantly to strengthening the SAR regime, concluded that the SAR regime remains nonetheless challenged by the fact that search and rescue responsibilities may conflict with migration management and security objectives relating to irregular sea arrivals; as well as by lack of capacity to implement SAR obligations or to receive persons rescued at sea upon disembarkation. The expert meeting described the timely identification of a place of safety for disembarkation as a “core challenge in any particular rescue at sea operation involving asylum-seekers and refugees”.

Following the October 2013 shipwrecks, UNHCR started working on a Central Mediterranean Sea Initiative (CMSI). UNHCR proposed “12 concrete steps aimed at saving lives”.⁷⁷ UNHCR calls for “reinforcing and maintaining SAR patrols along Mediterranean routes” and suggests the reinforcement of national maritime patrol activities, as well as Frontex’s joint patrols. In the CSMI, UNHCR stressed also that there remain gaps regarding responsibilities for disembarkation, and recommended the establishment of “more effective and predictable mechanisms for identifying without delay places of safety for the rapid disembarkation in Europe of refugees and migrants”.

This section reviews the weaknesses of the SAR system that Amnesty International has identified as requiring addressing to reduce refugees and migrants’ deaths at sea.

INADEQUATE OR INEXISTENT AGREEMENTS ON SAR ZONES

As described above, Article 98(2) of the UNCLOS and Chapter 3 of the SAR Convention require that states reach agreements with their neighbours to ensure the co-ordination of SAR operations. However, some states in the Mediterranean have instead unilaterally declared search and rescue regions. The area within the coasts of Italy, Libya and Malta continues to raise particular problems.

Italy and Malta have unilaterally declared partially overlapping SAR regions.⁷⁸ This creates confusion as to which state is responsible for coordinating rescues of people in distress in the overlapping areas and results in delays in rescuing people. The lack of clarity as to responsibilities can also be exploited to avoid taking action.

Malta’s SAR zone is vast, relative to Malta’s size and capacity to adequately ensure SAR operations within it.⁷⁹ It measures 250,000km², reaching from Tunisian territorial waters to the Greek Island of Crete. It incorporates the Italian islands and territorial waters of Lampedusa, Linosa and Lampione.

The SAR convention asks only that the state co-ordinates SAR services in the area under its responsibility. The state does not need to perform the SAR activity but can act in co-operation with other states and request that private vessels carry out rescue operations. However, in light of the death toll in the SAR region over which Malta claims responsibility, its ability to coordinate efficiently SAR services to ensure the safety of navigation as requested by the international law of the sea, is questionable.

An obvious, albeit only partial solution to this problem would be for Malta to accept a reduction in the size of its SAR zone. If respective SAR zones were rendered coextensive with the areas defined by the closest ports in both territories, fewer problems would arise with regard to disembarkation, and the problem of Malta’s limited resources for SAR would also be

reduced. However, Malta has shown little inclination to accept such a reduction in its SAR zone.

In the absence of such a settlement, differing interpretations of what constitute a place of safety for disembarkation will continue to undermine effective search and rescue operations in the central Mediterranean.

ADDITIONAL PROBLEMS ARISING IN RELATION TO THE LIBYAN SAR REGION

The conduct of search and rescue operations in the central Mediterranean is significantly complicated by Libya's irregular and ineffective delivery of search and rescue services in its own SAR zone and the additional fact that Libya cannot be considered to offer a safe place of disembarkation. Libya is a party to the SAR Convention, but has failed to fulfil its SAR obligations effectively in recent years.⁸⁰

The SAR Convention does not regulate situations of systemic failures by a coastal state in the provision of SAR services, which is what happened in Libya in 2011. Since then, subsequent Libyan governments have been unable to assert their control over parts of the country and rebuild state institutions, which collapsed during the armed conflict. However, the IMO 2004 Guidelines on the treatment of persons rescued at sea indicate that if the RCC responsible for a SAR region does not assume responsibility for a rescue operation, the first RCC which received the alert remains responsible.⁸¹

In 2009 Libya and Malta signed a "Memorandum of Understanding (MoU) in the field of search and rescue," aimed at coordinating the search and rescue operations within their respective SAR regions.⁸² The AFM, interviewed by Amnesty International in May 2014, confirmed that Malta communicates with the Libyan RCC and noted that the Libyan coastguard have become slightly more effective and carried out some rescue operations.⁸³ Malta has also assisted Libya to build its SAR system through the EU Border Assistance Mission (EUBAM).

Italy is also trying to co-operate with the Libyan coastguard and to encourage their development. However, co-operation efforts appear to have been undermined by the institutional chaos in post al-Gaddafi Libya and the complexity of the security sector, composed of a myriad of militias pursuing competing political agendas. Admiral Culcasi, head of OMN, interviewed by Amnesty International, explained that it is very difficult to identify interlocutors in Libya for SAR operations and stressed that Libyan assets are basic, allowing for minimal capacity to patrol coasts. He added that on one occasion thanks to the presence of two Libyan officers aboard the OMN ship *Fenice*, "we could demand that the Libyan authorities sent Libyan assets out to sea and they took a boat back to Libya, operating in Libyan territorial waters, or thereabout."⁸⁴ Amnesty International has not received further information from the Ministry of Defence regarding the purpose of the presence of Libyan officials on OMN assets.⁸⁵ The Admiral also stated that when a boat requires assistance in the Libyan SAR, commercial vessels are often required to go to the rescue. It is the SAR authority in charge of the operation which would direct the commercial vessel to the port of safety. While the SAR authority uses national ports of safety, "it can happen that a commercial vessel is directed to a Libyan port".

The Italian coastguard at Rome RCC confirmed that co-operation with the Libyan coastguard

is extremely difficult, including due to the lack of clarity regarding which are the relevant authorities: “We communicate with officials who told us they are the Libyan coastguard. We had their identity and positions confirmed by the Italian ambassador in Libya, to be sure. But they do not answer very much. Not reliably. Officially they exist and are part of the Libyan Navy.” In the absence of strong institutions, numerous militias that emerged from the armed conflict have filled the security vacuum by performing tasks traditionally assumed by the state, including the patrolling of the Libyan coast. For example in March 2014, Amnesty International met with the Commander of Special Maritime Support Unit, a unit that says it patrols the Libyan waters between Tripoli and Garabulli, some 40km east of the capital. The Unit also retrieves corpses from the Mediterranean following shipwrecks. The Commander told Amnesty International that the Unit intercepted 4,000 refugees and migrants who left irregularly from Libya between 2012 and 2014. Refugees and migrants’ boats are usually identified by either fishermen or commercial ships. Because they are always overcrowded, and often lack fuel, they are considered to be in distress by the Unit. The Commander complained that the Unit lacks adequate resources, including boats, ambulances and vehicles to transfer those disembarked from boats as well as dead bodies. The Commander also told Amnesty International that the Unit operates under the Ministry of Interior, that it is mainly made up of former anti al-Gaddafi fighters, and that it is not part of coastguard. Reports following a major shipwreck off the coasts of Libya on 22 August 2014 (see above) quote Libyan coastguard officials complaining at a grave lack of resources for rescue operations, including to remove bodies washed up on the shores.⁸⁶

In light of recent fatal shipwrecks near Libyan coasts it is clear that much more needs to be done to ensure safety at sea in that area. With this purpose, having an effective counterpart in Libya is regarded by the Italian coastguard as important. Italian coastguard officials told Amnesty International: “Last night there was a boat just off Tripoli’s coast. We were alerted to it. The boat was sinking. The boat was in Libyan territorial waters. We called the Libyan coastguard and asked them to go. We also asked a US commercial vessel to go to the boat. The Libyans managed to go.”

However, while the Libyan coastguard boats may be closer to a boat in immediate danger than Italian or Maltese vessels, co-operating with the Libyan coastguard is likely to result in human rights violations and abuses for the refugees and migrants who are taken back to Libya. Amnesty International research reveals that, in most cases, following disembarkation, migrants and refugees are handed over to the Department for Combatting Irregular Migration of the Ministry of Interior and detained in one of its 19 detention centres in the country. While Syrian refugees are likely to be released shortly after – usually, but not always upon intervention by UNHCR – sub-Saharan nationals and other nationals are likely to be subjected to indefinite detention pending deportation, torture and other ill-treatment and other violations.

Libya cannot be considered a “place of safety” to which refugees and migrants can be returned in light of documented gross human rights violations and abuses against refugees and migrants and the escalating violence in the country. Libya does not have an asylum system or legislation, while UNHCR operates in the country without an official status or memorandum of understanding, which restricts its activities and protection dialogue with the Libyan authorities.

The Italian coastguard appeared fully aware that refugees and migrants cannot be returned to Libya when speaking to Amnesty International, and admitted that it is a difficult situation when a commercial boat directed to Tripoli is required to assist a refugee and migrants' boat. "We know there is no asylum for refugees in Libya, so we need to tell the commercial boat not to go to Tripoli even though they are directed there. It is not easy. But if the Libyans are responsible and they assume responsibility for an operation, they decide where the commercial vessel has to go."⁸⁷

Since OMN has been patrolling the waters between Malta, Italy and Libya, its assets have often rescued boats in the Malta and Libya SAR regions. This has significantly reduced the pressure on Malta SAR services and has very often covered for Libyan lack of SAR capacity. However, OMN is not a permanent arrangement and if it ceases to operate, past problems will return.

Overcoming the anomalies of the Malta SAR zone will require dedicated delimitation and co-operation agreements with neighbouring countries.⁸⁸ Amnesty International considers that it is essential to clarify responsibilities between Italy and Malta and urges both countries to negotiate in good faith to reach agreement. The EU should also facilitate this process.

An effective solution to ensure safety of navigation in the Libyan SAR region must also be found. Until Libya is in a position to ensure efficient SAR services and until Libya becomes a safe place for refugees and migrants, Amnesty International urges EU countries to find a mechanism to guarantee that refugees and migrants crossing the Mediterranean and requesting assistance while in the Libyan SAR region, excluding Libyan territorial waters, are rescued and brought to a "place of safety" in the EU.

DISTRESS AT SEA

The trigger for the legal obligation to render assistance at sea is a distress situation. How states define this notion is crucial to the fulfilment of their search and rescue obligations. In an apparent desire to limit the extent of its search and rescue obligations, Malta currently employs a narrow definition of distress.

The 1979 SAR Convention defines distress as "A situation wherein there is reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance" (Annex, Chapter 1 para.1.3.13.).

This definition leaves it to the state/shipmaster dealing with the situation to assess when a situation requires immediate assistance. Different states have taken considerably different views in this respect. For some, such as Malta, a vessel must be on the point of sinking, while for others, including Italy, unseaworthiness *per se* entails distress.⁸⁹

The Italian coastguard confirmed to Amnesty International that they regard refugee and migrants' boats as a SAR case by definition, due to overloading, as well as to the lack of experienced crew and of safety equipment. They apply the criteria used to establish seaworthiness of Italian vessels: if these are lacking, a vessel is by definition unseaworthy.⁹⁰ Officials of Rome RCC explained to Amnesty International: "Migrants' boats are overcrowded, not manned by expert seafarers, they have no lifejackets. Of course they are in distress. The coastguard is the authority which also documents Italian boats' seaworthiness. We must use

the same criteria for all boats. An Italian boat in those conditions would be regarded as unseaworthy.”

Malta, however, takes the view that there needs to be a request for assistance and a clear and immediate danger of loss of life. As refugees and migrants' boats often head for Italy and do not want to end up in Malta, Malta has used this interpretation to its advantage to minimize its SAR interventions.⁹¹ According to a FRA research, when a Maltese vessel approaches a boat carrying refugees and migrants, officers determine if it constitutes a situation of distress and ask them if they want to be rescued by the AFM or whether they prefer to continue towards Italy. The FRA found that “Occasionally, migrants may be dissuaded by rescue officers from going to Malta as these are informed that Malta has a mandatory detention policy”.⁹² Malta applies a policy of automatic detention of up to 18 months for all migrants and 12 months for all asylum-seekers arriving irregularly to the country – a policy which breaches international law.⁹³ AFM officers interviewed by Amnesty International said that the AFM would always rescue refugees and migrants who may be in need of urgent medical care and that they also provide supplies needed to continue the journey and life jackets.⁹⁴

There have been reports of incidents where boats were approached by the AFM and later may have sunk. One such incident occurred in May 2007. A photograph of the boat was taken by an AFM aircraft and reached the media, showing 53 people in a small boat.⁹⁵ The boat reportedly disappeared, while the Maltese authorities claimed that there was no request of assistance from the boat.⁹⁶

An EU Regulation adopted in April 2014 includes provisions which EU states must respect during SAR operations at sea when acting within joint Frontex operations at sea. It is not binding on EU member states when acting within their national spheres of competence. When deciding whether a vessel is in distress, search and rescue units assigned to Frontex operations should take all relevant elements into account, in particular:

- a) the existence of a request for assistance, although such a request shall not be the sole factor for determining the existence of a distress situation;
- b) the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination;
- c) the number of persons on board in relation to the type and condition of the vessel;
- d) the availability of necessary supplies such as fuel, water and food, to reach a shore;
- e) the presence of qualified crew and command of the vessel;
- f) the availability and capability of safety, navigation and communication equipment;
- g) the presence of persons on board in urgent need of medical assistance;
- h) the presence of deceased persons on board;
- i) the presence of pregnant women or of children on board; and
- j) the weather and sea conditions, including weather and marine forecasts.⁹⁷

The new Regulation leaves a margin of appreciation in determining whether a distress situation exists to the search and rescue units, which should assess on a case-by-case basis, using this list of factors to evaluate the decision. The Regulation also clarifies that a distress situation should not depend on a request of assistance.

The common acceptance of this broad definition of distress by all EU member states in

relation to national level search and rescue operations is urgently needed. This would ensure that consistent standards of safety are applied in the central Mediterranean rather than leaving safety of navigations to chance, with the same boat being regarded in distress by one SAR authority and able to continue its journey by another.

As will be seen below, the AFM aircraft which spotted the refugees and migrants' boat which shipwrecked on 11 October 2013 reported that it was not stationary, but sailing – the implication being that it was not in distress. The Maltese Minister for Home Affairs and National Security, interviewed by Amnesty International, also stated that the boat was “*galleggiando*” [floating], and thus not in imminent danger. The boat capsized 45 minutes later, bringing to death about 200 people.

DISEMBARKATION

The SOLAS Convention at Chapter V, Regulation 33, and the SAR Convention at Chapter 3, para. 3.1.9, require states to arrange for the disembarkation of persons rescued at sea as soon as reasonably practicable. The SAR Convention defines rescue as “an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety” (Annex Chapter 1 para. 1.3.2), but does not define what a place of safety is.

Arguably the main gap in the current SAR regime is the lack of agreed criteria to determine in which state the rescued people should disembark. In principle, several states have some links to the situation and could be places for disembarkation: the flag state of the rescuing unit or of the vessel in distress; the next port of call on the rescuing ship's planned route; the closest port to the place where the rescue occurred; the state from which the vessel took the sea; the state competent for the relevant SAR zone; and the countries of nationality of those rescued. Yet, no state is currently under an obligation to let rescued persons disembark onto its territory.

In the Mediterranean, EU states' concerns regarding migration are key to resolving the problem of disembarkation. As a consequence of the Dublin Regulation, states worry that if they allow refugees and migrants to disembark, they will then become responsible for their reception, for processing their asylum application, for organizing the return of those who are not granted protection, and for the long-term integration of those who are recognized as needing protection, including unaccompanied minors. This is a particular challenge for Malta, given its size and available resources.

As described above, in an effort to address the issue of disembarkation, on 20 May 2004 the Maritime Safety Committee of the IMO adopted Amendments to the SOLAS and SAR Conventions.⁹⁸

The SOLAS Convention, Chapter V, Regulation 33, 1.1.1, as amended, states that:

“Contracting Governments shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from the obligations under the current regulation does not further endanger the safety of life at sea. The Contracting Government responsible for the

search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the Organization. In these cases the relevant Contracting Governments shall arrange for such disembarkation to be effective as soon as reasonably practicable”.

The amended SAR Convention, Chapter 3, paragraph 3.1.9, is drafted in almost identical terms.⁹⁹

The above-mentioned IMO Guidelines on the Treatment of Persons Rescued at Sea, prepared to assist states in implementing the 2004 Amendments, require the state in charge of the SAR zone where the persons were rescued to provide a place of safety on its own territory or ensure that a place of safety is granted in another country (para.2.5).

So, on the basis of the 2004 Amendments, the state in whose SAR zone the rescue occurs has an obligation to co-ordinate interventions, but it remains debated in international law whether it also is under a clear, unambiguous duty to accept itself the disembarkation of people rescued at sea.¹⁰⁰ Experts have differing opinions on whether the amendments create an automatic duty for the state responsible for the SAR zone where the rescue occurs to accept disembarkation. It has been noted by some that the language chosen would have been different had the contracting parties wanted to create such an automatic interpretation.¹⁰¹

In the absence of an unambiguous duty to accept disembarkation, states’ practice continue to vary.

For Malta, rescued people must be disembarked at the closest safe port, usually at Lampedusa or in Sicily, even though the rescue happened in the Malta SAR region.¹⁰² This has frequently created tensions with Italy.

Italy, on the other hand, considers that unless a different arrangement is reached on a case-by-case basis, the state competent for the relevant SAR zone must allow the disembarkation: given the extension of the Maltese SAR area, this would mean La Valletta’s port in the majority of cases.

A second difficulty arises in respect of the scope of the definition of a place of safety. In the IMO Guidelines, a place of safety is defined as a location where rescue operations are considered to terminate, and where the survivors’ safety or life is no longer threatened, basic human needs (such as food, shelter and medical needs) can be met and transportation arrangements can be made for the survivors’ next or final destination (Principle 6.12). Furthermore, the IMO Guidelines state that disembarkation of asylum-seekers and refugees recovered at sea in territories where their lives and freedom would be threatened should be avoided (para. 6.17), consistently with the principle of *non-refoulement* (Article 33, 1951 Convention relating to the Status of Refugees).

The definition of place of safety as a place where people rescued at sea not only have their basic needs met but are also protected against *refoulement* and where their human rights are upheld has clearly been gaining ground in recent years. This is the interpretation emerging

from international practice, such as the IMO Guidelines, but also to be found in other reports from the IMO and UNHCR¹⁰³ and in EU law. It is based on the extraterritorial application of human rights law, including the prohibition of collective expulsions, which the European Court of Human Rights has authoritatively affirmed in *Hirsi Jamaa and others v. Italy*.¹⁰⁴ Many experts have also come out in support of this human-rights informed definition of place of safety, which links obligations under international human rights law and refugee law with obligations under the law of the sea.¹⁰⁵

However, for Malta, a place of safety for SAR purposes does not coincide with a place of safety for humanitarian purposes. Malta, which has not ratified the 2004 SAR and SOLAS Conventions Amendments, rejects the link that the IMO Guidelines and EU law are making between SAR obligations and humanitarian obligation¹⁰⁶ and maintains that any country where basic needs can be satisfied is a place of safety, irrespective of whether the persons rescued may be in need of international protection. It does not consider itself bound by the duty to receive individuals rescued in its SAR zone or in Libya's SAR zone. This has resulted in a number of situations that have put the right of refugees to seek international protection at risk.

Since 2010, the IMO has tried to develop a regional agreement, in the form of a Memorandum of Understanding (MoU) on concerted procedures relating to the disembarkation of persons rescued at sea.¹⁰⁷ It has also proposed to develop a pilot project for a regional solution in the Mediterranean.¹⁰⁸ In May 2010, the IMO Secretary General tried to advance negotiations through informal consultations among interested parties.¹⁰⁹ A number of meetings of the consultation group have so far been held. While some agreement was reached on a number of points, it was decided to extend the deadline for completing the MoU.¹¹⁰ The latest meeting, in April 2014, was inconclusive, although there is a willingness to discuss the issue further. IMO has offered its good offices to assist the parties, but no significant progress has been achieved as of the time of writing.¹¹¹

The lack of agreed criteria to determine where disembarkation will happen is especially problematic for private vessels which may be required to divert significantly from their intended route and may incur economic loss as a result. Fishermen, in particular, have expressed concern about assisting refugees and migrants because they fear the cost in terms of fuel, lost fishing opportunities and damage to the boat, in addition to the risks to the safety of their crew.¹¹² Maltese fishermen are quite aware that in several occasions (see below) Malta has refused commercial vessels entry into Maltese waters when they were carrying refugees and migrants and this seems to be discouraging them from approaching and assisting refugee and migrants' boats.¹¹³

According to the AFM, shipmasters sometimes delay response to requests to render assistance to a refugee and migrants' boat by a RCC, or even, in more rare cases, ignore it. The delays are difficult to address, according to the AFM. However, if there is ground to be concerned that a shipmaster ignored the request of the Maltese RCC, Malta would write to the flag state. The AFM reported that about two letters of this sort are typically sent each year.¹¹⁴

The dispute between Italy and Malta – exacerbated by the subsequent duties to take charge of asylum-seekers and of repatriation of migrants – without a comprehensive and automatic

EU-based mechanism of burden sharing – periodically produces deadlocks and delays which can put the lives of migrants at risk and result in the denial of the opportunity for refugees to secure international protection.

THE CASES OF *SALAMIS* AND *ADAKENT*, AUGUST 2013

On 4 August 2013, the private oil tanker *Salamis* (IMO 9188776), flying the Liberian flag and operated by Greek shipping company Mantinia, left the port of Khoms, Libya, heading towards Malta. About 45 nautical miles off the Libyan coast – in international waters – *Salamis* rescued a group of 102 individuals, mostly Eritrean and Sudanese nationals, stranded at sea in Libyan SAR region. The group reportedly included four pregnant women, a five-month-old baby and an injured woman. According to the CoE Parliamentary Assembly's reconstruction of the events, the *Salamis* was instructed by Rome RCC on behalf of the Libyan authorities to transport those rescued back to Libya and disembark them in Tripoli.¹¹⁵ The *Salamis* refused to return them to Libya and continued sailing towards Malta.

On 5 August, a vessel of the AFM stopped the *Salamis* before it entered Maltese territorial waters, contending that the vessel had disobeyed orders given by the Rome RCC to direct back towards Libya and disembark individuals rescued at sea there. This instruction appears to be confirmed by official documents published by the Maltese government.¹¹⁶ On 6 August 2013, European Commissioner Malmström urged Malta to allow the refugees and migrants, who had by then been waiting at sea for two days, to disembark in view of their urgent humanitarian needs. Malta did not and the Maltese Minister for Home Affairs and National Security reportedly stated: "As a sovereign state, we cannot give in to the barefaced breach of international law by this captain."¹¹⁷

Following intense diplomatic negotiations, on 7 August 2013 the Italian government eventually authorized, reportedly on humanitarian grounds, *Salamis* to disembark the 102 individuals in Siracusa.¹¹⁸

In October 2013 Amnesty International wrote to Italy's Minister for Infrastructures and Transport, responsible for Rome RCC and the coastguard, as well as to Malta's Minister for Home Affairs and National Security. Clarifications on the events from Italy's side were eventually provided by officials of Rome RCC interviewed by Amnesty International in February 2014. Such clarifications partially match with the reconstruction of the CoE PACE. Rome RCC officials stated that after receiving a call from a satellite phone from an Eritrean national, they located the boat off Tripoli's coast. Rome's RCC informed Tripoli's authorities who requested assistance from Rome to identify vessels to direct to the rescue. The *Salamis* was directed towards the migrants. At this point according to Rome RCC, the Libyan authorities could no longer be reached. An officer of the *Salamis* informed Rome RCC that they had a person in need of urgent medical care on board, whereupon Rome RCC directed the *Salamis* towards the closest port, Tripoli. In a letter to Amnesty International, the director of Mantinia provided a partially different account, stating that "Following the completion of the rescue operation, [the ship]master did not receive instructions from the Italian rescue with regard to a specific destination of the rescued persons and therefore proceeded to Valletta, Malta, his scheduled port of call".¹¹⁹

Later the *Salamis* captain informed Rome RCC that they could actually cope with the medical emergency as the health condition of the injured person was stationary, there was a nurse on

Tens of thousands of refugees and migrants are risking their lives crossing the central Mediterranean sea, trying to get to Europe. They want to escape war, persecution, violence and poverty. They hope to find safety in Europe and a better life, but their journeys are perilous.



© Massimo Sestini / eye4me

Refugees and migrants from Africa travel towards Europe on an overcrowded boat, before being rescued and taken aboard an Italian Navy ship, 8 June 2014.



Above: Rescue workers stand next to drowned bodies of refugees and migrants near Sampieri, Sicily, 30 September 2013.

Everyone crossing from North Africa to European shores takes huge risks.

The dangers of the sea crossing are increased by overcrowded and unseaworthy boats, which very often break down and start taking in water. Refugees and migrants endure beatings and other violence by the smugglers. They become dehydrated and do not have enough to eat. Some have died while trapped on board. Others have drowned before rescue could reach them.

According to UNHCR, by mid-September 2014, 2,500 men, women and children had died in the Mediterranean. Of these, 2,200 died between the beginning of June and 15 September 2014. But countless more lives may have been lost.

“The boat went down in less than 30 seconds, we were all in the water. I knew how to swim, some others didn’t. I saw jerrycans floating, I held onto one. We held on to it together for some five hours.”

Aliou



Above: Celestin Oaikhena from Nigeria reached Lampedusa on 16 June 2013 and stayed at the asylum-seekers reception centre of Mineo, Sicily, until he was granted humanitarian protection about a year later. His brother Boniface, who travelled with him from Libya, was lost at sea during the crossing.

Below: Mamadou, Osman and Alieu (on the right), from Gambia at the asylum-seekers reception centre of Mineo, Sicily, awaiting a decision on their asylum application. They survived the shipwreck of 28 June 2014 in the central Mediterranean, in which over 70 people died.

“There were many people on the boat, about 80, all men. The boat was a rubber dinghy. There were no lifejackets. We saw a big fishing boat. It was night, we saw the lights. The sea was not calm. We went towards it to be rescued... [A] heavy wave came from the sea. About 20 of us fell in the water. Only two were rescued. I was one of them. The others drowned. We did not manage to retrieve their bodies. My brother Boniface was among those who disappeared... From Lampedusa I called my father, who told the rest of the family.”

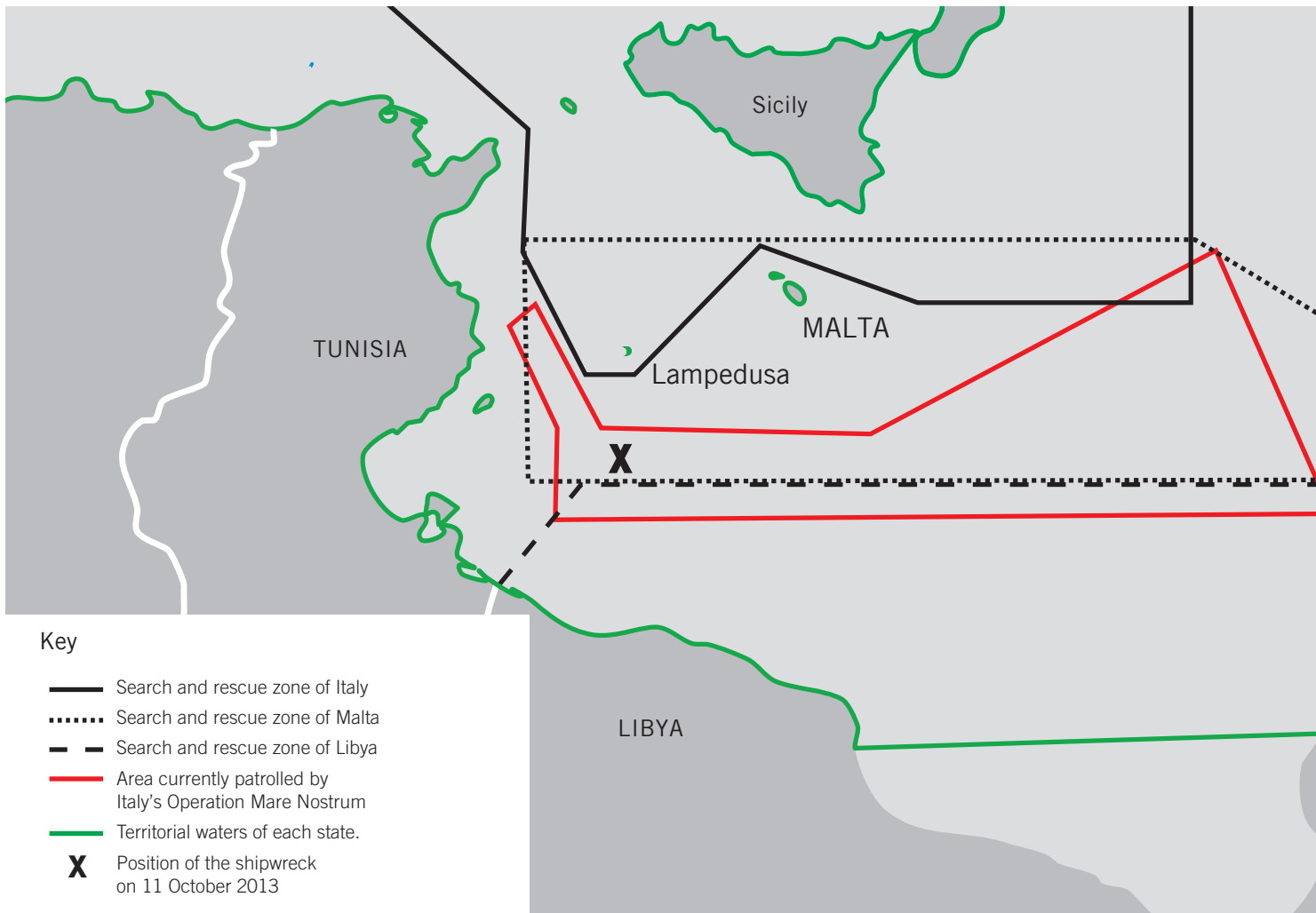
Celestin Oaikhena



LIVES ADRIFT
REFUGEES AND MIGRANTS IN PERIL
IN THE CENTRAL MEDITERRANEAN

Friday 11 October 2013, approximately 5:00pm:
a trawler carrying over 400 people, mostly Syrian families including about 150 children, sank 111km from Lampedusa and 218km from Malta, in Malta's search and rescue zone. 212 people were rescued, and about 200 are presumed dead. Only 26 bodies were recovered. A dispute between Malta and Italy over which country was responsible for rescuing them may have delayed rescue operations.

Zones of operation in central Mediterranean





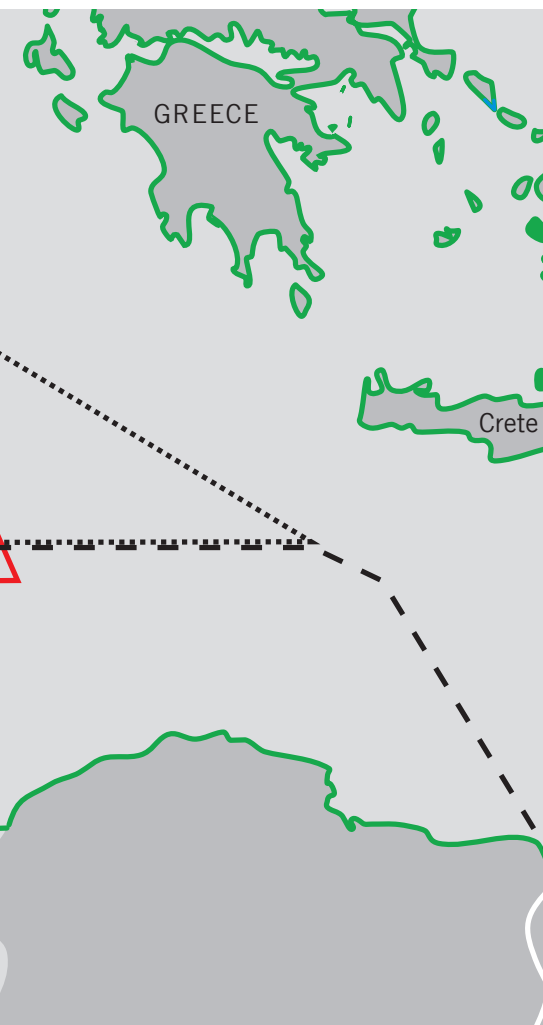
The Wahid sisters, Randa, 10, Sherihan, 8, Nurhan, 6, and Kristina, 2, were never found after the shipwreck of 11 October 2013. Their father Hasan Yousef Wahid, and their mother, Manal Hashash, both Syrians, have been looking for them since.



Mohammed Kazkji, aged 22 from Damascus, Syria, pictured in Malta. He survived the shipwreck of 11 October 2013. His friend Yahea did not.

“We are hanging on to the hope that we will find our children. All we want is to find our daughters, either dead or alive.”

“Yahea was 22... I cannot look into the sea, I lost my friend Yahea, maybe I lost my soul and my mind in the sea. I hate the sea, I can't look at it.”



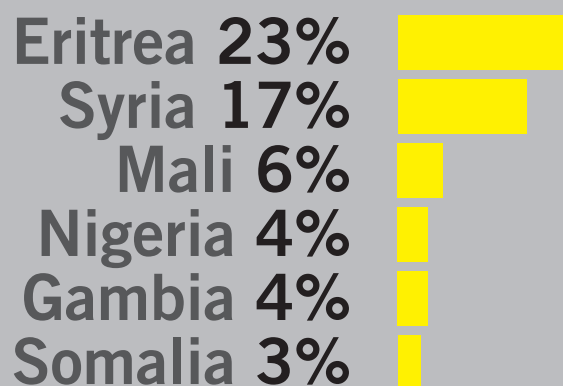
130,000

seaborne refugees and migrants irregularly crossing Europe's southern border in 2014 as of 15 September. Of these, over 118,000 arrived in Italy by boat.

Over 2,500

people died at sea in the same period. This means approximately that one in every 53 people dies.

People who crossed the central Mediterranean in the first 8 months of 2014 by top nationalities:



(other/undetermined 43%)

Source: Frontex



© Amnesty International

Above: Italian Navy vessel Virginio Fasan, carrying out search and rescue in the central Mediterranean as part of Operation Mare Nostrum, August 2014. Using two rubber dinghies, a dozen people at a time were transferred to the Fasan. Families were transferred first.

Below: Italian Navy vessel Virginio Fasan in port having patrolled the central Mediterranean between the Italian island of Lampedusa, Tunisia and Libya, August 2014.

Shortly after the shipwrecks of October 2013, Italy independently launched Operation Mare Nostrum (OMN), with the stated aim of safeguarding life at sea and combating human trafficking. It takes place in international waters and the area patrolled overlaps with the Maltese SAR zone south of Malta as well as with the Libyan SAR zone.

OMN has rescued well over 100,000 people. Without OMN, it is certain that the death toll at sea in the past year would have been much higher.



© Amnesty International

Right: A total of 1,004 refugees and migrants were rescued by the Fasan and transferred to the port of Naples on 15 August 2014.

Below: A group of Somali women, among those rescued by the Fasan between 13 and 14 August 2014. Some arrived barefoot and some children were shaking with cold. People from Syria, Somalia, Gambia, Bangladesh and other countries were rescued on this mission.





Above: Survivors of the 29 June 2014 incident queue for dinner in the holding centre of Pozzallo, Sicily, July 2014. Those disembarked in Italy are sometimes kept in holding centres while they undergo an identification process, after which they are transferred to an open centre.

Right: The Safi detention centre, near Luqa airport (Malta). Asylum-seekers can be detained up to 12 months and irregular migrants up to 18 months. This policy in Malta breaches international law.

Below: Asylum-seekers leaving an open centre in Comiso, Sicily, 7 August 2014. Many asylum-seekers leave Italy shortly after arrival and continue their journeys to other European countries where they might have friends or family, and seek asylum there.

“I think people at sea should be saved. You can have problems at any time there. People will continue to cross the sea even if Mare Nostrum stops. There are many families who think that their relatives are in Europe, but in reality they are dead. The EU must stop this.”

Celestin Oaikhena



board, and they could take the refugees and migrants to Malta, which was the original destination. Rome RCC then informed Malta and Libya. Rome RCC officials appeared clear about their obligations on *non-refoulement* since the *Hirsi* case and explained that they had initially directed the *Salamis* to Tripoli only because of the reported medical emergency.

Also on 4 August 2013, the Turkish cargo *Adakent* (IMO 9037305) rescued, on request from Rome RCC, 96 individuals in distress at sea and returned them to Libya. *Adakent* sailed to Tripoli and there returned the 96 rescued people to the authorities. Information available indicates that the *Adakent* was detected by the Automated Identification System (AIS) as calling at the port of Tripoli on 5 August 2013 at 11.15 UTC¹²⁰, its previous recorded position being Marina di Carrara, Italy, on 2 August 2013 at 16.03 UTC. On 15 October 2013, Amnesty International requested information from Italy's Minister for Infrastructures and Transport, responsible for Rome RCC and the coastguard, as well as from Malta's Minister for Home Affairs and National Security. Interviewed in February 2014, Rome RCC officials confirmed to Amnesty International that they had asked the *Adakent* to assist a boat located at 60nm off Tripoli, in Libyan SAR region. By the time the *Adakent* reached the boat, Libyan SAR authorities had been in direct contact with *Adakent* and instructed it to direct towards Tripoli. According to the CoE PACE information¹²¹, the instruction was given directly by Libyan authorities, while according to media reports quoting sources from the Maltese government, it was given by Rome RCC.¹²²

Other examples of delayed rescue and/or disembarkation have included the following cases:

- On 9 November 2011, the Italian Navy ship *Foscari* rescued 44 refugees and migrants, mostly from Sub-Saharan region, in the Maltese SAR zone. They had been sending distress calls for two days with their satellite phone. The delay exposed them to the risk of drowning, dehydration and exposure. The migrants were taken to Sicily.¹²³
- On 20 August 2009, the Italian authorities rescued five Eritrean nationals, three men and two women, near Lampedusa, who had been at sea for three weeks; 75 other refugees and migrants who had been in the same boat had died of dehydration and starvation. The survivors told the Italian authorities that at least 10 commercial vessels had passed by without assisting them. The Italian Ministry of the Interior accused the AFM of having seen the boat two days before Italian authorities found them. The AFM had provided the refugees and migrants with food and water but had not rescued them. Ivan Consiglio, spokesperson for the AFM, stated that when spotted, the boat and the refugees and migrants were "in very good shape" and had refused assistance from the AFM.¹²⁴ The prosecuting authorities of Agrigento, Sicily, opened an investigation for failure to assist a person in danger against unknown persons.¹²⁵
- In April 2009, the merchant cargo ship *Pinar E* (flying Panama's flag and whose owner had Turkish nationality), rescued 142 refugees and migrants in Maltese SAR waters off the coast of Lampedusa. It subsequently had to wait for four days in the high seas, while Italy and Malta negotiated, before being allowed by Italian authorities to approach Italian shores. Malta insisted that the *Pinar E* take the refugees and migrants to Lampedusa as that was the closest port to where they had been rescued. Italy maintained that they had been found in the Maltese SAR region and therefore should be disembarked in Malta. Eventually, Italy allowed the

refugees and migrants' disembarkation, but as Italian authorities clearly stated, solely in view of the serious humanitarian emergency occurred on board of the merchant ship.¹²⁶ Italy stressed that this gesture should not be interpreted as a precedent, nor as recognition of the arguments put forward by Malta.¹²⁷ The Maltese Prime Minister, in a declaration released to Malta's parliament on 21 April 2009, underlined that the rescue occurred 41 nautical miles from Lampedusa and 114 nautical miles to the South West of Malta, thus rendering Italy the state responsible for accepting disembarkation.¹²⁸

- In May 2007, an Italian Navy vessel saved 27 people, all African men, who had been clinging reportedly for three days to the tuna pen of a Maltese trawler, the *Budafel*. The *Budafel* was refusing to take them on board, following the shipwreck of the boat with which they had sailed from Libya, in the Libyan SAR region, but close to the border with the Maltese SAR region. Maltese authorities requested Libyan authorities to take action, which was reportedly promised but did not materialize. In the meanwhile, Maltese authorities failed to take any direct action. According to the reconstruction of the incident by the Italian Council for Refugees (a non-governmental organization), Rome RCC was informed of the situation first by media. Shortly after having the report confirmed by Malta RCC, Italian authorities proceeded to the rescue. In its official statement regarding the incident, Malta stressed that it would not take responsibility for incidents outside its SAR region.¹²⁹

4. 11 OCTOBER 2013 – A FORESEEABLE DISASTER

“I cannot look into the sea, I lost my friend Yahea, maybe I lost my soul and my mind in the sea. I hate the sea, I can’t look at it.”

Mohammed Kazkji, 22, from Syria, student of electrical engineering¹³⁰

“I drank so much water when the boat sank, I still feel it in my throat. I keep telling the doctor in the prison that there is something in my lungs, in my throat, because of all that water... On the boat, I was travelling with one friend who had a wife and two children, but they all drowned.”

Samir, mid-20s, from Syria, former cheese maker¹³¹

The most shocking example of the dangers created by the shortcomings in the co-operation between Italian and Maltese search and rescue services occurred on 11 October 2013.

DYNAMICS OF THE INCIDENT¹³²

“Just before the boat sank, a friend I had met in Zuwara gave me a piece of the boat’s life saver to put under my shirt to float, because I cannot swim. That’s how I floated in the water, until they rescued me. My cousin, who is 25, survived too, but he was saved by the Italians. He is now a refugee in Germany. On the boat, I could see Dr Jammo.”

*He called Italy at 11am, I could see him. After the boat sank, I saw children, women, floating dead. I could not help anybody. It was very hard. When I think about it my head hurts.”*¹³³ Mahmud Alhaloof, 28, from Syria, former basketball coach

On Friday 11 October 2013, at approximately 5:00pm¹³⁴ a trawler carrying over 400 people, the vast majority Syrian families, including approximately 150 children, sank 111km from Lampedusa and 218km from Malta, in Malta’s SAR zone; 212 people were rescued, and some 200 are estimated to have died. Only 26 bodies were recovered.

The boat had left Zuwara, Libya, at 1:00am on 11 October. Embarkation of passengers had started at 10:00pm the night before.¹³⁵ Passengers had been taken in small boats to the trawler, anchored outside Zuwara port, in groups of about 10 people. Among the passengers were several Syrian medical doctors travelling with their families. One of them was Mohanad Jammo, 40, a physician in the Intensive Care Unit of a hospital in Aleppo, who later would be making the calls requesting rescue to Italy and Malta RCCs, and whose interview by journalist Fabrizio Gatti of *L’Espresso* magazine constitutes one of the most detailed testimonies of the events.¹³⁶ Mohanad Jammo reportedly asked the smuggler organizing the crossing how many people were on board, and was told “you are about 260 adults and about 100 children”. Many survivors, however, reported that there were at least 400 people on the trawler.¹³⁷

At about 3:00am on 11 October, a Libyan vessel with several men armed with Kalashnikovs approached the boat. The captain of the refugee and migrants’ boat, a Tunisian national, contacted the smuggler in Zuwara and told him that the boat was being stopped and requested to go back. He reportedly received instructions to proceed. The men on the Libyan vessel kept circling the refugee and migrants’ boat for hours and made several attempts at stopping it, initially by throwing a rope in the fan of the boat’s engine, and eventually by shooting several times, first in the air, then at the cabin, and finally at the engine of the boat, which started to take in water. Three or four passengers were wounded. At dawn, the Libyan vessel gave up and let the refugees and migrants continue their journey towards Lampedusa. The water entering the boat was being pumped out with the one functioning pump.

At about 10:00am, as the water was rising fast, the captain asked who could speak English and had an emergency number to call. Mohanad Jammo offered to help. Before departure he had saved a screenshot of the emergency numbers from a Facebook post’s comments on “Al Kompis”, a Swedish based Arabic news site. At 11:00am Mohanad Jammo reportedly called Rome RCC. He stated that a woman answered and asked for their position. Mohanad Jammo gave the position and added that there were many Syrians, including many doctors, and over 100 children on the boat, and that the boat was taking in water. Admiral Felicio Angrisano, Commander of the Harbour Authorities Corps and of the Coastguard, denies that Rome RCC received a call at that time. Mohanad Jammo’s timeline of the events differs from Rome RCC’s timeline only as to this phone call. Rome RCC maintains that Mohanad Jammo first called at 12:26pm and again at 12:39pm.

According to the timeline provided in a letter by Admiral Felicio Angrisano to the director of the Italian weekly *L’Espresso*, at 12:26pm a call from a satellite telephone reached Rome RCC. The line was very disturbed and the call was at times unintelligible. After five minutes of attempted communication, the line went down. Guessing on the basis of experience that

the satellite phone was a Thuraya one, the Italian coastguard called the Thuraya company in the United Arab Emirates, to check the co-ordinates of the telephone, and therefore be able to locate the boat from which the call had come. At 12:39pm (eight minutes after the end of the previous call) a second call was received from the same telephone. This time, communication was possible and some data were acquired: number and nationality of people on board, place of departure, conditions of the boat, presence of two children in need of medical care, and co-ordinates of the boat, whose engine was still and which was embarking water. The boat was in the Maltese SAR zone.

Mohanad Jammo stated that the same woman who had answered at 11:00am also answered at 12:26pm. She said: "OK, OK, OK". Mohanad Jammo stated he then called again – the 12.39pm call – and the same woman put him on hold. A man then answered and told him that the boat was in Maltese SAR zone and instructed Mohanad Jammo to call the Maltese SAR authorities and proceeded to give him the number, starting 00356, the code for Malta.

Admiral Angrisano, interviewed by Amnesty International in February 2014, explained that the instruction provided to the migrants who had called Rome RCC to contact directly Malta RCC is a routine practice which has been proven to maximize effectiveness of rescue operations, by ensuring direct communication between those requesting assistance and those in charge of providing it – in this case, Malta RCC.

According to Admiral Angrisano's timeline, at 1:00pm Rome RCC informed the Maltese RCC of the situation, adding that two commercial vessels had also been located in the area, the *Stadt Bremerhaven*, flying the Marshall Island flag, and the *Tyrusland*, flying the British flag, which were at respectively 25 and 70 miles from the refugee and migrants' boat. At 1:05pm (nine minutes after the end of the call which started at 12:39pm), Malta RCC took charge of co-ordinating the search and rescue operation. Meanwhile, according to Admiral Angrisano, following orders from the chief of the Italian Navy maritime team the patrol vessel *Libra* (with a helicopter on board), started sailing towards the refugee and migrants' boat, 27nm or 48km away.

At 1:34pm Rome RCC issued a message regarding the boat in distress through the SafetyNET international safety service and as a Hydrolant Navigational Warning to all vessels in the central Mediterranean and stating:

EASTERN MEDITERRANEAN SEA. VESSEL, 250 PERSONS ON BOARD, REQUESTING ASSISTANCE IN 34-20-18N 012-42-05E. VESSELS IN VICINITY REQUESTED TO KEEP A SHARP LOOKOUT, ASSIST IF POSSIBLE. REPORTS TO MRCC ROME

The automated identification system AIS, which provides the position of large commercial vessels as well as some state operated vessels, indicates that at this time there were several coastguard boats in operation off the coast of Lampedusa. The AIS data also shows several commercial ships that came within less than 50km from the vessel.¹³⁸ However, none of these vessels directed itself towards the position of the refugees and migrants in distress until after the boat capsized at around 5:00pm.

According to Watch the Med, an online mapping platform monitoring violations of refugee and migrants' rights at sea, the AFM has not released the position of its assets at the time (in

particular the patrol boat P61 that was sent to the rescue) and these were not accounted for by the AIS data. (The AFM, interviewed by Amnesty International in May 2014, refused to answer questions regarding the rescue operation on 11 October 2013 due to ongoing judicial proceedings. These proceedings followed the refusal by Maltese authorities to disclose information on the same issue requested under the Freedom of Information Act by a Maltese newspaper.)

Between 1:00pm and 3:00pm, Mohanad Jammo called Malta several times. He also called the smuggler in Zuwara to ask that more credit be put on the satellite Thuraya phone. At 3:00pm, the AFM reportedly told Mohanad Jammo that their position had been identified and that rescue would arrive in 45 minutes.

An AFM statement of 11 October 2013 reports that the Maltese aircraft B200 detected the refugees and migrants at 4:00pm. Mohanad Jammo reportedly called Malta again and was told that rescue would arrive in one hour and ten minutes. In the meantime, the water pump stopped working. Mohanad Jammo reportedly called the AFM again and begged them to send down lifejackets and inflatable boats as soon as possible. According to the AFM press statement on the date of the shipwreck: "The said boat was being following [sic] by the Rescue centre and located by AFM aircraft at 1600hrs. Reports were that the craft, although underway towards Lampedusa, appeared unstable. A few minutes later, the aircraft reported that the boat had capsized and that numerous people were in the water. Initial assistance was provided by the aircraft which dropped a life-raft in close proximity of the people in distress. AFM Patrol Boat P61 was first to arrive on scene at around 17:51hrs and immediately initiated SAR activities. It was joined shortly afterwards by the Italian patrol vessel ITS *Libra*."¹³⁹

According to Admiral Angrisano's timeline, at 4:22pm Malta RCC informed Rome RCC that one of its aircraft had spotted the refugee and migrants' boat, which was not stationary (as communicated during the 12:39pm call) but sailing at 5/10 knots. At 5:07pm Malta RCC informed Rome RCC that the boat had capsized and many people were in the water and requested assistance from Italian assets. The rescue operations were carried out, under Maltese co-ordination, by two helicopters and a Maltese patrol boat, which had already been activated at the time Malta took charge of the incident; by the Italian Navy *Libra* and *Espero* vessels, with helicopters; by Italian coastguard patrol boats; by two Italian fishing boats which were in the area; and by a commercial vessel asked to the area by Malta.

At 5:00pm the boat sank very quickly. An AFM video of the minutes immediately following the sinking and of the rescue, filmed from an AFM aircraft, can be seen on YouTube.¹⁴⁰

At 5:14pm the ITS *Libra* was directed to the rescue, being located at 10nm or 18 km from it (it was at 27nm at 1:34pm and at 10nm, or 18km at 5:07pm, having taken about three and half hours to slowly sail towards the refugee and migrants' boat without reaching it). *Libra's* helicopter, which was also still on the deck of the *Libra* at 5:07pm, also arrived at the scene. At 5:49pm the AIS data shows the Italian *CP302* coastguard speedboat leaving Lampedusa, followed by *CP301*. They were then followed by two vessels of the Italian Customs Police (not accounted for by AIS data.)

At 5:51pm, according to the press statement of AFM Malta, the AFM patrol boat

P61 reached the location. At about 6:00pm the ITS *Libra* arrived. At 6:15pm, the AIS data shows that two large Italian fishing vessels, the *Famavia* and *Chiaraluna*, were also heading towards the location.

At 6:26pm, a second Hydrolant warning was issued, providing the co-ordinates of the capsized boat (34-28N, 012-41E), placing the boat at 61.4nm or 111km from Lampedusa and 118nm or 218km from Malta.

Between 8:18am and 8:30pm, the AIS data shows CP302 arriving, followed by CP301.

AFM Malta rescued 147 people (109 men, 19 women and 15 children), Italian assets 65, of which the ITS *Libra* 56 (39 men, eight women and nine children).¹⁴¹ Some families were separated during the rescue operations; 26 bodies were recovered. Considering that 212 people were saved and that there were more than 400 people on board, it is believed about 200 were lost at sea. Mohanad Jammo lost his six-year-old and nine-month-old children.

TESTIMONIES FROM SURVIVORS OF THE 11 OCTOBER 2013 SHIPWRECK

THE WAHID FAMILY

Hasan Yousef Wahid, a Syrian doctor of Kurdish origin, and his wife Manal Hashash, had four daughters, Randa, 10, Sherihan, 8, Nurhan, 6, and Kristina, 2.

They survived the shipwreck, but none of their daughters has been found. Hasan Wahid was rescued by the AFM and taken to Malta, whereas Manal Hashash was rescued by the Italian authorities and taken to Sicily. In the frantic hours after the rescue, they had no idea whether the other was dead or alive. They were eventually put in telephone contact and realized that neither of them had the children. They decided to leave the centres they were at and made their way separately to Switzerland, where they have been granted protection. Amnesty International spoke to them in February 2014, when they were still hoping to find their daughters.

Originally from Aleppo, Syria, they had been living and working in Libya for 15 years, when fighting started there. They decided to return to Syria, which was then peaceful. Shortly afterwards, violence broke out in Syria too, and they moved back to Libya, where Hasan Wahid worked at a hospital.

Hasan Wahid: "Shortly after I returned to Libya, the war in Syria turned sectarian, with fights between the Kurds and the Jabhat al Nusra and other groups. I started receiving threats. I was known to be a Kurd in the area where I lived in Libya. I received a direct threat saying that if I do not leave Libya I will regret staying. I was accused of supporting the regime in Syria by merely residing in Libya, instead of being in Syria to fight against it. I did not support the regime, but I was also against the Islamists. We had a row with some people and I was beaten up. I felt I had to leave Libya."

"I tried to go to Egypt, but the Egyptians closed the borders to Syrians. I applied for a visa to Tunis, but it was turned down. I then applied for a Maltese visa, but that was also rejected. So, at that stage, my only option was the sea. My main concern was to save my wife, my daughters and myself."

Hasan Wahid contacted a Libyan smuggler and paid \$4,500 for his family of six. “We were told it would be a passenger ship. When we saw it was a fishing trawler, it was too late to turn back. My family sat far from me. I had to sit at the back with the elderlies and the physically impaired because I have a childhood handicap in my left foot. My wife and daughters sat at the front, on the same level of the boat.”

“The people on board the boat were Syrians. There were 40 doctors and their families. We must have been 450-500 people on the boat. After we had been sailing for a couple of hours, a speed boat with armed men appeared. They were Libyans, but we did not know whether they were coastguard or pirates. They fired in the air. Our captain did not stop. We assumed the Libyans were pirates because most of us on board had our life’s savings with us. The Libyan boat came toward us again and at about 2:00am they fired at our boat. Until then, they had just tried to stop us, throwing ropes below the boat and circling around it to create waves. When they shot at us directly, three people were injured and the boat was damaged. Then they left. The water inside the boat started rising, so we used water pumps to pump it out. The pumps worked until about noon, but then they broke down.”

Hasan Wahid recalls the attempts at contacting Italy and Malta. “By then, the boat was moored, unable to move. The captain switched the engines off and the high waves were rocking the boat on all sides. We stayed like that until the boat capsized, taking us all down. Just before it capsized, we saw a helicopter hovering above us. An hour later, the Italian and Maltese coastguards arrived.”

“When the ship capsized, I don’t know how I managed to surface. When I did, I saw that we had been flung far away from the ship and the waves were pushing us further away. I was not lifted out of the water for about two hours. The coastguards were rescuing the children first. I was eventually rescued by the Maltese authorities, after sunset. I didn’t know at that stage whether my wife and children had been rescued or not. A man sitting next to me on the Maltese boat – whom I knew from the camp we stayed at in Libya for a week before the sea crossing – told me that he had seen one of my daughters on one of the rescuers’ boats. She is eight and has no front teeth and has darker skin than her sisters. The man said he recognized her. I asked: do you mean Sherihan? He said: ‘yes, that’s the one, I saw her on one of the boats. She called me and asked if I had seen her father. I told her not to worry and that dad will go to her’. He was trying to calm her down, despite the fact he was still in the water and she was on a boat. Someone else on the same rescue boat as me told me that they saw my wife alive and that she had been rescued. I asked them whether they had seen any of my daughters with her, but they said no.”

“The Maltese rescue boat I was on kept searching for people until about 3:00am. We eventually fell asleep and when we woke up we were in Malta. I looked for my wife. I learned that she was alive in Italy.”

“In Malta, I gave the Maltese Red Cross all the information about my daughters and my wife, names, ages...My wife, in Italy, was also looking for them frantically. She kept asking for them, but she could not get a reply.”

Manal Hashash: “I kept asking about my children, but no one would give me any information at all.”

In Italy, Manal Hashash left the centre of Porto Empedocle, Sicily, where she had been hosted and, with a group of other Syrians, reached Palermo. From there she travelled to Rome and then, by train, to Milan and finally Switzerland.

In the meantime, in Malta, Hasan Wahid lost hope to find any of his daughters there. He managed to get to Milan and from there he took a train to Switzerland.

In Switzerland, Hasan Wahid and his wife sought asylum and were hosted in two separate refugee centres until eventually they were reunited, 20 days after the shipwreck. As they had lost their documents during the shipwreck, they had to ask relatives and friends to send birth certificates, school and work documents and expired passports to prove their identity.

They also registered with the Swiss Red Cross to trace their daughters. "We are hanging on to the hope that we will find our children. All we want is to find our daughters, either dead or alive."

MOHAMMED KAZKJI, IBRAHIM ABDALLA SUDI, OMAR, SAMIR HGAZI AND MAHMUD ALHALOOF

Amnesty International met Mohammed Kazkji, Ibrahim Abdalla Sudi, Omar, Samir Hgazi and Mahmud Alhaloof in Malta, in May 2014. All refugees fleeing war in Syria through a perilous journey, these men were failed over and again by the Europe in which they were seeking sanctuary.

They nearly drowned in the shipwreck of 11 October 2013. They were rescued by the AFM and taken to Malta. Four of them tried to move irregularly towards the European countries where they wanted to start their new life. Two were detained, prosecuted and jailed before leaving Malta; the other two were forcibly returned to Malta, and one of them was prosecuted and jailed there. All of them are now trapped in Malta, sharing temporary accommodations when one is available, and sleeping rough otherwise.

Some time after the rescue Ibrahim and Samir tried to leave Malta irregularly. They were arrested at Malta's harbour and tried and convicted for use of false identification documents. They did not manage to understand much of the proceedings, as interpretation was poor. Ibrahim and Samir were sentenced to eight months detention.

Samir is deaf from birth. During the interview with Amnesty International, Ibrahim and Omar helped him by repeating questions and answers for him. He explained to Amnesty International: "I lost my hearing aid in the water. I have applied for a new one, but they have not given it to me yet. I asked for one even before being sent to prison, and then again from prison."

Mohammed and Omar managed to board a ferry from Malta to Catania. Then they travelled by train to Milan, Paris, Brussels and Amsterdam. In the Netherlands they went to a refugee centre. Their fingerprints were taken and their asylum request was rejected. They were both returned to Malta on the basis of the Dublin Regulation. Once in Malta, Omar was tried and sentenced to six months' imprisonment for using false identification documents. Mohammed, having denied that he had used false identification documents, was not prosecuted. Mohammed visited Omar and the other friends in prison often during their detention.

When Amnesty International researchers met Mohammed and Mahmoud, they were sharing a flat in the El Marsa area, but they were due to leave as they had run out of money. They did not know where they were going to spend the following night. Amnesty International met Ibrahim, Omar and Samir in Corradino prison, Paola, where they were still detained. They were released in July 2014. Mahmoud had already obtained subsidiary protection in Malta, while the others were awaiting a decision for protection. But none of them wanted to stay in Malta. They wanted to go to the Netherlands or Germany. And they all hoped to be able to go back to Syria one day.

MOHAMED KAZKJI, FROM SYRIA¹⁴²

Mohammed, 22, fled Syria on 25 August 2012, after receiving a letter from the police ordering him to serve as a soldier. He left his family – his parents and four siblings – and flew to Egypt. His grandfather, one uncle and five cousins died during bombings in Damascus. From Egypt he paid smugglers to take him to Libya where he joined an uncle, who lives in Libya and runs a car-repair business.

“I wanted to finish my studies as an electrical engineer. Now I speak to my family maybe once a month, but if there is fighting the line goes down. Last month they were OK. In Libya I could work but not study. Libya was becoming very dangerous for me. Lots of fighting, everybody was armed. Libyans were not very welcoming. In Misrata there is no police, no authority, it is lawless. I was seeing my mother in my dreams every day.”

So Mohammed decided to attempt the sea crossing. “I had researched where to go in Europe on Facebook. The Netherlands seemed best, you can learn the language and study or work there. So I went to a Libyan smuggler with a friend from Syria, Yahea, whom I had met in Libya. We asked the smuggler to arrange our trip to Italy. It was \$1,300 each. We went from Misrata to Zuwara by car, it took about seven hours. The journey was organized by the smuggler. In Zuwara, I met my friend Omar. My friend Yahea died in the shipwreck. He was 22. I think his sister came to Malta, because a journalist told me that a woman was looking for Yahea, after the shipwreck. He was from Damascus, like me.”

IBRAHIM ABDALLA SUDI, FROM SYRIA¹⁴³

Ibrahim, 28, who is from Daraa, Syria, left the country on 26 November 2011. He comes from a family of farmers and graziers, who lost their livelihood in the war. “There was no more food. I had to leave. I have five siblings. I cannot call my family because all lines are down at my village. Sometimes I call my sister, who lives in Damascus. But even she cannot call our village, so I have had no news of them since I left.” Ibrahim went to Jordan, then to Egypt and Libya by bus. “I wanted to stay in Libya, I tried, but there were too many problems, it was difficult to find work and a place to live. I stayed in Libya for two years, working as a carpenter. There was no chance of getting a work permit. I would go to a bridge, and people needing workers would pick me up.” Ibrahim was worried about what he would do after his release from prison. “For us it would have been better to die in the sea than be here... There is nowhere to go. If we are given only protection instead of refugee status, I will have to pay for health and will not be able to travel. We need nothing from Malta, we are here by mistake. We want to go to Europe.”

The men’s account of the boat sea crossing and of the shipwreck is consistent with other, separate testimonies.

They reported that after giving the position of the boat to Italy and Malta, the captain was sailing in circles to try to keep the position they had given to the rescue services and not to sink. Mohammed remembers that at 4:00pm a doctor called again for help and was told: “we looked for you but you were not there.” Soon afterwards, at about 4:10pm, they saw the Maltese aircraft, which took photos. Omar was near the doctor who made the phone calls and heard everything first hand. Ibrahim and Samir were below deck. The doctor was phoning from the top deck to avoid the noise. The aircraft flew over them for 30 minutes.

Ibrahim witnessed a woman giving birth just before the boat sank: “I think she had a boy. There were doctors and nurses around her.” He is not sure the boy was born alive. He also saw the two men who had been wounded by the Libyan armed men. Their arms were injured. They had lost lots of blood and he believes they died because they were probably too weak to swim. They were in the hull of the boat. “Everybody was trying to leave the boat. People with lifejackets were stuck because the boat was pushing them down and the lifejacket taking them up. When the boat capsized I was pushed down by a heavy cable, which hit my shoulders, deep under the water. When I resurfaced, I saw that the boat was under the water.”

Mohammed told Amnesty International: “After the boat sank I was looking for my friends in the water. Where was my friend Yahea? Where was Omar? I found Omar, I asked him: where is Yahea? He said, I don’t know. I could not swim so much. I tried to help Omar and he helped me, but we could not help others. Many sank trapped in the boat. We don’t hate Malta, but I cannot look into the sea, I lost my friend Yahea, maybe I lost my soul and my mind in the sea. I hate the sea, I can’t look at it.”

LACK OF ACCOUNTABILITY

The Libyan vessel shooting at the refugee and migrants’ boat and causing it to take in water was certainly one of the causes of the shipwreck. But looking at the available timeline, it is reasonable to question whether Italy and Malta acted promptly and with all available resources to save the refugees and migrants and whether a delay in going to their rescue was another cause of the shipwreck.

Both Italy and Malta claim they acted in full compliance with their obligations under the 1979 SAR Convention.¹⁴⁴ However, *prima facie*, at the very least the following possible breaches of SAR obligations emerge: the failure of the captain of the *Libra* to direct herself at full speed towards the boat requesting assistance, as required by the SOLAS Convention (Chapter V, Regulation 33(1)); the failure of the Italian authorities to order her to do so, as required by the UNCLOS (Article 98(1)(b));¹⁴⁵ and the failure of the Maltese authorities to provide assistance to the boat after officially having taken charge of the case, as required by the SAR Convention, by ensuring co-ordination and co-operation with other states, namely Italy.

Admiral Angrisano reiterated to Amnesty International that Italy acted in compliance with its international obligations and that Malta, exercising its sovereignty, had assumed the command of the rescue operation. He stressed that assistance was offered by Italy. “At 16:22pm Malta told us that the boat was sailing normally. After 45 minutes they informed us that it had capsized, and we all did what was possible. States are sovereign, and sovereignty is expressed by assuming responsibility for a SAR zone.” According to Rome RCC, it was

Malta's responsibility to demand Italy to dispatch its assets, especially the *Libra*, which had been offered, since Malta had assumed the co-ordination of the rescue. Doing otherwise would have constituted a violation of the sovereignty of Malta and of the SAR convention. Yet, this does not answer why the captain of the *Libra* did not go to the rescue, considering that the SOLAS Convention regards the master of the ship himself to be bound to proceed to a rescue at full speed.

The AFM has so far refused to disclose the timeline of its activities on 11 October 2013. A Freedom of Information Act request by the newspaper *MaltaToday* was turned down and a decision on the newspaper's appeal is now before the Court of Appeal. The AFM justified its refusal stating that, with regard to the documents containing the information requested, "the public interest that is served by non-disclosure outweighs the public interest in disclosure. This release would or could reasonably be expected to cause damage to security, defence or the international relations of Malta with Italy".¹⁴⁶

Malta's Minister for Home Affairs and National Security, interviewed by Amnesty International in May 2014, reiterated that co-operation with Italian SAR authorities is excellent and that no interest would be served in disclosing information which could show that Italy was lacking on a particular occasion, because its SAR service is in most cases extremely effective. The Minister also maintained that "The boat was overcrowded but not in distress. It was *galleggiando* [floating]" when it was spotted by the Maltese aircraft. However, the boat capsized 45 minutes later.

At the end of December 2013, the Maltese Prime Minister Joseph Muscat, interviewed on Maltese television, stated that on 11 October he was called by the then Commander of AFM, Martin Xuereb, who reportedly asked him: "What are we supposed to do? On the basis of international norms, it should not be us to have to pick them up, but we are seeing them drowning one after the other. They cannot resist the tide any longer." The Maltese Prime Minister reported to have ordered to forget all rules and laws, to pick up people from the water and take them to Malta.¹⁴⁷ Amnesty International notes that, provided that the Prime Minister related the conversation accurately, as the boat was in the SAR zone of Malta and Malta had formally taken charge of the case, it is quite unclear why the AFM Commander would have stated that it should not have been up to Malta "to pick them up".

A statement to parliament by the Italian Under-secretary for defence in January 2014 did not shed any further light on which obstacles came in the way of timely rescue of the refugees and migrants on 11 October 2013.¹⁴⁸

The obligation to protect life at sea is enshrined in international maritime law, international human rights law, as well as in the national laws of both Italy and Malta. The death of about 200 people, mostly refugees fleeing war, in an area of sea where rescue was available and had been repeatedly requested, demands accountability.

Amnesty International considers that an independent inquiry is needed in both countries to investigate the possible failures to act of all those involved. Judicial investigations and prosecutions should follow where relevant. Victims and their families are entitled to reparation, which includes access to the truth and a guarantee of non-repetition.

THE AFTERMATH

The rescue was followed by a situation of great confusion and deep distress for survivors, many of whom had no idea about the fate of their loved ones. Many were missing their children. It was a challenging situation for rescuers and officials in charge of assisting survivors.

In Malta, the authorities had never faced a shipwreck of that scale. The government treated it as an emergency disaster from the start and took the unprecedented decision not to place the survivors in migration detention. Families were brought to the Hal Far open centre, while single men were detained for a few days in Safi barracks and then released and brought to Hal Far. Even though this brief period of detention was an improvement on Malta's usual treatment of irregular migrants - which involves automatic detention for anyone who enters the country irregularly - it was nonetheless a shocking experience for men who had just survived a shipwreck. Furthermore, the Hal Far open centre was not organized to receive first arrivals and basics, such as clothes, were unavailable.

Mohammed Kazkji told Amnesty International: "Just after we were rescued, the Maltese police took me and my friend to a police station and wanted our fingerprints. They took us to jail. I thought I was going crazy. We stayed in prison for a few nights. I was in my underpants and a T-shirt because I had taken off my trousers in the water. Nobody gave us spare clothes. Only some good people, later. The police wanted to give us prisoners' clothes. I refused. Women and children were in an open camp. Everybody was asking about their families, but the authorities were saying: they are in Italy, wait, tomorrow. I asked to see the corpses to identify my friend Yahea, but he was not among the bodies. The open camp was also very bad, cold or hot, no kitchen, no showers."

UNHCR and Maltese non-governmental organizations commended the decision of the Maltese government not to detain the survivors of the 11 October 2013 shipwreck and pressed for the same practice to be extended to all people arriving irregularly by boat in the future, a recommendation the authorities were reportedly not prepared to accept.

In the immediate aftermath of the rescue, the Maltese government called an emergency meeting at ministerial level. Immigration police, UNHCR, IOM and non-governmental organizations were immediately involved to organize a multifunctional response. The overall management and approach taken to assist survivors was judged positively by UNHCR and civil society. Some civil society representatives, however, remarked that the 11 October 2013 shipwreck exposed how ill-prepared Malta was for such an emergency.¹⁴⁹

On the Monday after the shipwreck, data about the survivors and the missing started being exchanged between Maltese and Italian authorities.

In Italy, the situation of survivors was particularly chaotic. Italian authorities and staff from international and non-governmental organizations were still addressing the situation of the survivors of the 3 October 2013 shipwreck and arrivals of refugee and migrants' boats to Italy were continuing. Survivors of the 11 October 2013 shipwreck were hosted in a tent structure in Porto Empedocle, where facilities were extremely basic. After identification procedures were completed, which took a few days, survivors were sent to open centres in Trapani, from where most left very quickly.

Hasan Wahid, whose wife Manal was rescued by Italian authorities and taken to Italy, described to Amnesty International the lack of adequate care for survivors: “My wife and the other survivors did not receive any aid at all in Italy. When my wife arrived in Switzerland, she was still in the same clothes she had on when we got on the boat in Libya. In Malta, we were visited by the minister of health and the minister of interior. They asked us what we needed. They gave us clothes and food. But in Italy, they did not give survivors anything at all.” Italian officials involved in the reception of refugees and migrants in those days, interviewed by Amnesty International in February 2014, confirmed that there had not been resources to address even basic needs such as clean clothes, due to the chaotic situation and the continuing arrivals.

Some parents rescued by Maltese authorities ended up being separated from their children, rescued by Italian authorities and taken to Sicily. They were reunited only several weeks later, following completion of DNA tests, due to Italian law requirements. Related adults also ended up separated and no assistance was provided either by Malta or Italy to help them reunite, which eventually they did by themselves.

Most survivors ended up leaving both Italy and Malta shortly after the rescue. Many wanted to go to countries in northern Europe. In Italy, many refused to give their fingerprints and were let go. In the aftermath of the rescue, Amnesty International spoke to several survivors in transit through Milan to reach northern Europe.¹⁵⁰ In Malta, survivors were systematically identified and requested to leave their fingerprints. Although survivors in Malta were informed that leaving irregularly would result in their forcible return to Malta and possible criminal charges, many took the risk anyway. Some survivors have since been returned to Malta, tried and in some cases imprisoned, as in the case of Omar.

Most survivors managed to reach the northern European countries they wanted to settle in. Many are reportedly in Sweden and Germany. Although some countries, such as the Netherlands, in the case of Omar and Mohammed, chose to send them back to Malta to face possible criminal charges, other countries appear to have decided not to send back other survivors.

5. WHOSE BORDERS? THE CHALLENGE OF DUBLIN AND THE FAILURES OF COASTAL STATES

FRONTEX: PROTECTING THE RIGHTS OF SEABORNE MIGRANTS, OR A WEAPON FOR FORTRESS EUROPE?

Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, was established in 2004 and became operational in October 2005.¹⁵¹ The Agency, which has its headquarters in Warsaw, Poland, had a staff of 302 people in 2013. Its 2014 budget is €89.2 million.¹⁵²

The main task of Frontex is to co-ordinate joint operations between member states on the external sea, land and air borders of the EU. Frontex also co-ordinates the joint returns from member states to countries of origin, carries out risk analyses to inform its operational decisions as well as those of member states, and develops and organizes training for border and coastguards within and outside the EU. Two thirds of Frontex' budget is used for operational activities (€62.6 million in 2013), of which operations at sea take up the biggest chunk (in 2013, 46.2% or €28.8 million).

Frontex co-ordinates several joint operations at the EU's external land, air and sea borders. Two operations are active in the central Mediterranean: European Patrols Network (EPN) Hermes and Aeneas. EPN Hermes implements activities to control irregular migration flows and other cross-border crime from Tunisia, Algeria and Libya towards Lampedusa, Sardinia and Sicily. It had a budget allocation of €5.6 million in 2013. EPN Aeneas has the same objective but focuses on the route from Turkey, Albania and Egypt towards the south east coast of Italy, particularly Apulia and Calabria, and an allocation of €2.2 million in 2013. These joint operations are hosted by Italy, with the participation of several member states.¹⁵³

Frontex highlighted that rescuing people in distress at sea was a key activity during its 2013 maritime joint operations.¹⁵⁴ After the October 2013 shipwrecks, the European Commission reinforced the 2013 budget of Frontex by allocating an additional €8.2 million (bringing the final budget for 2013 to €94 million) to intensify operations in the Mediterranean, including to contribute to SAR capacity.¹⁵⁵ The October 2013 shipwrecks resulted also in increased pressure to conclude negotiations on the proposed regulation establishing rules for the surveillance of the external sea borders in the context of operational co-operation by Frontex.¹⁵⁶

Regulation (EU) 656/2014 on surveillance of the external sea borders in the context of Frontex co-operation was finally adopted in April 2014.¹⁵⁷ It sets out rules for the interception of vessels during joint operations at sea, including for search and rescue situations and the disembarkation of intercepted or rescued people. The aim of the new Regulation is to resolve confusion over diverging national interpretations of international

provisions on maritime surveillance by setting out clear rules to be laid out in Frontex operational plans and followed during Frontex joint operations.

In particular, the Regulation provides that SAR activities should be initiated whenever there are indications that conditions of the ship or people on board do not allow for safe travel including severe overcrowding, poor conditions of vessels, lack of necessary equipment and absence of professional personnel, and weather conditions. The definition of place of safety takes into account the protection of human rights and the principle of *non-refoulement*, which are key to the decision where rescued persons can be disembarked. It makes explicit reference to the fact that shipmasters and crews should not face criminal sanctions for the sole reason that they have rescued people in distress and brought them to a place of safety. If the Regulation becomes the basis for practical guidance at the operational level, agreed and consistently given to all officials involved in interception and search and rescue operations, not only those led by Frontex, it could contribute to strengthening search and rescue at sea, thereby helping to avoid deaths at sea.

The Regulation fails, however, to provide the much needed clarity on the issue of disembarkation and responses to protection and other needs of intercepted and rescued people. It makes allowance for disembarkation in non-EU countries following interception on the high seas, although this is subject to extensive human rights and *non-refoulement* safeguards, including respect for key procedural guarantees.¹⁵⁸ Decisions on disembarkation following a rescue operation fall back on the responsible RCC, which is likely to involve the closest port or place of safety, depending on the circumstances of the case. The Regulation recognizes the possibility to disembark in the member state hosting the joint operation, possibly to avoid situations of uncertainty which may lead to rescued persons remaining at sea for long periods of time.

The Regulation also fails to address one of the key drivers for states to avoid fulfilling their search and rescue obligations. In particular, they do not ensure that the identification of a place of safety takes into account the capacity to address immediate post-disembarkation needs and continue to uphold the core Dublin principle that the state on whose territory people rescued at sea are disembarked is solely responsible for addressing these needs.

With the first anniversary of the launch of OMN approaching, Italy is demanding that Frontex take over OMN as the Agency continues to be seen as a key instrument of European solidarity in the area of border management.¹⁵⁹ The Strategic Guidelines for future legislative and operational planning in the field of Justice and Home affairs, adopted by Heads of State and Government in June 2014, call for a reinforcement of its “operational assistance, in particular to support Member States facing strong pressure at the external borders”.¹⁶⁰

In practice, if Frontex’ operations were to address current SAR needs in the Mediterranean, those operations would be bound by the Regulation and this would help ensure more effective rescue at sea. However, it would not be enough to increase Frontex’ budget. Member states would also need to provide Frontex with a significant amount of naval and aerial assets (which would then act under the co-ordination of the responsible RCC centre when a SAR situation arises).

Frontex’ core mission is currently defined in terms of border control activities and its

deployment in the central Mediterranean sea has so far been close to Italy's territorial waters. If the recently announced new Frontex operation Triton is to effectively meet the search and rescue needs in the central Mediterranean, this function needs to be clearly articulated as a priority. Frontex will need to deploy assets in sufficient number throughout both Italy and Malta's SAR zones and, for so long as Libya is incapable of fulfilling its own search and rescue obligations, its SAR zone also. Finally, member states should also reach an agreement on disembarkation, which should be reflected in Frontex operational plan, to ensure solidarity and responsibility-sharing between participating member states.

THE CHALLENGE OF DUBLIN

On 15 June 1990, EU member states adopted the Convention determining which state was responsible for examining applications for asylum lodged in one of the member states of the European Communities, generally known as the 'Dublin Convention'.¹⁶¹ After the Treaty of Amsterdam in 1999, which enabled EU law to govern the matter of asylum and migration, the Dublin Convention was replaced by a Regulation (known as Dublin II) based on the same principles as the Convention.¹⁶²

As with the Convention, the Regulation aims to ensure that one member state is responsible for an asylum application and therefore avoid "refugees in orbit" scenarios; to prevent abuse of asylum procedures in the form of multiple asylum applications in different EU states; and to guarantee effective access to asylum procedures in the responsible member state.

The allocation of responsibility is established by a hierarchy of binding criteria, starting from the protection of the best interests of minors and family life, the possession of a visa or residence permit, illegal entry or stay in the territory of the state, down to where the asylum application was lodged. However, any state party may decide to examine an asylum application under discretionary clauses even if such examination is not its responsibility.¹⁶³

Given the limited scope for family reunion under the strict definition of family in the Regulation, the criteria place the burden of responsibility effectively on the member state that played the greatest part in the applicant's entry or residence in a member state. This approach has been reinforced with the establishment of Eurodac – the asylum seekers' fingerprint database – which may conclusively prove that someone entered irregularly or already applied for asylum in another member state.¹⁶⁴ Unsurprisingly, available data show that "Dublin transfer" requests between states are overwhelmingly connected to people who are staying without permission in a member state and whose applications are under examination or who have been rejected in another member state.¹⁶⁵

Nevertheless, only a fraction of the agreed "Dublin transfers" are actually carried out. According to a recent report by the European Asylum Support Office (EASO), between 2008–2012, on average some 35,000 outgoing Dublin requests were made annually; 80% of the outgoing requests were accepted, but only around 25% of them resulted in the physical transfer of a person from one member state to another (on average, about 8,500 people annually). Thus, although the proportion of outgoing requests was on average about 12% of the number of registered asylum applicants, Dublin transfers were made in the case of only about 3% of those making an asylum claim in the EU.¹⁶⁶

Although it only affects a small fraction of all asylum applications made in the EU, the

cumbersome bureaucracy involved in Dublin procedures and their insensitivity to asylum-seekers' individual motivations and choices – if not outright violation of their rights – has come to epitomize the inhuman face of Europe's asylum system. Research has shown that practice regarding Dublin procedures across the EU acts to the detriment of asylum-seekers: it leads to serious delays in the examination of asylum claims, effectively putting peoples' lives on hold; conditions for family reunification are too strictly defined causing families to be separated; and there has been an increasing use of detention for those subject to Dublin arrangements.¹⁶⁷ The hierarchy of criteria is not always respected, with the illegal entry or stay criteria being the one predominantly used in connection with Eurodac.

The cases of the Syrian refugees Omar and Mohammed Kazkji (see above) are emblematic. Despite being in obvious need of international protection and having survived a shipwreck to reach safety in Europe, they fell into the net of Dublin. The Netherlands, where they wanted protection, decided they should be returned to Malta, where they were taken after the shipwreck. Following a Maltese police investigation, while Mohammed was let go, Omar was tried and sentenced to six months' imprisonment in Malta.

Furthermore, the problems inherent in the Dublin system are exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in member states, creating an asylum lottery. The requesting state is not obliged to make any inquiry as to whether and how the asylum-seeker will be protected in the receiving state. Deficiencies in a number of member states' asylum policies have meant that asylum-seekers transferred back were unable to access asylum procedures or fair reception conditions. This has resulted in national courts increasingly intervening in cases of transfers of responsibility in application of Dublin, and in both the European Court of Human Rights and the Court of Justice of the European Union asserting states' obligation to apply Dublin arrangements in compliance with fundamental rights.¹⁶⁸

Revisions of the Dublin Regulation were recently negotiated and agreed.¹⁶⁹ The Dublin III Regulation, in force from 1 January 2014, introduces significant reforms, such as additional guarantees to people in a Dublin procedure, including an obligatory personal interview and information on the process, more ample options for reuniting family and relatives, and additional guarantees for minors. However, this latest revision of the Dublin system has again missed the opportunity to consider a fundamentally different approach to the question of responsibility for considering asylum applications – one that would imply a system which was not based almost exclusively on the principle that the member state responsible for a person's presence on the territory of the EU should be responsible for considering his or her asylum request.

The Dublin Regulation has arguably established a legal process of allocating responsibility to examine asylum applications in Europe. However, the principle at the basis of the current system subordinates refugee protection to migration policies and should be abandoned. It should be based on the fulfilment of member states' obligations under international refugee and human rights law. The Dublin Regulation encourages member states to adopt and implement measures restricting access of asylum-seekers to procedures and to the territory.

DUBLIN AND OMN

Italy's OMN has revealed the impracticality of Dublin arrangements in that many, if not most,

of the people rescued and disembarked have moved on irregularly to apply for asylum in other European countries where they have family, relatives or other links. In 2014, up to the end of August, only 25,026 asylum applications were reportedly lodged in Italy.¹⁷⁰ Germany received 97,093¹⁷¹ as of the end of July 2014 and Sweden 50,175¹⁷² as of the end of August 2014, with Syrian and Eritrean nationals being the top nationality of asylum-seekers. Given that rescued people have not been systematically fingerprinted by Italian authorities and their details entered into the Eurodac database, it is not clear to what extent they are likely to be “dublined back”.

Within the Dublin system, Italy is a “receiving” country, given that the number of the requests of competence addressed to Italy by other member states far exceeds requests from Italy in the other direction.¹⁷³ Within the EU, and in virtue of OMN, it is also one of countries with the highest influx of irregular migrants. Indeed, Italy appears to have taken the following approach: it will carry out and pay for rescue operations in the Mediterranean but it will not take charge of the migrants and asylum-seekers seeking subsequently to enter other EU countries, in disregard for the principle underlying the Dublin Regulation.

The working of Dublin arrangements are increasingly being challenged in relation to Italy, as it has been widely documented that people transferred back to Italy face inadequate reception conditions and difficulties in accessing accommodation, social services and other assistance.¹⁷⁴ A high number of German administrative court decisions temporarily suspended Dublin transfers to Italy and also a considerable number of court judgements found that Germany was obligated to apply the discretionary clauses under the Dublin II Regulation and take responsibility for determining asylum claims.¹⁷⁵

The number of boat arrivals has highlighted protection gaps and challenges in Italy, particularly as regards reception conditions and local integration of refugees.¹⁷⁶ As highlighted by EASO, Italy lacks a consolidated and co-ordinated national reception system as well as a coherent contingency/emergency plan in order to tackle emergency situations related to the influx of mixed migratory flows. Italy's centres for asylum-seekers (CARAs) remained largely overcrowded and the Ministry of the Interior struggled to identify spaces to accommodate newly arrived asylum-seekers. The enlargement of the reception network (in Italian known as SPRAR, *Sistema di protezione per richiedenti asilo e rifugiati*) and the opening of new emergency facilities by the prefectures, especially in Sicily, Calabria and Apulia, did not keep pace with increasing needs, and conditions in most of these facilities fell short of adequate standards.¹⁷⁷

Deficiencies in the Italian system for reception and support might explain the growing numbers of asylum-seekers who refuse to be fingerprinted to avoid being subjected to the Dublin procedure and being stuck in Italy. This has been particularly relevant among Eritreans, Somalis and Syrians. In recent months and years, many refugees and migrants have moved to other European countries to join family there or find better conditions of support. These irregular movements within Europe testify to the inherent flaws of the Dublin system which, by seeking to contain asylum-seekers in the EU country of first arrival, does not allow them to find adequate and durable solutions. Indeed, the Dublin system ignores the brute reality that those irregularly entering the EU through its southern land and sea borders rarely wish to remain in the EU country they first enter (Italy, Malta, Bulgaria, Greece).

It is clear that the Dublin system needs to be fundamentally reformed in order to limit these irregular secondary movements within the EU and allow asylum-seekers to go where they have wider family ties or stronger links and better prospects of integration and support. Consideration should also be given to allow people who are granted refugee or subsidiary protection status to move freely within the territory of the EU upon recognition of their status. Their right to free movement would be enhanced if positive decisions taken in one member state were acknowledged as valid in other EU member states, and if they could assert their rights wherever they are in the EU.

Such a reform would go some way towards addressing the migration-related concerns of countries such as Italy and Malta that have been disincentivizing them from carrying out search and rescue operations.

6. CONCLUSIONS AND RECOMMENDATIONS

The summer months of 2014 have seen the number of deaths of migrants and refugees in the central Mediterranean reach new heights. Despite the introduction of Italy's Operation Mare Nostrum on 18 October 2013, which has already been responsible for the rescue of well over 100,000 refugees and migrants, some 2,500 have lost their lives at sea in the last eight and a half months alone. The EU as a whole cannot be indifferent to this suffering.

The sharp rise in refugees and migrants prepared to risk the perils of long journeys in rickety, overcrowded boats is not just the product of increased instability in the Middle East and the deterioration of the situation in Libya over the last 12 months. It is also a consequence of the progressive sealing off of Europe's land borders and the absence of safe and legal channels for migrants and refugees to reach the EU. For so long as the EU continues to push those fleeing conflict or poverty to take dangerous sea journeys, it must be prepared – collectively – to meet its obligations to save lives.

Long-standing disputes between Italy and Malta over the extent of their respective search and rescue obligations have historically undermined the delivery of effective search and rescue operations in the central Mediterranean. These have been papered over by Italy's Operation Mare Nostrum, but need urgently to be resolved. This is not enough, however. It is clear that the scale of the challenge surpasses the ability and resources of Italy and Malta to respond to it on their own. A collective EU response is needed to meet a shared EU responsibility.

The announcement at the end of August 2014 that the EU would deploy a Frontex operation to complement the efforts of Italy and Malta is at least a step in the right direction. But considerable doubts remain over both the ability of Frontex to deliver search and rescue operations at the level currently required and in the areas where they are needed; and the resources – which will have to be considerable – that the EU and its member states will invest in it.

In the absence of a broader review of EU mechanisms for sharing the responsibility for – and distributing the cost of – receiving and processing irregular migrants and asylum-seekers, disputes over disembarkation are no less likely to plague Frontex-led search and rescue operations, than those till now conducted by Italy and Malta.

Clearly, however, the key challenge is to reduce the number of people taking dangerous sea journeys in the first place. With the current instability in the Middle East showing no signs of abating, the migratory pressures on the EU cannot be relied on to dissipate of their own accord. Tackling the network of traffickers exploiting and often cruelly mistreating those desperately seeking Europe's shores is necessary, but not, in itself, a solution to the bigger forces at play. In the long-run, the EU and its member states need to reflect on how they can open up more safe and regular routes to enter the EU for both migrants and, especially, the refugees who compose almost half of all those arriving irregularly by sea.

RECOMMENDATIONS

TO ITALY

- Maintain OMN until it can be safely replaced without protection gaps by another viable operation of comparable scale, with at least the same level of resources and trained staff. OMN should deploy its assets where most needed to ensure timely response to requests of assistance.

TO MALTA

- Employ a broader definition of distress at sea aimed at maximizing the protection of life, including by applying the relevant provisions of Regulation (EU) 656/2014 to all SAR operations coordinated by Malta RCC.
- Ratify and implement the 2004 SAR and SOLAS amendments.

TO ITALY AND MALTA

- Agree on criteria to identify the place of safety where people rescued at sea should be disembarked as a matter of urgency, to render disembarkation predictable. To this end, negotiations on a Memorandum of Understanding on disembarkation at the IMO should be vigorously pursued.
- Reach agreement on the delimitation of respective SAR zones. In consideration of its size and resources as well as of the death toll and high traffic in its SAR zone, Malta should agree to reducing its SAR zone.
- Ensure that all people rescued have access to individualized asylum procedures and there is no *refoulement*, including when the rescue is carried out by private shipmasters, including in the context of bilateral readmission agreements.
- Refrain from penalizing shipmasters for assisting people in distress at sea; minimize any economic loss for private shipmasters; and enforce the obligation on shipmasters to provide assistance at sea.
- Implement measures to restore family links as soon as possible upon disembarkation, ensuring that refugees and migrants are able to communicate with relatives in countries of origin or with relatives taken to a different reception centre, if members of the same families are for any reason separated following disembarkation.
- With regard to the 11 October 2013 shipwreck, establish an independent inquiry in each country to investigate the possible failures to act of all those involved and ensure that the inquiries cooperate with each other. Judicial investigations and prosecutions should follow where relevant. Ensure also that victims and their families enjoy their right to reparation, which includes access to the truth and a guarantee of non-repetition.

TO EU INSTITUTIONS AND MEMBER STATES

- Offer more safe and regular routes to refugees to access protection, including by:
 - Increasing resettlement and humanitarian admission places for refugees,
 - Facilitating family reunification for refugees who have family members living in the EU,
 - Applying a broad definition of family members to include extended or non-nuclear family, and
 - Applying flexibility as to documentary and other requirements.
- Ensure that refugees who arrive at the EU's external land borders are able to access asylum procedures.
- Strengthen SAR operations in the Aegean and Mediterranean seas, including by committing adequate financial, naval and aerial resources to Frontex to enable it to patrol the Mediterranean and Aegean seas at a level commensurate with the scale of departures from North African coasts.
- Ensure that any Frontex-led operation in the central Mediterranean clearly articulates the delivery of search and rescue activities as a priority and that Frontex assets are deployed in sufficient number throughout both Italy and Malta's SAR zones.
- Ensure that all those rescued in the course of Frontex-led operations are disembarked in the EU and that an agreement on disembarkation which ensures solidarity and responsibility-sharing between participating member states is included in Frontex operational plan.
- Ensure that refugees and migrants requesting assistance from within the Libyan SAR zone, excluding Libyan territorial waters, are rescued and brought to a place of safety, for as long as Libya is not in a position to uphold its SAR obligations and cannot guarantee respect for migrants and asylum-seekers' rights.
- Establish an accountability mechanism to promote and scrutinize compliance with SAR obligations; and commit to carry out impartial and independent inquiries for any failure to protect lives at sea and to cooperate with any such inquiry.
- Take urgent measures to ensure the recording of information on and identification of refugees and migrants who die or are lost at sea, especially through a systematic debriefing of people rescued at sea; and establish a EU centralized database and communication mechanism to provide official information to families.
- Strengthen the capacity of EASO to assist EU coastal states financially and logistically with initial provision of information to migrants and asylum-seekers, referral to appropriate procedures and reception after disembarkation. Use EASO to allocate additional emergency funding, special and emergency support, including the deployment of Asylum Support Teams to member states coping with high number of arrivals.
- Review the implementation of the Dublin Regulation with the aim of ensuring in a

consistent manner throughout the EU that family reunification, including for extended family relations, is facilitated, and that travelling to EU member states beyond the country of entry for this purpose is allowed. The purpose should be to provide durable solutions to refugees, by allowing asylum-seekers to enjoy the support of their extended family and community.

- Eliminate obstacles to the free movement of persons granted international protection in the EU, while ensuring the transfer of protection statuses, and establish a system of mutual recognition of positive decisions on international protection. Such measures should be subject to verifiable steps being taken by member states benefitting from them to build capacity for refugee protection and integration.

ENDNOTES

- ¹ Interview with Amnesty International at the La Zagara reception centre in Melilli, Sicily, in July 2014.
- ² UNHCR, “High Commissioner for Refugees Guterres and Special Envoy Jolie warn of escalating crisis in the Mediterranean”, 15 September 2014, <http://www.unhcr.org/5416981b9.html>; UNHCR, “Three boat tragedies in five days on the Mediterranean – scores feared dead”, *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>; UNHCR, “Urgent European action needed to stop rising refugee and migrant deaths at sea”, *Press Releases*, 24 July 2014, <http://www.unhcr.org/53fc5e491c3.html>; and <http://www.unhcr.org/53d0cbb26.html>; “UNHCR fears for the safety of thousands of refugees in embattled Libya”, *News Stories*, 5 August 2014, <http://www.unhcr.org/53e0e9919.html>
- ³ Frontex General Report 2013, p16.
- ⁴ Frontex, Annual Risk Analysis 2014, 14 May 2014, http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf
- ⁵ Frontex, Situation in the Mediterranean, Presentation of Gil Arias, Executive Director a.i. of Frontex to the Civil liberties, justice and home affairs (Libe) Committee, Brussels, 4 September 2014.
- ⁶ Amnesty International, *The human cost of Fortress Europe: Human rights violations against migrants and refugees at Europe’s borders* (Index: EUR 05/001/2014), <http://www.amnesty.org/en/library/info/EUR05/001/2014/en>
- ⁷ Amnesty International, *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 19/007/2013), <http://www.amnesty.org/en/library/info/MDE19/007/2013/en>
- ⁸ Some findings of these visits are summarized in an article published on 18 December 2013, “‘If an African dies here, no one cares’ – abuses of migrants and refugees in detention”. The article is available at: <http://livewire.amnesty.org/2013/12/18/if-an-african-dies-here-no-one-cares-abuses-of-migrants-and-refugees-in-detention-in-libya/>
- ⁹ Amnesty International, *Egypt: ‘We cannot live here anymore’: Refugees from Syria in Egypt*, (Index: MDE 12/060/2013), <http://www.amnesty.org/en/library/info/MDE12/060/2013/en>
- ¹⁰ Eurostatat, Table on Immigration, Persons, Total number of long-term immigrants into the reporting country during the reference year, accessed on 9 September 2014, at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00176&plugin=1>
- ¹¹ Philippe De Bruycker, Anna Di Bartolomeo, Philippe Fargues, *Migrants smuggled by sea to the EU: facts, laws and policy options*, MPC RR2013/06, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2013.
- ¹² Philippe De Bruycker, Anna Di Bartolomeo, Philippe Fargues, *Migrants smuggled by sea to the EU: facts, laws and policy options*, 2013.
- See also Frontex, *Update on Central Mediterranean Route*, <http://frontex.europa.eu/news/update-on-central-mediterranean-route-5wQPpYW>. According to Frontex, between January and September 2013, more than 31,000 migrants arrived in the EU using the central Mediterranean route, mainly via Sicily

and Lampedusa, but also, to a lesser extent, via Calabria, Puglia and Malta. The main nationalities included Eritreans, Somalis and other sub-Saharan Africans, as well as Syrian nationals. Frontex noted that the migratory pressure over the summer months of 2013 was comparable to the same period in 2011. Amnesty International notes that Frontex statistics do not distinguish between refugees and migrants and that most Syrian, Eritrean and Somali nationals would qualify for international protection.

¹³ European Union Agency for Fundamental Rights, FRA, *Fundamental Rights at Europe's southern sea borders*, 2013, pp19 – 23. See <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders>

¹⁴ UNHCR, "Three boat tragedies in five days on the Mediterranean", *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>

¹⁵ UNHCR, "UNHCR fears for the safety of thousands of refugees in embattled Libya", *News Stories*, 5 August 2014, <http://www.unhcr.org/53e0e9919.html>

¹⁶ UNHCR, "High Commissioner for Refugees Guterres and Special Envoy Jolie warn of escalating crisis in the Mediterranean", 15 September 2014, <http://www.unhcr.org/5416981b9.html>; and "Three boat tragedies in five days on the Mediterranean", *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>

¹⁷ UNHCR, "Concern mounts for refugees and asylum-seekers in Libya", *Briefing Notes*, 5 August 2014, <http://www.unhcr.org/53e0c0a09.html>

¹⁸ UNHCR, "Fact Sheet: Drop in boat arrivals to Malta", 31 July 2014, <http://www.unhcr.org/mt/news-and-views/press-releases/754-unhcr-fact-sheet-drop-in-boat-arrivals-to-malta>. See also Times of Malta "AFM save over 30 migrant children. Total landings hit 565 this year", 29 August 2014, at <http://www.timesofmalta.com/articles/view/20140829/local/AFM-save-over-30-migrant-children.533520>

¹⁹ FRA, *Fundamental Rights at Europe's southern sea borders*, 2013.

²⁰ Frontex, Annual Risk Analysis 2014, pp29-39.

²¹ See the Bulgarian authorities' DAILY REPORT Of the NATIONAL OPERATIONAL HEADQUARTERS FOR ADDRESSING THE INCREASED MIGRATORY PRESSURE CRISIS SITUATION, 11 July 2014.

²² FRA, *Fundamental Rights at Europe's southern sea borders*, 2013, p30.

²³ The figure is based on media reports gathered by the blog Fortress Europe at http://fortresseurope.blogspot.co.uk/p/la-strage.html?_sm_au_=iVHjsVL55K6rWtF

²⁴ UNHCR, "Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011", *Briefing Notes*, 31 January 2012, <http://www.unhcr.org/4f27e01f9.html>

²⁵ UNHCR, "Three boat tragedies in five days on the Mediterranean", *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>

²⁶ Philippe De Bruycker, Anna Di Bartolomeo, Philippe Fargues, *Migrants smuggled by sea to the EU: facts, laws and policy options*, 2013.

²⁷ This is the percentage obtained using UNHCR data as of 15 September 2014 regarding the number of seaborne refugees and migrants irregularly crossing Europe's southern border, 130,000, and the number of deaths at sea in the Mediterranean, 2,500.

²⁸ Fortress Europe, the blog of an Italian journalist, is frequently used as a source for figures of refugees and migrants' deaths at sea, compiled by scanning international media reports,

http://fortresseurope.blogspot.com/p/la-strage.html?_sm_au_=iVVsWn72HqN565VW

²⁹ UNHCR, “Three boat tragedies in five days on the Mediterranean”, *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>

³⁰ UNHCR, “Three boat tragedies in five days on the Mediterranean”, *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>

³¹ UNHCR, “Three boat tragedies in five days on the Mediterranean”, *Briefing Notes*, 26 August 2014, <http://www.unhcr.org/53fc5e491c3.html>

³² UNHCR, “Urgent European action needed to stop rising refugee and migrant deaths at sea”, *Press Releases*, 24 July 2014, <http://www.unhcr.org/53d0cbb26.html>

³³ UNHCR, “Urgent European action needed to stop rising refugee and migrant deaths at sea”, *Press Releases*, 24 July 2014, <http://www.unhcr.org/53d0cbb26.html>

³⁴ The Guardian, “Thirty bodies found on migrant boat off the coast of Sicily, reports say”, 30 June 2014, <http://www.theguardian.com/world/2014/jun/30/thirty-bodies-migrant-boat-sicily> The final number of those who died of asphyxia was reported to be 45. See for example La Repubblica di Palermo, “A Pozzallo i funerali dei 45 migranti morti asfissati sul barcone”, 23 July 2014, http://palermo.repubblica.it/cronaca/2014/07/23/news/a_pozzallo_i_funerali_dei_48_migranti_morti_asfissati_sul_barcone-92241857/

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³⁷ The Guardian, “Dozens dead as migrant boat sinks off coast of Libya”, 11 May 2014, <http://www.theguardian.com/world/2014/may/11/migrant-boat-sinks-coast-libya>

³⁸ Prosecutors in Italy opened cases against the smugglers and traffickers involved in organizing the journey. A Tunisian national in his early 30s, Khaled Bensalam, alleged to be the captain of the boat, is being tried in Italy on manslaughter charges. The trial opened on 2 July 2014 and the next hearing was scheduled for 3 September 2014. No representatives of the survivors or victims’ families attended. According to media reports on the police investigation into the shipwreck, some of the refugees and migrants had paid at least \$3,000 dollars to smugglers to cross the Sahara and an additional amount for the boat crossing. They were reportedly stopped in the desert, kidnapped for ransom and held until their families had paid the amount to the smugglers. Some of the women had been raped and some of the men had been tortured by the smugglers in the camp, in Libya, where they were held before being embarked. A 24-year-old Somali national, Elmi Mouhamud Muhidin, was arrested on 8 November 2013 on kidnapping, smuggling, trafficking and rape charges, after having been identified by some of the survivors in a reception centre. He was tried at the Assizes court of Agrigento on 30 May 2014 with an accelerated procedure. The New York Times, “Migrants die as burning boat capsizes off Italy”, 3 October 2013; BBC News, “Italy boat sinking: hundreds feared dead off Lampedusa”, 3 October 2013; BBC News, “Lampedusa boat tragedy: migrants ‘raped and tortured’”, 8 November 2013; La Stampa, “Ci violentavano a turno in quel capannone nel deserto”, 14 January 2014. On 1 July 2014 there were media reports that 14 people in various Italian cities were held by police or notified that they were

suspected of being involved in smuggling related offences. The investigation was related to the 3 October 2013 shipwreck. *Il Giornale di Sicilia*, "Immigrazione, naufragio del 3 ottobre: Fermi e avvisi di garanzia", 1 July 2014.

³⁹ Communication on the work of the Task Force Mediterranean: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf

⁴⁰ Frontex, FRAN quarterly, Quarter 4, October-December 2013, p5, http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q4_2013.pdf

⁴¹ Philippe De Bruycker, Anna Di Bartolomeo, Philippe Fargues, *Migrants smuggled by sea to the EU: facts, laws and policy options*, 2013.

⁴² EU Agency for Fundamental Rights, *Fundamental Rights at Europe's southern sea borders*, 2013, pp19–23.

⁴³ Frontex, Annual Risk Analysis 2014, pp29-30.

⁴⁴ See Eurostat data on Asylum applicants and first instance decisions on asylum applications: 2013, at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-14-003/EN/KS-QA-14-003-EN.PDF

⁴⁵ Interview with Amnesty International at the reception centre of Pozzallo, Sicily, in July 2014.

⁴⁶ Interview with Amnesty International at the La Zagara reception centre in Melilli, Sicily, in July 2014.

⁴⁷ Interview with Amnesty International, July 2014.

⁴⁸ Interview with Amnesty International at the reception centre of Pozzallo, Sicily, in July 2014.

⁴⁹ Interview with Amnesty International, July 2014.

⁵⁰ Interview with Amnesty International at the reception centre of Pozzallo, Sicily, in July 2014.

⁵¹ Interview with Amnesty International at the centre for asylum-seekers of Mineo, Sicily, in July 2014.

⁵² The Guardian, "Thirty bodies found on migrant boat off the coast of Sicily, reports say", 30 June 2014, <http://www.theguardian.com/world/2014/jun/30/thirty-bodies-migrant-boat-sicily>. The final number of those who died of asphyxia was reported to be 45. See, for example, *La Repubblica di Palermo*, "A Pozzallo i funerali dei 45 migranti morti asfissati sul barcone", 23 July 2014, http://palermo.repubblica.it/cronaca/2014/07/23/news/a_pozzallo_i_funerali_dei_48_migranti_morti_asfissati_sul_barcone-92241857/⁵² For official information on Operation Mare Nostrum, see the Italian Navy page at <http://www.marina.difesa.it/attivita/operativa/Pagine/MareNostrum.aspx>

⁵³ The system of the "mother ship" has been observed on occasions along the Egypt-Italy route. A bigger boat, generally a fishing boat is used to tow a smaller boat, where migrants are transferred for the second part of the journey. Admiral Culcasi explained that "it is important for the Navy to arrive at the time of the transfer from one boat to the other to document the crime and be in compliance with international law. We have so far intercepted three "mother ships" and captured one. We need to be able to document the transfer of people from one boat to the other and the departure of the "mother ship" to be allowed to pursue it, require it to show the flag and board it. It is a military operation and we need to take the "mother ship" back with us as evidence of the crime".

⁵⁴ The Italian Navy assets available to OMN include: one amphibious ship LPD, which has the overall command of the operation, and has on board medical facilities and (mezzi da sbarco e gommoni a chiglia rigida); two Maestrale frigates, each with a AB-212 helicopter on board; two patrol vessels

Costellazioni/Comandanti and Minerva type, which can have on board a AB-212 helicopter; two EH-101 (MPH) heavy helicopters, on board the amphibious ship, or stationed in Lampedusa/Pantelleria/Catania as required; one P180 aircraft, with ForwardLookingInfraRed – FLIR technology, at Pratica di Mare; one LRMP Breguet Atlantic in Sigonella; the radar network of the navy which can receive commercial vessels signals (through *Automatic Identification System* – AIS technology).

⁵⁵ Statements of Minister of defence Pinotti to press, and confirmed by Amnesty International interview with the Italian Navy in February 2014.

⁵⁶ Ministry of Defence, “Il Ministro della Difesa Mario Mauro incontra il Primo Ministro Sloveno – la Slovenia partecipa all’emergenza immigrazione con una nave in Mare Nostrum”, 17 January 2014, Comunicato stampa nr. 18, http://www.marina.difesa.it/documentazione/comunicati/Pagine/2014_018.aspx

⁵⁷ CA Mario Culcasi, head of the *Comando delle Forze da Pattugliamento per la sorveglianza e la difesa costiera* (Comforpat), interviewed by Amnesty International in Augusta, Sicily, February 2014.

⁵⁸ La Repubblica, “Alfano: “Entro ottobre Mare nostrum lascia il posto alla forza Ue””, 15 August 2014, http://www.repubblica.it/politica/2014/08/15/news/alfano_immigrati_mare_nostrum-93838728/?ref=HREC1-11

⁵⁹ IMO Guidelines on the Treatment of Persons Rescued at Sea (Resolution MSC.167(78)), at 2.1.3 and 5.1.2.

⁶⁰ European Court of Human Rights, Grand Chamber, CASE OF HIRSI JAMAA AND OTHERS v. ITALY, (Application no. 27765/09), Judgment, Strasbourg, 23 February 2012, at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>

⁶¹ UNCLOS, Arts. 2, 3, 4 and 8.

⁶² UNCLOS, Art. 33.

⁶³ UNCLOS, Arts. 55, 56 and 57.

⁶⁴ UNCLOS, Arts. 86-90.

⁶⁵ UNCLOS, Art. 94.

⁶⁶ UNHCR and IMO, “Rescue at Sea. A Guide to Principles and Practice as Applied to Migrants and Refugees”, September 2006, <http://www.unhcr.org/refworld/docid/45b8d1e54.html>

⁶⁷ The 1982 UNCLOS Convention requires that every coastal state party “...promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose”. (Art. 98 (2)).

⁶⁸ The 1974 (SOLAS Convention) requires state parties “to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around its coast. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and the navigational dangers, and shall, so far as possible, provide adequate means of locating and rescuing such persons.” (Chapter 5, Regulation 7).

⁶⁹ The Maritime Safety Committee is IMO's senior technical body on safety-related matters. For further information, see <http://www.imo.org/OurWork/Safety/Pages/Default.aspx>

⁷⁰ The amendments are contained in IMO Maritime Safety Committee Resolutions MSC.153 (78) and MSC. 155 (78), adopted on 20 May 2004 - MSC 78/26/Add.1 - 4 June 2004 - MARITIME SAFETY COMMITTEE 78th session Agenda item 26 (MSC 78/26)MSC res., 153 (78) (2004), available at [http://www.imo.org/blast/blastDataHelper.asp?data_id=15526&filename=153\(78\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=15526&filename=153(78).pdf)

⁷¹ Amnesty International interviewed the Italian coastguard in February 2014 and the Armed Forces of Malta in May 2014.

⁷² SAR Convention, Annex, Chapter 2.3.

⁷³ Jointly published by IMO and the International Civil Aviation Organization (ICAO), the three-volume IAMSAR Manual provides guidelines for a common aviation and maritime approach to organizing and providing search and rescue (SAR) services. The IAMSAR manual is divided into three volumes: Volume I, Organization and Management, discusses the global SAR system concept, establishment and improvement of national and regional SAR systems and co-operation with neighbouring States to provide effective and economical SAR services; Volume II, Mission Co-ordination, assists personnel who plan and co-ordinate SAR operations and exercises; Volume III, Mobile Facilities, is intended to be carried aboard rescue units, aircraft and vessels to help with performance of a search, rescue or on-scene co-ordinator function, and with aspects of SAR that pertain to their own emergencies. See IMO information at <http://www.imo.org/OurWork/Safety/RadioCommunicationsAndSearchAndRescue/SearchAndRescue/Pages/IAMSARManual.aspx>

⁷⁴ There are EU tools to provide assistance, such as Joint Frontex operations coordinated by Frontex; Rapid Border Intervention Teams deployed by Frontex; Financial assistance under the European Borders Fund; the European Refugee Fund, or the European Return Fund; EASO Asylum Support Teams; voluntary relocation schemes such as that used for Malta, Eurema, in 2009-2012; and the never enforced temporary protection under Directive 2001/55.

⁷⁵ CoE Parliamentary Assembly, Doc. 13532, 9 June 2014, *The "left-to-die boat": actions and reactions*, Report, Committee on Migration, Refugees and Displaced Persons, Rapporteur: Ms Tineke Strik.

⁷⁶ UNHCR, *Refugees and Asylum-Seekers in Distress at Sea – how best to respond?*, Expert Meeting in Djibouti, 8 to 10 November 2011, Background Paper and Summary Conclusions.

⁷⁷ UNHCR Central Mediterranean Sea Initiative (CMSI), EU solidarity for rescue-at-sea and protection of refugees and migrants, CMSI action plan, UNHCR Bureau for Europe, updated 22 July 2014.

⁷⁸ For Malta: IMO Circular SAR.8/Circ.1/Corr.3 of 20 October 2005, Global Sar Plan Containing Information on The Current Availability of Sar Services, Annex 2
http://www.imo.org/blast/blastDataHelper.asp?data_id=16608&filename=1-Corr-3.pdf

For Italy, see map annexed to Presidential Decree D.P.R. No. 660/1994 and IMO Circular SAR.8/Circ.1/Corr.5 of 23 April 2007, Global SAR Plan Containing Information on The Current Availability of SAR Services.

⁷⁹ Jasmine Coppens, *The essential role of Malta in drafting the new regional agreement on migrants at sea in the Mediterranean basin*, Jefferson Law Book Company, 44JMARLC 89, 2013.

⁸⁰ Commission Working Document, paras 5 and 33 stating that the waters neighbouring Libya are not subject to SAR patrols and that in the waters around Libya SAR services are not being provided by the state mainly responsible.

⁸¹ IMO Guidelines on the treatment of persons rescued at sea, IMO, Maritime Safety Committee, Res. MSC. 167(78), 20 May 2004, para. 6.7. See also IAMSAR Manual, Vol. II.

- ⁸² European Union Agency for Fundamental Rights, *Fundamental rights at Europe's southern sea borders*, 2013.
- ⁸³ Interview with Air Wing Commanding Officer Lt Col Claudio Spiteri, head of Malta RCC and other officers of the Armed Forces of Malta, in May 2014.
- ⁸⁴ CA Mario Culcasi, head of *Comando delle Forze da Pattugliamento per la sorveglianza e la difesa costiera* (Comforpat), interviewed by Amnesty International in Augusta, Sicily, in February 2014.
- ⁸⁵ Amnesty International wrote to the Minister of Defence on 14 February 2014.
- ⁸⁶ Reuters, "More than 250 migrants may have died in shipwreck off Libya", 24 August 2014, <http://www.reuters.com/article/2014/08/24/us-libya-migrants-idUSKBN0G00H920140824>
- ⁸⁷ Interview with Amnesty International in February 2014.
- ⁸⁸ With Greece, an Agreement on Co-operation in the Field of Search and Rescue was signed on 12 January 2008 and ratified by Malta on 3 April 2008. It delegates to Greek authorities the co-ordination of SAR activities over a broad portion of the eastern Maltese SAR region..See www.foreign.gov.mt/TreatyDetails.aspx?id=583. See also Marcello Di Filippo, "Irregular migration across the Mediterranean sea: problematic issues concerning the international rules on safeguard of life at sea", in *Paix et Sécurité Internationales*, 01/2013, pp53-76 and in particular note 31.
- ⁸⁹ Violeta Moreno-Lax, "Seeking asylum in the Mediterranean: against a fragmentary reading of EU member states' obligations accruing at sea", 23 *International Journal of Refugee Law* 174 (2011), 195.
- ⁹⁰ Interview with Amnesty International in February 2014.
- ⁹¹ UNHCR, "One survivor, 54 die at sea attempting the voyage to Italy from Libya", *Press Releases*, 10 July 2012.
- ⁹² EU Agency for Fundamental Rights, *Fundamental Rights at Europe's southern sea borders*, 2013, p34.
- ⁹³ Amnesty International Report 2013, under Malta.
- ⁹⁴ EU Agency for Fundamental Rights, *Fundamental Rights at Europe's southern sea borders*, 2013, p34.
- ⁹⁵ Times of Malta, "54 illegal immigrants land in six hours", <http://www.timesofmalta.com/articles/view/20070527/local/54-illegal-immigrants-land-in-six-hours.16535>
- ⁹⁶ Interview with Neil Falzon and an AFM representative in Silja Klepp, "A double bind: Malta and the rescue of unwanted migrants at sea, a legal anthropological perspective on the humanitarian law of the sea", *International Journal of Refugee Law*. Klepp also reports Karl Schembri's investigation of a case on 17 November 2005. Schembri photographed the AFM logbook registering the orders given by headquarters to rescuers via radio. One such order was "to keep at distance" from a boat which was carrying 200 migrants in force six wind. Italian SAR authorities were reportedly informed too late. Nine migrants were found dead near Pozzallo, Sicily, and some 20 to 30 were missing, while 177, including five children were found on land. See also Malta Today, "Exclusive: November migrants' shipwreck tragedy. "Keep at distance" from boat people, rescuers told", 16 April 2006.
- ⁹⁷ Article 9, 2, f, Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014, establishing rules for the surveillance of the external sea borders in the context of operational co-operation coordinated by the European Agency for the Management of Operational Cooperation at the

External Borders of the Member States of the European Union, OJ L 189/93, 27 June 2014.

⁹⁸ MSC res., 153 (78) (2004), Adoption of amendments to the International Convention for the Safety of Life at Sea, 1974, as amended, available at [http://www.imo.org/blast/blastDataHelper.asp?data_id=15526&filename=153\(78\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=15526&filename=153(78).pdf)

⁹⁹ Adoption of Amendments to the International Convention on Maritime Search and Rescue, 1979, as amended, Annex 5, Resolution MSC.155(78), MSC 78/26/Add.1, <http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Documents/Resolution%20MSC.155-%2078.pdf>

¹⁰⁰ In favour of such an obligation: Thomas Gammeltoft-Hansen, *The Refugee, The Sovereign and The Sea: EU Interdiction Policies in The Mediterranean*, DIIS Working Paper no 2008/6 at 25-27.

¹⁰¹ Marcello Di Filippo, "Irregular migration across the Mediterranean sea: problematic issues concerning the international rules on safeguard of life at sea", in *Paix et Sécurité Internationales*, 01/2013, note 56.

¹⁰² See letter of 8 June 2007 of the Malta Permanent Representative to the EU, addressed to the German Permanent Representative to the EU, in his capacity as Chairman of CoRePer, available at <www.europarl.europa.eu/hearings/20070703/libe/caruana_en.pdf>; the statement of the Maltese Minister for justice and home affairs, delivered at the JHA Council meeting of 12 June 2007, available at www.doi.gov.mt/en/press_releases/2007/06/pr0870.asp

¹⁰³ IMO and UNHCR: *Rescue at Sea. A Guide to Principles and Practice as Applied to Migrants and Refugees*; in UNHCR, Background Paper for the Expert Meeting in Djibouti, 8-10 November 2011. *Refugees and Asylum-Seekers in Distress at Sea – How Best to Respond?* October 2011.

¹⁰⁴ European Court of Human Rights, Grand Chamber, Judgment of 23 February 2012, Application No. 27765/09.

¹⁰⁵ See quoted in Marcello Di Filippo, "Irregular migration across the Mediterranean sea: problematic issues concerning the international rules on safeguard of life at sea", in *Paix et Sécurité Internationales*, 01/2013.

¹⁰⁶ Silja Klepp, "A double bind: Malta and the rescue of unwanted migrants at sea, a legal anthropological perspective on the humanitarian law of the sea", *International Journal of Refugee Law*.

¹⁰⁷ IMO, Facilitation Committee, (FAL), Address of the Secretary-General at the opening of the thirty-seventh session of the Facilitation Committee, IMO Doc. FAL 37/INF. 5, 5 September 2011, 3-4.

¹⁰⁸ COMSAR, Report to the Maritime Safety Committee, IMO Doc. COMSAR 14/17, 22 March 2010, paras10.1–10.26.

¹⁰⁹ Jasmine Coppens, *The essential role of Malta in drafting the new regional agreement on migrants at sea in the Mediterranean basin*, 2013.

¹¹⁰ COMSAR, Report to the Maritime Safety Committee, IMO Doc. COMSAR 16/17, 23 March 2012, paras10.3–10.4. For an account of the negotiations see Jasmine Coppens, *The essential role of Malta in drafting the new regional agreement on migrants at sea in the Mediterranean basin*, 2013.

¹¹¹ Amnesty International received this update from the IMO Legal Affairs Office in September 2014.

¹¹² EU Agency for Fundamental Rights, *Fundamental Rights at Europe's southern sea borders*, 2013, pp35-36.

¹¹³ EU Agency for Fundamental Rights, *Fundamental Rights at Europe's southern sea borders*, 2013,

pp35-36.

¹¹⁴ Interview with Amnesty International on 16 May 2014.

¹¹⁵ CoE Parliamentary Assembly, Doc. 13532, 9 June 2014, *The “left-to-die boat”: actions and reactions*, Report, Committee on Migration, Refugees and Displaced Persons, Rapporteur: Ms Tineke Strik, p11.

¹¹⁶ Namely the communication dated 5 August 2013 from Maritime Rescue Co-ordination Centre Rome to Rescue Co-ordination Centre Malta (prot. 03.03.01/9558/C.O.,– see annex), which indicated the following:

“SUBJECT: RUBBER BOAT ADRIFT WITH 250 MIGRANTS ON BOARD IN UNKNOWN POSITION - THURAYA PHONE NUMBER ON BOARD 008821655527133.

FOLLOWING OUR FAX N, 03.03.01/9519/C.O. DATED 04TH AUGUST 2013.

TEXT: DEAR SIRs,

WE NEED TO CLARIFY THAT, M/V SALAMIS WAS DIVERTED IN POSITION LAT. 33°30.22’N - LONG. 014°19.03’E BY THIS MRCC. ON BEHALF LIBYAN AUTHORITIES.

FURTHERMORE, AT THE END OF RESCUE OPERATIONS THIS M.R.C.C. GAVE INSTRUCTIONS TO M/V SALAMIS TO DIVERT TOWARDS CLOSEST PORT, IN ORDER TO COMPLETE THE RESCUE OPERATION. AT THE MOMENT, THE CLOSEST PORT WAS TRIPOLI. MASTER OF THE SHIP HAS REPLIED US THAT, AS MASTER OF THE SHIP, HIS OWN DECISION WAS TO PROCEED TOWARDS MALTA AS ORIGINAL PORT OF CALL.”

¹¹⁷ Times of Malta, “Migrants sent to Italy”, 6 August 2013.

¹¹⁸ The facts occurred between 4 and 7 August 2013. See “Immigrazione, i 102 naufraghi rifiutati da Malta sbarcati a Siracusa”, 7 August 2013, <http://www.ilfattoquotidiano.it/2013/08/07/immigrazione-litalia-accogliera-nave-alla-quale-malta-ha-rifiutato-lingresso-in/678815>; Niels Frenzen, “Italy Conducted De Facto Push-Back of Migrants By Ordering Cargo Ship to Rescue and Transport Migrants to Libya”, 13 August 2013, <http://migrantsatsea.wordpress.com/2013/08/13/italy-conducted-de-facto-push-back-of-migrants-by-ordering-cargo-ship-to-rescue-and-transport-migrants-to-libya>. See also Miriam Dalli, “Government warns Salamis’s local agent to take migrants back to Tripoli”, Malta Today, 5 August 2013, <http://www.maltatoday.com.mt/en/newsdetails/news/national/Government-warns-Salamis-local-agent-migrants-must-be-taken-back-to-Tripoli-20130805>, reproducing the text of the letter sent by Maltese authorities to the local agent for the rescuing unit Salamis; Fabio Caffio, “Nodi irrisolti nel Mediterraneo dei migrant”, *Affari internazionali*, 12 August 2013, <http://www.affarinternazionali.it/articolo.asp?ID=2388>

¹¹⁹ Letter to Amnesty International of 29 October 2013.

¹²⁰ Coordinated Universal Time.

¹²¹ See also Senator Filippo Bubbico statement at http://www.interno.gov.it/miniinterno/export/sites/default/it/assets/files/28_2014/2014_02_05_audizione_bubbicoo_Consiglio_Europa.pdf

¹²² Times of Malta, “Update 8: Government requests ship master to return to rescue location”, 5 August

2013, <http://www.timesofmalta.com/articles/view/20130805/local/tanker-carrying-migrants.480832>

¹²³ UNHCR, “UNHCR thanks Italian Navy for rescuing boat in distress packed with refugees from Libya”, *Briefing notes*, 11 November 2011, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4ebd29809&query=libya>. Times of Malta, “UNHCR comments give the wrong impression – AFM”, 14 November 2011.

¹²⁴ La Repubblica, “Intercettati dai Maltesi e lasciati andare: l'ultima illusione dnel viaggio dell'orrore”, 22 August 2009.

¹²⁵ In December 2009, Thomas Hammarberg, the CoE Commissioner for Human Rights published two letters addressed to the Ministers of the Interior of both Italy and Malta stating that the responsibility to rescue people at sea appeared to have been neglected. Comm DH (2009) 40, CommDH (2009) 41.

¹²⁶ BBC, “Italy takes in stranded migrants”, 20 April 2009, <http://news.bbc.co.uk/2/hi/europe/8007379.stm>; Times of Malta, “Migrants standoff: PM insists Malta did its duty”, 20 April 2009, <http://www.timesofmalta.com/articles/view/20090420/local/migrants-standoff-pm-insists-malta-did-its-duty.253648>

¹²⁷ See the joint press release of the Ministers of Foreign Affairs and of Home Affairs of 19 April 2009, www.esteri.it/MAE/IT/Sala_Stampa/ArchivioNotizie/Comunicati/2009/04/20090420_FrattiniMaroni_navePinar.htm?LANG=IT

¹²⁸ www.mfa.gov.mt/default.aspx?MDIS=21&NWID=360. See also the conclusions of the Maltese Council of Ministers of 5 May 2009, www.mfa.gov.mt/Default.aspx?MDIS=21&NWID=378

¹²⁹ See the report by Italian NGO Consiglio italiano rifugiati, presented during an EP public hearing, www.europarl.europa.eu/hearings/20070703/libe/cir_report_en.pdf; see also the response by the Maltese government, included in a document presented in the same hearing, www.europarl.europa.eu/hearings/20070703/libe/caruana_en.pdf

¹³⁰ Interview with Amnesty International in May 2014, in Malta.

¹³¹ Interview with Amnesty International in May 2014, in Corradino prison, Malta.

¹³² In order to construct a full account of the trawler’s journey, Amnesty International conducted interviews with survivors, officials of the Italian Navy and the Armed Forces of Malta, UNHCR and IOM representatives, staff of non-governmental organizations, and other informed individuals between February and May 2014; used reports by *L'Espresso* magazine, *Malta Today* newspaper and other media; and a reconstruction by Watch the Med, an online mapping platform to monitor the deaths and violations of migrants’ rights at the maritime borders of the EU, which uses technical evidence, such as the AIS – automated vessel tracking data. Survivors’ accounts collected by Amnesty International and by journalists are broadly consistent.

¹³³ Interview with Amnesty International in May 2014, in Malta.

¹³⁴ All times given in this reconstruction of the shipwreck are CET.

¹³⁵ Some passengers reported departing at 10:00pm of 10 October 2013, while others reported that embarkation on the trawler from the smaller boats started at 10:00pm while the trawler sailed at 1:00am of 11 October 2013.

¹³⁶ The video interview, by journalist Fabrizio Gatti of Italian magazine *L'Espresso*, is available at <http://espresso.repubblica.it/internazionale/2013/11/28/news/lampedusa-buck-passing-on-the-massacre-so-they-left-syrians-children-drown-1.143363>

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- ¹³⁷ See the reconstruction by Watch the Med, 11 October 2013 wreck: boat carrying over 400 people sinks after being shot by Libyan vessel and several hours delay in the rescue operation, 29 November 2013, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.watchthemed.net%2Fmedia%2Fuploads%2Freport%2F32%2F11.10.2013_summary_ENG.pdf&ei=bkjQU4zRG8ixOQWmz4HoBQ&usg=AFQjCNExu7crg-RRxFXP8phWutJhK3TMA&sig2=VbCf_T_WRZgTjA07R5wOKA&bvm=bv.71667212,d.d2k
- ¹³⁸ The analysis of AIS (Automated Identification System) data was done for Watch the Med by Don Ferguson, Geospatial Analyst at West Virginia University and GISCorps volunteer.
- ¹³⁹ Update 1 of AFM press statement on 11 October 2013, “SAR incident 60 Nautical Miles south of Lampedusa Island”, <http://www.afm.gov.mt/NewsDetails?l=1&nid=2269&cid=76>
- ¹⁴⁰ AFM Release - Search & Rescue 118NM off Malta 11th October 2013, published on 23 October 2013, at <https://www.youtube.com/watch?v=XEtNvMMwOP0> (last viewed 6 August 2014).
- ¹⁴¹ Update 1 of AFM press statement on 11 October 2013, “SAR incident 60 Nautical Miles south of Lampedusa Island”, <http://www.afm.gov.mt/NewsDetails?l=1&nid=2269&cid=76>
- ¹⁴² Interviewed by Amnesty International in Malta, in May 2014.
- ¹⁴³ Interviewed by Amnesty International in Malta, in May 2014.
- ¹⁴⁴ Interviews with Admiral Felicio Angrisano, head of the Italian coastguard, in February 2014; and with Emmanuel Mallia MP, Malta’s Minister for Home Affairs and National Security, and Colonel Claudio Spiteri, of the AFM, responsible for Malta RCC, in May 2014.
- ¹⁴⁵ Even if the first distress call was received only at 12:26pm, as confirmed by Rome RCC, the military ship ITS *Libra* could have covered the 27nm of distance from the migrants’ boat in less than one and half hours, at a speed of 20 knots. Commercial vessels could have assisted, too. See Watch the Med reconstruction.
- ¹⁴⁶ MaltaToday, “AFM turns down complaint on refusal to disclose Lampedusa rescue mission timeline”, 13 January 2014, <http://www.maltatoday.com.mt/news/national/33079/afm-turns-down-complaint-on-refusal-to-disclose-lampedusa-rescue-mission-time>
- ¹⁴⁷ Malta Independent, “PM hints at hesitation to save migrants due to international laws”, 31 December 2013. The Prime Minister spoke at the TV programme Xarabank.
- ¹⁴⁸ *XVII Legislatura, Camera dei Deputati, Resoconto stenografico dell’Assemblea, Seduta n. 149 di venerdì 10 gennaio 2014, Chiarimenti in merito al naufragio di un peschereccio carico di profughi siriani affondato tra Lampedusa e Malta l’11 ottobre 2013, n. 2-00330 (interpellanza urgente Artini).*
- ¹⁴⁹ Amnesty International interviewed UNHCR Malta representatives and civil society representatives in Malta, in May 2014.
- ¹⁵⁰ Amnesty International, *An international failure: the Syrian refugee crisis*, (Index: ACT 34/001/2013), 13 December 2013, <http://www.amnesty.org/en/library/asset/ACT34/001/2013/en/8a376b76-d031-48a6-9588-ed9aee651d52/act340012013en.pdf>
- ¹⁵¹ Regulation (EU) No 1168/2011 amending Council Regulation (EC) No 2007/2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.
- ¹⁵² Frontex budget 2014, 14 February 2014, at

http://frontex.europa.eu/assets/About_Frontex/Governance_documents/Budget/Budget_2014.pdf

¹⁵³ These included Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, the Netherlands and the United Kingdom.

¹⁵⁴ See Frontex General Report 2013, p64.

¹⁵⁵ Frontex General Report 2013, p16.

¹⁵⁶ See COM(2013) 197 final and Amnesty International, International Commission of Jurists, and European Council on Refugees and Exiles, *Joint Briefing on the European Commission Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, September 2013, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/09/EU-SurveillanceatSea-JointBriefing-ICJAIECRE-2013.pdf>

¹⁵⁷ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 189/93, 27 June 2014.

¹⁵⁸ These are set out in Article 4 of the Regulation.

¹⁵⁹ EUnews, "Immigration, the EU froze Italy's will: Frontex will not substitute Mare Nostrum: "not enough means"", 19 August 2014, <https://www.google.co.uk/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=numero+immigrati+in+italia+2012&start=10>

¹⁶⁰ Conclusions, European Council 26/27 June 2014, p4, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf

¹⁶¹ OJ C 254/1, 19.8.1997. The Dublin Convention entered into force on 1 September 1997.

¹⁶² Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>

¹⁶³ Under Article 3.2 (so-called sovereignty clause) and Article 15 (humanitarian clause) of Dublin II. See Discretionary clauses in Chapter IV of recast Regulation (EU) No 604/2013 (Dublin III).

¹⁶⁴ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000R2725>

¹⁶⁵ EASO Annual report 2013, p30, <http://easo.europa.eu/wp-content/uploads/EASO-AR-final.pdf>

¹⁶⁶ EASO Annual report 2013, p30.

¹⁶⁷ See ECRE, Forum réfugiés-Cosi and the Hungarian Helsinki Committee, *Dublin II Regulation. Lives on Hold. European Comparative Report*, February 2013.

¹⁶⁸ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, European Court of Human Rights, 21 January 2011; Joined Cases C-411/10 and C-493/10 N. S. and M. E. and Others. Court of Justice of the European Union, 21 December 2011.

¹⁶⁹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180/31, 29 June 2013.

¹⁷⁰ La Repubblica, "Unhcr, strage nel Mediterraneo: "1600 morti in 3 mesi". Su Mare Nostrum: "Ha salvato migliaia di vite", 26 August 2014, http://www.repubblica.it/politica/2014/08/26/news/unhcr_mare_nostrum_ha_salvato_migliaia_di_vite_ora_serve_azione_ue-94476914/

¹⁷¹ See Office for migration and refugees, <http://www.bamf.de/SharedDocs/Pressemitteilungen/DE/2014/20140815-0021-pressemitteilung-bmi-asylzahlen-juli.html?nn=3799586>

¹⁷² See *Applications for asylum received, 2014*, at <http://www.migrationsverket.se/download/18.7c00d8e6143101d166d1aab/1409563863507/Inkomnans%C3%B6kningsom+asyl+2014+-+Applications+for+asylum+received+2014.pdf>

¹⁷³ Only in 2011, on the one hand, the requests received by Italy were 13,715 compared to 1,275 sent by Italy, most of them came from Switzerland (5,806), from Germany (2,005), from Sweden (1,446). On the other hand, out of 1,275 requests of responsibility to other Member States from the Italian Dublin Unit, 210 of them were to Greece, 154 to Malta, 115 to Norway and 101 to the United Kingdom. Notwithstanding the above-mentioned number of requests, it is worth underlining that the transfers successfully carried out from Italy were only 14. See "Dublin II Regulation: National Report": European network for technical cooperation on the application of the Dublin II Regulation – Italy, 19 December 2012, p.21.

¹⁷⁴ Swiss Refugee Council, *Italy: Reception Conditions – Current situation of asylum seekers and recognized refugees, in particular Dublin returnees*, Bern, October 2013. See <http://www.fluechtlingshilfe.ch/news/italienbericht/1310-sfh-bericht-italien-aufnahmebedingungen.pdf>

¹⁷⁵ EASO Annual Report, Situation of Asylum in the European Union, 2013, fn152.

¹⁷⁶ UNHCR, "UNHCR Recommendations on Important Aspects of Refugee Protection in Italy", July 2013, <http://www.refworld.org/docid/522f0efe4.html>

¹⁷⁷ EASO Annual Report, Situation of Asylum in the European Union, 2013, fn288.

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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Through the testimony of survivors, this report documents the perils of the journey. It analyzes the long-standing shortcomings in the search and rescue services provided in the central Mediterranean and makes recommendations for their improvement.

Italy's Operation Mare Nostrum has temporarily papered over these problems, but it is not a sufficient or durable solution. An adequately funded and appropriately mandated EU-led search and rescue operation is urgently needed to fulfil a shared EU responsibility.

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