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Italy/Malta: Obligation to safeguard lives and safety of migrants and asylum seekers

Amnesty International is concerned that the lives and safety of migrants and asylum seekers have been placed at risk first by a dispute between the Italian and Maltese governments over their obligations to respond to distress calls under maritime conventions to which they are party, then by the Italian government's unprecedented decision to transfer migrants and asylum seekers rescued at sea to Tripoli, Libya.

On the morning of 6 May 2009 three vessels with an estimated 227 people on board sent out a distress call while passing about 50 miles south of the Italian island of Lampedusa. A dispute occurred between the Maltese and Italian government over who had responsibility for Search and Rescue Operations in those waters and where the migrants should be disembarked. Rescue operations may have been delayed due to the dispute. Eventually an Italian cargo vessel, identified as the closest available craft, was asked by the Maltese authorities to rescue the boats, but could not find them and continued its planned journey.

In the late afternoon of 6 May the boats were rescued by two Italian coastguard vessels. The coastguard took the individuals rescued at sea to Tripoli, Libya, without stopping in any Italian port. According to media reports Libya agreed that all those rescued including non-Libyan nationals could be disembarked in Tripoli.

The Italian Minister of the Interior Roberto Maroni was reported to have said during a TV program on 7 May that this was "an historical achievement after one year of bilateral negotiations with Libya". Libya and Italy signed a Treaty of Friendship, Partnership and Co-operation in August 2008, based on previous agreements, which include provisions on combating irregular migration through joint patrolling of the sea.

This appears to be the latest of a number of similar episodes which have occurred in the last few weeks. The Italian and Maltese governments have repeatedly disagreed over their obligations which require them to respond to distress calls, and rescue and disembark migrants and asylum seekers found crossing the central Mediterranean.

On 16 April 2009 a Turkish cargo ship, "Pinar" rescued an estimated 140 migrants and asylum seekers whose boat risked sinking in the waters south of Sicily. At least 10 of them were reportedly injured; the body of a dead woman was also taken on board the rescue ship. The rescue happened within the Maltese Search and Rescue Area and upon request of the Maltese authorities. The cargo ship was however impeded from reaching either a Maltese port or a closer Italian port to disembark the migrants as neither country would accept responsibility. The migrants were left stranded for four days, with insufficient water and food for the migrants, who were forced to "camp" on the deck of the ship, in the absence of accommodation. The Italian authorities dispatched a medical team on 18 April to verify the health conditions of the migrants. They were eventually allowed to disembark in the Italian port of Porto Empedocle on 20 April.

On 30 April 2009 the Italian authorities refused to let a Maltese coastguard vessel disembark 66 migrants on Lampedusa. The migrants had been rescued at sea by a Tunisian fishing boat,

and reportedly transferred to the Maltese vessel within Malta's Search and Rescue region, only 23 miles from Lampedusa. The Italian authorities argued that Malta should disembark and assist the migrants and asylum seekers on Maltese territory, since they were found within the Search and Rescue region assigned by international conventions to Malta. The vessel was forced to return to Malta.

Amnesty International considers that disputes over jurisdiction or responsibility should neither prevent nor delay the rescue, provision of assistance or disembarkation of individuals in distress at sea.

Amnesty International calls on Italy and Malta to respect the fundamental rights of asylum-seekers, migrants and refugees. It also calls on the Libyan authorities to introduce procedures to allow asylum seekers to apply for refugee status and give all those potentially in need of international protection access to the UNHCR in Libya.

The organization urges all governments to cooperate closely in order to ensure that those rescued at sea are immediately brought to a place of safety, while fully respecting the principle of non-refoulement – not sending them to countries where they may be at risk of torture or other ill-treatment or where access to a fair and satisfactory asylum procedure is limited. Furthermore all states must uphold their obligations under international refugee and human rights law, as well as maritime law.

Amnesty International stresses that no policy of border controls should be implemented at the expense of the basic human rights of those in distress at sea and of the international human rights obligations of the state, including their obligations to prevent any action which would force individuals into a situation where their human rights are threatened. States must ensure that any international cooperation or assistance efforts, including in implementing border controls or immigration policy, does not result in human rights abuses. States have an obligation to provide assistance to those found in distress at sea, arrange for their prompt disembarkation in a place of safety, and allow access to a full, fair and satisfactory asylum procedure to assess their protection needs.

Any screening or status determination of persons rescued at sea beyond providing assistance to persons in distress should occur after they have been disembarked in a place of safety. This obligation must take into account the immediate humanitarian and protection needs of the individuals, in accordance with both states' obligations under international human rights and refugee law, including non-refoulement.

Amnesty International considers that the move to return those rescued at sea to Libya without proper examination of their protection needs and is contrary to Italy's obligations under international human rights and refugee law, sets a dangerous precedent for EU member states. Amnesty International therefore calls on the European Commission to condemn such practice and work together with EU member states to ensure that the human rights of asylum-seekers, migrants and refugees are effectively protected in the future.

Background

1) Maritime law

Under the 1979 UN International Convention on Maritime Search and Rescue (SAR), to which both countries are parties, states shall ensure that assistance be provided to any person in distress at sea, regardless of their nationality or status, or the circumstances in which they are found. The responsibility to rescue those in distress at sea has become universally recognised and is to be considered as customary international law, binding on all states.

The International Convention for the Safety of Life at Sea (SOLAS) states that the state responsible for the search and rescue region where assistance is given is responsible for

ensuring the co-ordination and co-operation of all parties, so that survivors are disembarked from the assisting ship and delivered to a place of safety as soon as is reasonably practicable.

In 2004 amendments to the SAR and SOLAS Conventions were adopted. These amendments clarified the obligations of a state in whose search and rescue area persons or vessels in distress are found to coordinate rescue operations up to the point where rescued people are delivered to a safe place, in order to “ensure that in every case a place of safety is provided within a reasonable time”. Therefore, “the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Contracting Government responsible for the search and rescue region in which the survivors were recovered”. Malta raised objections to these amendments on the grounds that they could be interpreted as imposing on a state the obligation to disembark on its own territory and offer assistance to all those rescued within its SAR region.

Amnesty International has previously called on Malta to ratify the amendments to the SAR and SOLAS Convention which aim to maintaining the integrity of the search and rescue services and by doing so ensure that fundamental rights of persons in distress at sea are more effectively protected.

Both Italy and Malta have requested the European Union (EU) to resolve the issue of burden sharing but so far no concrete steps have been taken. Draft guidelines for interception at sea in the context of joint EU border patrol operations under a specialized EU agency (FRONTEX) have been discussed since 2007 at the EU Council. However, the discussion remains blocked on the issue of responsibility for disembarkation.

In January 2009 guidelines were issued by the International Maritime Organisation (IMO) for the disembarkation of persons rescued at sea, which state that international protection principles included in international instruments should be followed.

The IMO guidelines further underline that all parties involved, including the state responsible for the SAR region where the persons are rescued, and other coastal States in the planned route of the rescuing ship should cooperate in order to ensure that disembarkation of the persons rescued is carried out swiftly taking into account the ship master’s preferred arrangements for disembarkation and the immediate basic needs of the rescued persons. The state responsible for the SAR area where the persons were rescued should exercise primary responsibility for ensuring such cooperation occurs. If disembarkation from the rescuing ship cannot be arranged swiftly, the state responsible for the SAR area should accept the disembarkation of the persons rescued in accordance with their immigration laws and regulations into a place of safety under its control, where the persons rescued can have timely access to post rescue support.

2) Libya

Libya is not a party to the 1951 Convention related to the Status of Refugees or its 1967 Protocol. Furthermore, to Amnesty International’s knowledge, Libya had not signed a cooperation agreement for a formal UNHCR presence in the country. This means that anyone wishing to present an asylum claim to the UNHCR has limited opportunity to do so. In national legislation, there are no procedures which would allow asylum-seekers to present an application for recognition of their refugee status by the Libyan authorities.

As a party to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, Libya is under the obligation not to return any individuals to a country where they would be at risk of torture or where their “life, physical integrity or liberty would be threatened”. In October 2007, the UN Human Rights Committee raised concerns about reports that Libyan authorities regularly return refugees and asylum-seekers to countries where

they may be at risk of torture and other ill treatment, as well as concerns over persistent allegations that migrants, asylum seekers and refugees arrested and detained in Libya are subjected to torture and cruel, inhuman and degrading treatment.

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