

SUMMARY: LIVES ADRIFT

**REFUGEES AND
MIGRANTS IN PERIL IN
THE CENTRAL
MEDITERRANEAN**

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1. INTRODUCTION

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.

At least 2,500 refugees and migrants died in the attempt to cross the Mediterranean in 2014 as of 15 September. The real number will never be known, as many bodies are lost at sea.

This document provides a summary of the report *Lives Adrift*. It 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.

Three shipwrecks in October 2013 together claimed the lives of over 500 people, many of them children. Italy, alone 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. Since 18 October 2013, the Italian Navy has rescued well over 100,000 people. Now, however, the Italian government is looking for a way out of this operation and has been lobbying the EU to take it over or assist Italy with it. On 27 August 2014, the European Commission announced that Frontex (the European Agency for the Management of Operational Co-operation at the External Borders of Member States of the European Union) would implement an operation to complement OMN. But Frontex capacity to deliver effective SAR operations in the central Mediterranean remains in doubt, depending as it does on the resources that member states will offer and on the ability of the border control agency to focus 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, 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. In the first eight months of 2014, 40% of people reaching Europe irregularly through the central Mediterranean route were Eritreans (23%) and Syrians (17%). The majority of those fleeing these countries are clearly fleeing generalized violence or persecution and are in need of international protection.

The numbers of those trying to reach Europe are unlikely to go down. 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. 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. 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.

Ultimately, the death toll in the Mediterranean will decrease only if safe and regular routes into the EU are opened. In addition to ensuring that refugees can access asylum at Europe's land borders, European states should significantly increase the number of resettlement and humanitarian admission places for refugees, as Amnesty International has repeatedly recommended, and increase the offer of family reunification and other special visas.

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.

Two areas need to be addressed by the EU and its member states: the search and rescue at sea (SAR) regime under the international law of the sea and the EU Dublin Regulation. The increasing number of refugees and migrants attempting the crossing is putting the SAR regime in the central Mediterranean under pressure and exposing its systemic weaknesses. 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 if OMN stops, the long-standing wrangling between Malta and Italy on the extent of their respective SAR obligations is likely to resurface.

The report *Lives adrift* 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

Lives adrift 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.

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. In comparison, the numbers of those smuggled by sea have been quite small. 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. According to UNHCR, total arrivals by sea through the Mediterranean amounted to 60,000 in 2013. Out of these, 43,000 people arrived in Italy.

In 2014, the number of seaborne refugees and migrants irregularly crossing Europe's southern border reached 130,000 as of 15 September. Of these, UNHCR estimates that over 118,000 arrived in Italy. The vast majority of these people departed from Libya.

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).

The numbers of those who die at sea have steadily increased since the early 2000s. According to UNHCR, which already in 2011 had described the Mediterranean as “the most deadly stretch of water for refugees and migrants”, 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.

Following the deployment of OMN, the ratio of those who died to all those who crossed, which has been standing over 3%, has decreased to about 1.9%, or one death per 53 persons crossing. OMN is therefore clearly working in reducing the death toll, but the Mediterranean crossing remains an extremely dangerous route for refugees and migrants.

THE SEA CROSSING

The sea crossing is often described by refugees and migrants as a terrifying experience. Refugees and migrants' accounts are quite consistent in their descriptions of how departures from Libya to cross the central Mediterranean are organized and the circumstances of the sea journey. The report gives some of their accounts in detail.

The risks to life in such journeys are obvious from these reports. 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 seldom 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.

ABDEL, FROM SYRIA

Abdel, a 37-year-old marble worker, father of six, fled Aleppo, Syria, for Libya in 2012. In 2014, Abdel became worried for the safety of his family in Libya and decided to leave.

“The smuggler organized for my family and me to be picked up and taken to Zuwara beach. 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, armed men ushered everybody closer to the shore where inflatable boats were waiting. “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.”

Amnesty International interviewed Abdel and his wife and children in Pozzallo, Sicily, in July 2014.

WILSON, FROM GHANA

Wilson is 19, from Koforidia, Ghana. He left Ghana in December 2010, aged 15, and made his way slowly to Libya. There, he worked for a while, painstakingly putting together the one thousand dollars he knew he needed to pay smugglers for the sea crossing.

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. 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 10:00pm.”

“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 1:00am on Sunday, the water finished.” At about 6:00am the boat reached international waters. “We saw three big ships for containers. Everyone screamed to go towards them. People from the ship took pictures of us and went back into the boat. They didn’t help, though. 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 10:00am 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. Someone tried to leave the bottom of the boat. At least seven managed. 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. “The fishermen called the Italians to rescue us. It was about 7:00pm... They waited with us. After about one hour, with the telescope, a fisherman saw the rescuers arriving and he told us to

relax. 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 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.

Amnesty International interviewed Wilson in Pozzallo, Sicily, in July 2014.

OPERATION MARE NOSTRUM

Since it began on 18 October 2013, over 100,000 people have been rescued through the Italian Navy’s OMN. Without OMN, it is certain that the death toll at sea in the past year would have been much higher.

OMN is described by the Italian Navy as a military and humanitarian operation to safeguard life at sea and combat human trafficking. It takes place in international waters, in an area overlapping with the Maltese SAR zone south of Malta, as well as with the Libyan SAR zone. Italy is spending over €9 million per month on the operation.

OMN operates in close co-ordination with the Italian coastguard, through Rome Maritime Rescue Co-ordination Centre (Rome RCC). Rome RCC receives all requests of assistance 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 International Convention on Maritime Search and Rescue (SAR) Conventions, on which the international SAR system is based.

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. 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, and which are 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.

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.

Amnesty International is therefore concerned about the intention of the Italian government to close the operation probably by December 2014, in the absence of clear commitments by other states and the EU to employ at least the same amount of resources for SAR operations.

3. HUMAN RIGHTS AT SEA

The report *Lives adrift* analyses in depth 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 SAR SYSTEM: STATES AND SHIPMASTERS OBLIGATIONS AT SEA

Shipmasters have an obligation to render assistance to those in danger of being lost at sea and to proceed with all speed to the rescue of those in distress at sea, regardless of their nationality, status or the circumstances in which they are found (UNCLOS Art. 98 (1); SOLAS Convention, Chapter V, Regulation 33(1); and SAR Convention Chapter 2.1.10). States parties are also required to ensure that they are delivered to a place of safety (SAR Convention Chapter 1.3.2).

The UNCLOS (Article 98(2)), SOLAS convention (Chapter 5, Regulation 7), and SAR Convention (Chapter 3) also require states to co-operate with neighbouring states where necessary, to reduce the risk of non-rescue, and to ensure that there are sufficient search and rescue regions established in each sea area; that these are contiguous and not overlapping; and that they are established by agreement among the parties concerned (SAR Annex, Chapter 2). The SAR Convention further requires that states establish “rescue co-ordination centres” (RCCs) for their SAR services and provides the basic framework within which RCCs are requested to operate.

In May 2004, the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) adopted Amendments to the SOLAS and SAR Conventions, to further strengthen the SAR system. The Amendments require states parties to co-ordinate and co-operate to ensure that disembarkation can be arranged as soon as reasonably practicable and with minimum further deviation from the rescuing ship’s intended voyage.

To accompany the May 2004 Amendments, the IMO MSC adopted also Guidelines on the Treatment of Persons Rescued at Sea. The Guidelines state that the government responsible for the SAR region in which people were rescued is responsible for providing a place of safety or ensuring that such a place of safety is provided. The Guidelines describe a place of safety as a location where their safety or life is no longer threatened, their basic human needs can be met and their lives and freedom will not be at risk.

While Italy has ratified the 2004 Amendments, Malta has not. Divergent interpretations of their SAR obligations, and the resulting tensions, have undermined their co-operation in this area and put lives at risk.

THE SAR SYSTEM: GAPS AND WEAKNESSES

The SAR regime in the central Mediterranean is currently facing a very different challenge than 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. Unfortunately however, the response of the states faced with this phenomenon, primarily Italy and Malta, has historically been influenced and undermined by preoccupations relating to migration control.

States that rescue or accept the disembarkation of rescued refugees and migrants are also faced with the longer term cost and responsibility of meeting their needs. This responsibility is significantly aggravated by the EU Dublin Regulation, whereby asylum-seekers, refugees and irregular migrants must be taken in charge by the state whose borders have been first crossed. As a result, the state 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. Such rules create a disincentive for southern European states, including Italy and Malta, to assist and take refugees and migrants to their ports.

Amnesty International has identified the following three main problematic areas in the SAR system:

- Inadequate or non-existent agreements on SAR zones

Italy and Malta have been unable to reach an agreement over the extension of their respective SAR regions, which partially overlap. Malta's SAR zone is vast, relative to Malta's size and capacity to adequately ensure SAR operations within it. It measures 250,000km², and incorporates the territorial waters surrounding the Italian islands of Lampedusa, Linosa and Lampione. This creates confusion as to which state is responsible for co-ordinating rescues of people in distress in the overlapping areas and results in delays in rescuing people.

A further problem relates to the Libyan SAR zone. Libya is a party to the SAR Convention, but has failed to fulfil its SAR obligations effectively in recent years.

Both Malta and Italy have made attempts to co-operate with and strengthen the capacity of the Libyan coastguard. However, co-operation efforts are complicated by the institutional chaos in post al-Gaddafi Libya. 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. Libya cannot be considered to offer a safe place of disembarkation, because of documented gross human rights violations and abuses against refugees and migrants and the escalating violence in the country, and because it does not have an asylum system or legislation.

- The interpretation of the concept of 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 SAR obligations.

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”. Different states have taken considerably different views in this respect. Consistent standards of safety are not applied in the central Mediterranean, with the same boat being regarded in distress by one SAR authority and able to continue its journey by another.

In particular, for Malta, a vessel must be on the point of sinking and there must be a request of assistance. For Italy, unseaworthiness per se entails distress.

An EU Regulation adopted in May 2014 includes provisions which EU states must respect when acting within joint Frontex operations at sea. While it is not binding on EU member states when acting within their national spheres of competence, it could help raise standards if consistently applied by all European states, including Malta, during national SAR operations. When deciding whether a vessel is in distress, SAR units assigned to Frontex operations should take all relevant elements of the Regulation into account, including the seaworthiness of the vessel; the presence of a qualified crew and command of the vessel; safety, navigation and communication equipment; the need for medical assistance; and weather and sea conditions and forecasts. The Regulation also clarifies that a distress situation should not depend on a request of assistance.

- The interpretation of place of safety for disembarkation

There is a 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, including the closest port to the place where the rescue occurred and the state competent for the relevant SAR zone. Yet, no state is currently under an obligation to let rescued persons disembark onto its territory. In the absence of an unambiguous duty to accept disembarkation, states' practices 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 Maltese SAR region. For Italy, 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 Malta in the majority of cases.

Furthermore, Italy accepts that refugees and migrants cannot be taken to a place where their human rights would be at risk, whereas Malta 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.

The dispute between Italy and Malta periodically produces deadlocks and delays which have put the lives of refugees and migrants and the safety of crews at risk. Examples of these are provided in the report.

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 engineering*

On Friday 11 October 2013, at approximately 5:00pm 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.

This was a shocking example of the dangers created by the shortcomings in the co-operation between Italian and Maltese SAR services.

The trawler had left Zuwara, Libya, at 1:00am on 11 October. Among the passengers were several Syrian medical doctors travelling with their families. One of them was Mohanad Jammo, 40, a physician from Aleppo, who later would be making the calls requesting rescue to Italy and Malta. At about 3:00am the boat was approached by a Libyan vessel with several men armed with Kalashnikovs. They made a number of attempts to stop the boat, eventually by shooting at the boat's engine. Some passengers were injured and the trawler started to take on water. At dawn, the Libyan vessel eventually left. As water was rising fast in the refugee and migrants' boat, the captain asked who could speak English and had an emergency number to call. Mohanad Jammo offered to help. He reportedly called Rome RCC at 11:00am and gave the position of the boat, adding that there were many Syrians and over 100 children on board, and that the boat was taking in water. While Rome RCC denies receiving a call at 11:00am, it has confirmed that Mohanad Jammo called at 12:26pm and again at 12:39pm, when he was told by the Rome RCC that the boat was in Maltese SAR zone and that he had to call the Maltese SAR authorities.

Shortly afterwards, at 1:00pm, Rome RCC informed Malta's RCC of the situation, adding that two commercial vessels had also been located in the area. At 1:05pm, Malta's RCC took charge of co-ordinating the SAR operation. However, notwithstanding two RCCs being informed of the request for urgent assistance by the boat and of its position, and notwithstanding an Italian Navy vessel being in the vicinity, no rescue was provided to the refugees and migrants for hours.

At 4:22pm, Malta's RCC informed Rome RCC that one of its aircraft had spotted the boat, which was not stationary, but sailing at 5/10 knots. At 5:00pm, the boat capsized and sank rapidly. At 5:07pm, Malta's RCC informed Rome RCC that many people were in the water and requested assistance from Italian assets. Maltese and Italian assets, as well as commercial vessels, assisted in the subsequent rescue operations.

AFM Malta rescued 143 people (109 men, 19 women and 15 children), Italian assets 65, of which the ITS *Libra* 56 (39 men, eight women and nine children). 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.

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.

Hasan Wahid described to Amnesty International his experience of the shipwreck: “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... 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.”

Amnesty International interviewed Hasan Wahid and Manal Hashash in February 2014.

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. 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 contributed to the shipwreck.

Both Italy and Malta claim they acted in full compliance with their obligations under the SAR

Convention. However, at the very least the following possible breaches of SAR obligations emerge: the failure of the captain of the Italian Navy vessel *Libra* to direct herself at full speed towards the boat requesting assistance, as required by the SOLAS Convention; the failure of the Italian authorities to order her to do so, as required by the UNCLOS; 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.

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

The report *Lives adrift* 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 is urgently needed.

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 SAR 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.

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 proposed operation Triton is to work effectively, this function needs to be clearly articulated as a priority and it will need to deploy assets in sufficient number throughout both Italy and Malta's SAR zones and, for as long as necessary, Libya's SAR zone also. Finally, member states should also include in its operational plan an agreement on disembarkation which ensures solidarity and responsibility-sharing between participating member states.

A review of the Dublin system is also required.

Italy's OMN has revealed the impracticality of Dublin arrangements in that a vast number 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. Germany and Sweden each received far more.

The number of boat arrivals has highlighted protection gaps and challenges in Italy, particularly as regards reception conditions and local integration of refugees. 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.

Revisions of the Dublin Regulation were recently negotiated and agreed. 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.

It is clear that the Dublin system needs to be fundamentally reformed in order to 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. Such a reform would go some way to addressing the migration-related concerns of countries such as Italy and Malta that have been disincentivizing them from carrying out SAR operations.

6. CONCLUSIONS

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. 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 likely to plague Frontex-led search and rescue operations.

Clearly, however, the key challenge is to reduce the number of people taking dangerous sea journeys in the first place. Tackling the network of smugglers and traffickers exploiting and 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 legal routes to enter the EU for both migrants and, especially, the refugees who compose almost half of all those arriving irregularly by sea.

SELECTED 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

- 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 SAR activities as a priority and that Frontex assets are deployed in sufficient number throughout both Italy and Malta's SAR zones.
- 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.
- 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.