

The NGO 'Fortress Europe' calculated that 1.931 people have died during the first seven months of 2011 and it is estimated that 87 of these deaths have occurred in the Sicilian Channel. Therefore, the International Maritime Organization (IMO) recently took the initiative to develop a Memorandum of Understanding (MoU) on concerted procedures relating to the disembarkation of persons rescued at sea in the Mediterranean basin. This regional agreement could be the long-awaited solution to the problem.

ARAB SPRING

On 6 April 2011, Malta informed the Italian Maritime Rescue Coordination Centre of the presence of

it impossible to manoeuvre the boat. Over 250 migrants were lost after their vessel capsized due to flooding. Eventually, only 52 persons could be saved by the Italian Coast Guard.

The international community is aware that this problem has to be tackled as soon as possible in order to prevent further loss of life. Nevertheless, national governments are also showing increased reluctance to allow migrants and asylum seekers to set foot on their territories.

A State can refuse disembarkation onto its own territory or make this dependent on certain conditions. This often leads to problems and responsibility shifting.

For example, on 11 July 2011, the 'Almirante Juan de Borbón' –

The Arab Spring recently highlighted the issue of migrants at sea and the shortcomings of the international legal framework. Due to the social uprisings in Tunisia and Libya, thousands of people tried to reach Europe by sea. This is a dangerous journey, as these asylum seekers often travel in unseaworthy vessels. Already at this moment, 2011 is considered the deadliest year in almost two decades in the Mediterranean Sea.

Onderschrift foto

Towards a tailor-made solution for migrants at sea in the Mediterranean

a boat in distress, 45 miles from the Italian island of Lampedusa. As Maltese patrol boats were temporarily unavailable, Italian search and rescue assets were shipped to the area. The boat – which had departed from the Libyan port of Zuara – carried some 300 persons who had been fleeing the north coast of Africa. Normally, the type of vessel was only capable of holding a maximum of 40 people. Moreover, the engine was severely damaged, which made

a Spanish frigate participating in NATO 'Operation Unified Protector' – rescued 114 migrants from drowning in the Mediterranean. After their vessel had left Libya, the engine broke down and the persons on board drifted around for two days without food or water. When the warship was informed about their condition, they provided immediate assistance. On 13 July 2011, a man and his pregnant wife were brought to Malta for medical treatment. Spain agreed

to receive a 10-month-old baby. However, neither Spain, Italy nor Malta wanted to accept disembarkation onto their territory. Malta stated that NATO was responsible for the problem. Eventually, the migrants were transferred to Tunisia on 16 July 2011. As some of the asylum-seekers were of Tunisian origin and due to the political situation in the country, this could be regarded as a violation of the non-refoulement principle in the 1951 Refugee Convention, which

states that disembarkation of asylum seekers recovered at sea, in territories where their lives and freedom would be threatened, must be avoided.

As a result of the States' attitude towards rescued migrants, seafarers are being severely compromised in their efforts to continue the honourable and vital tradition of rescue at sea. In March 2011, a boat carrying 72 migrants spent 16 days drifting in the Mediterranean after it had left Tripoli to reach

Italy. Migrants stated that several ships ignored pleas for help. The out-of-fuel ship eventually washed up on western Libyan beach. Only 11 people survived while the others had died of thirst and starvation at sea.

IMO INITIATIVE

Although some States fear that clarifying obligations and solving the problem through an agreement would produce an enormous

pull factor – thus encouraging migrants to come to Europe by sea – the IMO wants to prevent incidents which cause loss of life at sea from recurring. Indeed, one of the primary concerns of the IMO is the integrity of the search and rescue and, consequentially, the safety of life at sea regime.

Already in 2010, the idea was launched of developing a pilot project for a regional solution in the Mediterranean. On the one hand, the system of rescuing mi-

grants in the Mediterranean basin has to be improved. On the other hand, these persons also have to be disembarked at a place of safety in accordance with the 2004 SAR and SOLAS Amendments. If the project works, it could be extended to other parts of the world experiencing similar situations. Meanwhile, the IMO is waiting to take steps on the international level

by sea towards Europe. In March 2011, NATO warships as well as aircraft started patrolling the approaches to Libyan territorial waters as part of 'Operation Unified Protector'. However, there were growing signs that Ghaddafi's regime was trying to force a migration crisis as a weapon against his NATO enemies. Pursuant these incidents, three

cient search and rescue regions are established within each sea area. These regions should be contiguous and – as far as practicable – not overlap. Parties are required to ensure the closest practicable co-ordination between maritime and aeronautical services. The International Aeronautical and Maritime Search and Rescue Manual (IAMSAR Manual) – which was jointly published by IMO and the International Civil Aviation Organization (ICAO) – provides guidelines for a common aviation and maritime approach to organizing and providing search and rescue services. For the moment, several States in the Mediterranean have unilaterally declared a SRR. However, as there is no regional agreement yet on the coordination among them, the new MoU could provide an effective response to this gap. Next to this, a system of burden-sharing among Mediterranean countries will be established.

However, Malta has some reservations on the current draft text of the regional agreement. This country plays a very important role in the agreement as it is situated at the frontline of European border controls. Malta is a small island, but in some ways it has a bigger stake in the Mediterranean than

land feels under pressure from migrants arriving by boat across the Mediterranean.

Indeed, the reality is that migrants coming from the north African coast and crossing the Mediterranean to reach Italy, have to pass through the Maltese SRR. Although Malta is only as small as 316 km², it unilaterally claimed a maritime SRR that coincides with the Malta Aeronautical SRR and the Malta Flight Information Region (FIR). Since the country 'inherited' an enormous FIR from Great Britain, Malta is now responsible for a region that amounts to 250.000 km². Towards the west, the Maltese SRR almost reaches the territorial waters of Tunisia. Towards the east, it nearly stretches to Crete. Moreover, towards the north, Malta claimed partly the same area as Italy did. For example, the Italian island of Lampedusa is both part of the Maltese and the Italian SRR.

Although Italy is pressuring Malta to give up part of this vast area, this is definitely not an option for the Maltese government. One of the reasons is that this area is connected to the lucrative income the island derives from its FIR, as the size of the latter is bound to the SRR. Malta earns millions of euros a year from air traffic control charges on aircraft using the area. Next to this, there are rumors that Malta thinks the SRR could

be an asset when delimiting its continental shelf. Indeed, Malta's maritime boundary system is only partially delimited and there are strong indications of oil and gas resources in the areas between Tunisia and Malta on the one

CONCLUSION

The Arab Spring highlighted once more the problem of migrants at sea. Due to the increased loss of life in the Mediterranean in 2011, the negotiations on the

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until the results of this Regional Agreement are ready.

A first meeting was held under the auspices of, and chaired by, the IMO Secretary-General on 28 July 2010. It consisted of a consultation group, attended by representatives from Italy, Malta, Spain and the IMO Secretariat. This consultation group drafted the terms of reference, stating the goals of the agreement.

The actual aim of the regional agreement is to (1) strengthen co-operation among all parties involved, (2) establish a system of communication between the countries in the region, (3) ensure the safety of persons rescued at sea, (4) arrange that delivery of persons takes place without undue delays to the rescuing ships and (5) promote co-operation for the disembarkation of persons rescued at sea.

Despite these efforts, following meetings were postponed. In 2011 States however realized that the situation in the Mediterranean region had deteriorated over the following months after the first meeting. The urgency of progressing the issue was stressed, as a consequence of a wave of social uprising affecting the northern part of the African continent, thus resulting in a massive migration

more meetings have been held since. Meanwhile, a draft text for the regional agreement was prepared and the consultation group was expanded to all Mediterranean countries. Next to this, it was decided that the regional agreement would take the form of a Memorandum of Understanding on concerted procedures relating to the disembarkation of persons rescued at sea. A MoU is an informal, yet legal agreement.

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REGIONAL AGREEMENT

The MoU could certainly have some positive effects on the current problem. Basically, the world's oceans are divided into 13 search and rescue areas, in each of which the countries concerned have delimited search and rescue regions (SRR) for which they are responsible. States must ensure that suffi-

cient most of the other coastal States. It has an important fishing industry, a high level of tourism and marine-related industries such as shipbuilding and ship repairs. Therefore, Malta is clearly one of the Mediterranean's most ocean-dependent States. As a result, maritime affairs – especially those of a political kind – are followed keenly by the Maltese people. Due to its population density, the is-

hand and Sicily and Malta on the other hand. However, the SAR Convention is very clear on this issue. It states that the delimitation of SRR is not related to and shall not prejudice the delimitation of any boundary between States.

Although Malta accessed both the SOLAS and SAR Conventions, it has not yet signed the 2004 SOLAS and SAR Amendments. On 22 December 2005, the IMO received a communication from the Ministry of Foreign Affairs of Malta declaring that Malta “is not yet in a position to accept these amendments”. As such, Malta does not accept any link between responsibility for the search and rescue and responsibility for providing a place of safety or ensuring that such a place of safety is provided. As the draft regional agreement contains such a provision, Malta still has certain reservations.

MoU on concerted procedures relating to the disembarkation of persons rescued at sea in the Mediterranean were speeded up. Not only States, but all parties involved could benefit from this new MoU. One of the problems that should be tackled is the coordination between the several SRR in the Mediterranean. Also, a system of burden-sharing has to be part of the agreement. Nevertheless, the problem is that if Malta is not willing to negotiate or decides not to be part of the MoU, there could simply not be an efficient agreement. Since Malta has an enormous SRR, it is of utmost importance that this country is being included.

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LOSC, SOLAS AND SAR

The 1982 Law of the Sea Convention (LOSC) states that every flag State must require the master of a ship flying its flag to render assistance to any person in danger of being lost at sea and to proceed with all possible speed to the rescue of persons in distress when informed of their need of assistance. Coastal States shall establish adequate and effective search and rescue services (for example, through the creation of a rescue co-ordination centre or RCC) and, where circumstances so require, cooperate with neighbouring States for this purpose. Both the 1984 Convention on Safety of Life at Sea (SOLAS Convention) and 1979 Search and Rescue Convention (SAR Convention) stipulate that States must arrange for the disembarkation of persons rescued at sea as soon as reasonably practicable. The 2004 Amendments to the SOLAS and SAR Conventions - drafted in the aftermath of the 'Tampa' incident in 2001 – also imply that persons in distress have to be delivered to a place of safety, namely a location where rescue operations are considered to terminate, 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. The Government responsible for the search and rescue region in which survivors were recovered will be responsible for providing a place of safety or ensuring that such a place of safety is provided.