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The interception and rescue at sea of asylum seekers, refugees and irregular migrants

Motion for a recommendation
tabled by Mr Arcadio DÍAZ TEJERA and other members of the Assembly

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This motion has not been discussed in the Assembly and commits only those who have signed it

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In recent years there have been increased attempts by some Council of Europe member states and the European Union to deflect mixed flows of migrants from their shores by intercepting the vessels in which they are travelling on the high seas and returning them to their country of origin or a third country.

There have also been a number of worrying incidents where persons in distress at sea have not been immediately rescued or where states have refused to allow persons rescued to dock while they argue over state responsibility towards these persons.

The Parliamentary Assembly has previously expressed concern about the increasing number of people who put their life and safety at risk by attempting to enter the territory of Council of Europe member states on board unsafe carriers, travelling in conditions of extreme hardship which sometimes result in their death.

The Parliamentary Assembly recalls Recommendation 1850 (2008) and Resolution 1637 (2008) on Europe's boat people: mixed migration flows by sea into southern Europe.The use of the Mediterranean Sea as an "asylum route" for many people fleeing violence and persecution and the actions by coastal States to deflect such persons arriving is of particular concern, as is smuggling and trafficking which frequently take place via these routes.

The United Nations Convention on the Law of the Sea (UNCLOS) obliges every State to require the master of a ship which flies its flag to render assistance to any person found at sea in danger of being lost and to proceed to the rescue of persons in distress. Two Conventions of the International Maritime Organisation (IMO) provide further detailed obligations in this context: the Safety of Life at Sea Convention (SOLAS) and the Search and Rescue Convention (SOLAR).

Under Article 33(1) of the 1951 Convention relating to the Status of Refugees, a *State*'s *non-refoulement* obligations are applicable wherever it exercises jurisdiction or "effective control".

Under Article 1 of the European Convention on Human Rights, States are required to secure Convention rights to "everyone" within their jurisdiction, or under their "effective control".The European Court of Human Rights has previously held that States are responsible for the acts of flag or war ships on the high seas resulting in a violation of Convention rights (*Xhavara v. Italy and Albania,* Application No. 37473/98, decision of 11 January 2001).

Notwithstanding these international standards, there remains confusion, uncertainty and disagreement over the responsibilities for rescue at sea and the conditions in which interceptions can take place and the steps which can and should be taken after interception. The confusion may be exacerbated depending on exactly

where the interception or rescue takes place (territorial waters, the high seas, “rescue zones”, etc.) or by whom the rescue or intervention is organised (private vessel, naval vessel, vessel operating under Frontex, etc.)

In view the international obligations (maritime, human rights, humanitarian, and obligations of *non-refoulement*) on States and their flag ships the Assembly invites the member states of the Council of Europe to:

– ensure that interception of migrants on the high seas by Council of Europe member states or by Frontex, complies with international and (for EU member states) EU standards;

– ensure that interception includes adequate mechanisms to ensure that asylum seekers are not pushed back to their country of origin, a third state, or to other Council of Europe Member States without the possibility of their protection needs being properly examined by means of a fair procedure;

– ensure that persons in distress at sea are rescued and disembarked promptly and humanely.

The Parliamentary Assembly invites the Committee of Ministers of the Council of Europe to prepare guiding principles to member states to clarify obligations, in particular in relation to human rights, refugee rights and humanitarian and maritime law, in connection with search and rescue obligations and commitments involved when intercepting vessels at sea.

Signed (see overleaf)

Signed[1]*:*

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