



## Resolution 1637 (2008)<sup>1</sup>

# Europe's boat people: mixed migration flows by sea into southern Europe

Parliamentary Assembly

1. The large-scale arrival of irregular migrants, refugees and asylum seekers on Europe's southern shores has become a regular phenomenon, with the number of arrivals climbing substantially in recent years. In 2006 these numbers reached a peak, but fell back in certain regions in 2007. Over 72 000 persons arrived in Spain, Italy, Greece and Malta in 2006 and over 51 000 persons arrived in these countries in 2007.
2. In recent years, the Parliamentary Assembly has closely monitored the plight of Europe's boat people and recalls in this respect its [Recommendation 1645 \(2004\)](#) on access to assistance and protection for asylum seekers at European seaports and coastal areas and [Resolution 1521 \(2006\)](#) on mass arrival of irregular migrants on Europe's southern shores.
3. This mixed migration flow includes refugees and asylum seekers, towards whom states have special responsibilities under international law, including the obligation to safeguard against *refoulement*.
4. Many thousands of lives are lost as irregular migrants, refugees and asylum seekers take to sea in unseaworthy boats and undertake longer and more perilous journeys to reach Europe. They leave for a multitude of different reasons, including to escape violent conflicts, human rights abuses, persecution, abject poverty and environmental degradation. They lack legal avenues to enter Europe and often pass through countries which offer no effective international protection.
5. The level of exploitation by traffickers and smugglers of persons seeking to enter Europe by irregular means is particularly alarming with, for example, regular reports from Libya of private detention, systematic extortion of money, and sexual and other violence.
6. There are an increasing number of reports of ships' masters ignoring distress signals from vessels in trouble. A particularly regrettable incident occurred in May 2007, when survivors from a sunken boat clung to the nets of a fishing boat for several days while the ship's master refused to bring them on board and states argued over their respective responsibilities for their rescue. Of further concern are allegations against the Maltese and Greek authorities that they have ignored distress calls and have at the same time pushed these boats away from their own shores or territorial waters.
7. Mediterranean member states, and in particular Malta, are struggling to meet the challenge of dealing with these mixed flows of migrants, refugees and asylum seekers. While these countries have the primary role in dealing with these flows, the European Union can provide assistance to ease the burden. Frontex, the European Union's external borders agency, has a particularly important role to play, offering assistance in search and rescue and border controls, as well as providing rapid border intervention teams (RABITS) and training for European border guards.
8. The Assembly calls on all member states of the Council of Europe to support the Mediterranean countries receiving mixed flows of irregular migrants, refugees and asylum seekers. In particular, member states are encouraged to provide assistance in the fields of search and rescue, reception, identification of

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 28 November 2008 (see [Doc. 11688](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mr. Østergaard). See also [Recommendation 1850 \(2008\)](#).



country of origin, organisation of returns and relocation of those with international protection needs. In this, member states should follow the example of the United States of America, which has taken in, from Malta, a large number of those in need of international protection. Assistance could also be given in terms of joint return flights and/or contributions to search and rescue operations. Member states should also support countries of origin and transit in tackling the root causes of irregular migration and promote legal avenues of migration while raising awareness of the dangers of irregular migration.

9. The Assembly calls on Mediterranean member states of the Council of Europe receiving mixed flows of irregular migrants, refugees and asylum seekers to:

9.1. comply fully with and, when applicable, implement international and regional human rights law, including the European Convention on Human Rights (ETS No. 5), international refugee law, and European Union legislation, including Council Directives 2003/9/EC (laying down minimum standards for the reception of asylum seekers), 2004/83/EC ("refugee qualification directive") and 2005/85/EC ("refugee procedures directive");

9.2. comply fully with international maritime obligations on search and rescue, and examine fully any allegations of breaches of these obligations, including allegations of boats being refused assistance and being "pushed back";

9.3. progressively proscribe administrative detention of irregular migrants and asylum seekers, drawing a clear distinction between the two groups, and in the meantime allow detention only if it is absolutely necessary to prevent unauthorised entry into the country or to ensure deportation or extradition, in accordance with the European Convention on Human Rights;

9.4. ensure that detention is authorised by the judiciary and is used only if it is necessary and if there is no suitable alternative. Furthermore, detention must be for the shortest possible period of time. Malta should re-examine its policy of systematic and excessive periods of detention which can be for up to eighteen months for irregular migrants and twelve months for asylum seekers;

9.5. comply fully with their obligation not to detain irregular migrants, refugees and asylum seekers with ordinary prisoners and to ensure that when detention takes place it is in a non-carceral environment;

9.6. respect the principle that vulnerable persons should not be detained. Vulnerable persons include unaccompanied minors, pregnant women, families with minors, persons with medical or other special needs, the elderly, victims of torture and sexual violence and victims of trafficking. In all circumstances, adequate assistance must be granted to vulnerable persons and particular attention must be paid to the situation of unaccompanied minors in view of worrying reports concerning their treatment in Spain, Greece and other countries in the region;

9.7. close unsuitable reception and detention centres, and construct new centres which are adequate and appropriate for the length of time irregular migrants and asylum seekers are to be detained. Detention facilities in Malta and Greece are in particular need of review, with many people being accommodated in tents or in facilities totally unsuited for anything other than immediate urgent reception;

9.8. ensure that all reception centres or detention centres provide:

9.8.1. appropriate food and sufficient quantities of drinking water;

9.8.2. adequate clothing and change of clothing, bedding, blankets, toiletries, etc.;

9.8.3. adequate furniture, such as beds, chairs and tables, as well as lockers to allow private items to be stored and kept safely;

9.8.4. separate accommodation and separate sanitation for men, women and unaccompanied minors;

9.8.5. adequate sanitation facilities which are kept clean and in serviceable operation;

9.8.6. regular access to the open air during substantial parts of the day;

9.8.7. sufficient recreational activities (television, reading, exercise, games, etc.);

9.9. ensure that those in detention or reception centres have access to the outside world, including access to family, civil society, in particular specialised NGOs dealing with the rights of migrants and asylum seekers, lawyers, the Red Cross and Red Crescent and international organisations such as the

Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). Such access should be available both directly and by telephone, including both outgoing and incoming calls;

9.10. guarantee to irregular migrants, refugees and asylum seekers access to their fundamental rights and procedural rights, including:

9.10.1. prompt provision of information on their rights and the relevant procedures applicable to them and prompt provision of information concerning their detention and the internal rules of the detention centre in which they are being held. Interpretation or translations should also be provided whenever necessary;

9.10.2. effective access to the asylum process and any humanitarian status determination process, ensuring the quality and consistency of all decisions in these processes at all relevant levels. Turkey should withdraw the geographical limitation for non-European asylum seekers;

9.10.3. effective guarantees against *refoulement* of asylum seekers;

9.10.4. automatic judicial control of detention and an effective remedy against deportation, with a suspensive effect before an independent and impartial authority;

9.10.5. access to a lawyer when detention or deportation is challenged. Free legal aid is required at least during the appeal process and the quality of this aid needs to be of an acceptable standard, which is often not the case in Spain and other countries;

9.11. ensure that staff working in reception and detention centres are carefully selected, properly trained and fully respected in their work and that they have the support of a sufficient number of interpreters and cultural mediators to carry out their work;

9.12. ensure that border staff are sufficiently trained to deal with refugees, asylum seekers and their requests for asylum;

9.13. guarantee to irregular migrants, refugees and asylum seekers not only emergency health care, which includes essential treatment that cannot reasonably be delayed and necessary care such as vaccinations and follow-up, but also basic health care, including essential dental care. Psychological assistance should also be provided for those with particular needs, such as victims of torture and violence, including sexual violence;

9.14. allow, when applicable, the monitoring of reception centres and detention centres by ombudspersons and national human rights commissions, parliamentarians and other national or international monitoring bodies. Where specialised monitoring bodies do not exist, they should be created. Where they do exist, their members should be selected and appointed carefully and should be trained in carrying out their functions. The media should also be granted reasonable access to detention centres from time to time to ensure transparency and accountability, without encroaching, however, on detainees' right to privacy;

9.15. implement the UNHCR's Ten point plan of action for refugee protection and mixed migration as a framework for addressing mixed migration flows in a comprehensive and collaborative way and invite the UNHCR and the IOM to expand their operations in the regions affected by these mixed migration movements;

9.16. promote the use of assisted voluntary return programmes with the support of the IOM and carry out forcible returns only in accordance with the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers in May 2005;

9.17. continue efforts to negotiate readmission agreements with countries of origin and transit, taking into account the need to provide sufficient guarantees against *refoulement*, access to asylum procedures and effective protection in accordance with human rights standards;

9.18. take steps to tackle intolerance, racism and xenophobia linked to the arrival of irregular migrants and asylum seekers. Malta in particular needs to take further steps in this respect;

9.19. accede to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

9.20. make full use of European Union funding opportunities under the External Borders Fund, the European Refugee Fund, the European Fund for the Integration of Third Country Nationals and the Return Fund;

- 9.21. make full use of the opportunity for loans from the Council of Europe Development Bank for creating the necessary permanent reception structures for receiving irregular migrants, asylum seekers and refugees.
10. The Assembly calls on the European Union, with the support of European Union member states, to:
- 10.1. extend further the support given to member states that are receiving countries, in particular for projects seeking to improve search and rescue operations and reception and detention facilities;
- 10.2. further develop the search and rescue operational capacities of Frontex as part of its border control mandate and ensure that the human rights implications of its work are fully monitored;
- 10.3. ensure that Frontex gives priority to creating a common curriculum for European border guards, taking into account the Council of Europe's human rights standards and international refugee standards. Frontex should also be encouraged to increase its operational capacities for search and rescue as part of its mandate for border control.
11. The Assembly calls on the UNHCR and the IOM to extend their presence in the regions affected by the large-scale arrival of migrants, refugees and asylum seekers, repeating as appropriate the model of co-operation developed with the authorities in Lampedusa, Italy, under the Praesidium Project.
12. The Assembly invites the Council of Europe Commissioner for Human Rights to continue to monitor the situation in reception and detention facilities for irregular migrants, refugees and asylum seekers during his country visits and develop recommendations on good practice in detention and reception of these persons.