Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1821 (2011)[1]

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

Parliamentary Assembly

1. The surveillance of Europe's southern borders has become a regional priority. The European continent is having to cope with the relatively large-scale arrival of migratory flows by sea from Africa, reaching Europe mainly through Italy, Malta, Spain, Greece and Cyprus.

2. Migrants, refugees, asylum seekers and others risk their lives to reach Europe's southern borders, mostly in unseaworthy vessels. These journeys, always undertaken illicitly, mostly on board flagless vessels, putting them at risk of falling into the hands of migrant smuggling and trafficking rings, reflect the desperation of the passengers, who have no legal means and, above all, no safer means of reaching Europe.

3. Although the number of arrivals by sea has fallen drastically in recent years, resulting in a shift of migratory routes (particularly towards the land border between Turkey and Greece), the Parliamentary Assembly, recalling, *inter alia*, its Resolution 1637 (2008) on Europe's boat people: mixed migration flows by sea into southern Europe, once again expresses its deep concern over the measures taken to deal with the arrival by sea of these mixed migratory flows. Many people in distress at sea have been rescued and many attempting to reach Europe have been pushed back, but the list of fatal incidents – as predictable as they are tragic – is a long one and it is currently getting longer on an almost daily basis.

4. Furthermore, recent arrivals in Italy and Malta following the turmoil in North Africa confirm that Europe must always be ready to face the possible large-scale arrival of irregular migrants, asylum seekers and refugees on its southern shores.

5. The Assembly notes that measures to manage these maritime arrivals raise numerous problems, of which five are particularly worrying:

5.1. despite several relevant international instruments which are applicable in this area and which satisfactorily set out the rights and obligations of states and individuals applicable in this area, interpretations of their content appear to differ. Some states do not agree on the nature and extent of their responsibilities in specific situations and some states also call into question the application of the principle of *non-refoulement* on the high seas;

5.2. while the absolute priority in the event of interception at sea is the swift disembarkation of those rescued to a "place of safety", the notion of "place of safety" does not appear to be interpreted in the same way by all member states. Yet it is clear that the notion of "place of safety" should not be restricted solely to the physical protection of people, but necessarily also entails respect for their fundamental rights;

5.3. divergences of this kind directly endanger the lives of the people to be rescued, in particular by delaying or preventing rescue measures, and they are likely to dissuade seafarers from rescuing people in distress at sea. Furthermore, they could result in a violation of the principle of *non-refoulement* in respect of a number of persons, including some in need of international protection;

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1. Assembly debate on 21 June 2011 (22nd Sitting) (see Doc. 12628, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Díaz Tejera). Text adopted by the Assembly on 21 June 2011 (22nd Sitting). See also Recommendation 1974 (2011).

5.4. although the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) plays an ever increasing role in interception at sea, there are inadequate guarantees of respect for human rights and obligations arising under international and European Union law, in the context of the joint operations it co-ordinates;

5.5. finally, these sea arrivals place a disproportionate burden on the states located on the southern borders of the European Union. The goal of responsibilities being shared more fairly and greater solidarity in the migration sphere between European states is far from being attained.

6. The situation is rendered more complex by the fact that these migratory flows are of a mixed nature and therefore call for specialised and tailored protection-sensitive responses in keeping with the status of those rescued. To respond to sea arrivals adequately and in line with the relevant international standards, the states must take account of this aspect in their migration management policies and activities.

7. The Assembly reminds member states of their obligations under international law, including the European Convention on Human Rights (ETS No. 5), the United Nations Convention on the Law of the Sea of 1982 and the 1951 Geneva Convention relating to the Status of Refugees, and particularly reminds them of the principle of *non-refoulement* and the right to seek asylum. The Assembly also reiterates the obligations of the states parties to the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue.

8. Finally and above all, the Assembly reminds member states that they have both a moral and legal obligation to save persons in distress at sea without the slightest delay, and unequivocally reiterates the interpretation given by the Office of the United Nations High Commissioner for Refugees (UNHCR), which states that the principle of *non-refoulement* is equally applicable on the high seas. The high seas are not an area where states are exempt from their legal obligations, including those emerging from international human rights law and international refugee law.

9. Accordingly, the Assembly calls on member states, when conducting maritime border surveillance operations, whether in the context of preventing smuggling and trafficking in human beings or in connection with border management, be it in the exercise of *de jure* or *de facto* jurisdiction, to:

9.1. fulfil without exception and without delay their obligation to save people in distress at sea;

9.2. ensure that their border management policies and activities, including interception measures, recognise the mixed make-up of flows of individuals attempting to cross maritime borders;

9.3. guarantee for all intercepted persons humane treatment and systematic respect for their human rights, including the principle of *non-refoulement,* regardless of whether interception measures are implemented within their own territorial waters, those of another state on the basis of an ad hoc bilateral agreement, or on the high seas;

9.4. refrain from any practices that might be tantamount to direct or indirect *refoulement*, including on the high seas, in keeping with the UNHCR's interpretation of the extraterritorial application of that principle and with the relevant judgments of the European Court of Human Rights;

9.5. carry out as a priority action the swift disembarkation of rescued persons to a "place of safety" and interpret a "place of safety" as meaning a place which can meet the immediate needs of those disembarked and in no way jeopardises their fundamental rights, since the notion of "safety" extends beyond mere protection from physical danger and must also take into account the fundamental rights dimension of the proposed place of disembarkation;

9.6. guarantee access to a fair and effective asylum procedure for those intercepted who are in need of international protection;

9.7. guarantee access to protection and assistance, including to asylum procedures, for those intercepted who are victims of human trafficking or at risk of being trafficked;

9.8. ensure that the placement in a detention facility of those intercepted – always excluding minors and vulnerable categories – regardless of their status, is authorised by the judicial authorities and occurs only where necessary and on grounds prescribed by law, that there is no other suitable alternative and that such placement conforms to the minimum standards and principles set forth in Assembly Resolution 1707 (2010) on the detention of asylum seekers and irregular migrants in Europe;

9.9. suspend any bilateral agreements they may have concluded with third states if the human rights of those intercepted are not appropriately guaranteed therein, particularly the right of access to an asylum procedure, and wherever these might be tantamount to a violation of the principle of *non-refoulement*, and conclude new bilateral agreements specifically containing such human rights guarantees and measures for their regular and effective monitoring;

9.10. sign and ratify, if they have not already done so, the aforementioned relevant international instruments and take account of the International Maritime Organization (IMO) Guidelines on the Treatment of Persons Rescued at Sea;

9.11. sign and ratify, if they have not already done so, the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the so-called "Palermo Protocols" to the United Nations Convention against Transnational Organized Crime (2000);

9.12. ensure that maritime border surveillance operations and border control measures do not affect the specific protection afforded under international law to vulnerable categories such as refugees, stateless persons, women and unaccompanied children, migrants, victims of trafficking or at risk of being trafficked, or victims of torture and trauma.

10. The Assembly is concerned about the lack of clarity regarding the respective responsibilities of European Union states and Frontex and the absence of adequate guarantees for the respect of fundamental rights and international standards in the framework of joint operations co-ordinated by that agency. While the Assembly welcomes the proposals presented by the European Commission to amend the rules governing that agency, with a view to strengthening guarantees of full respect for fundamental rights, it considers them inadequate and would like the European Parliament to be entrusted with the democratic supervision of the agency's activities, particularly where respect for fundamental rights is concerned.

11. The Assembly also considers it essential that efforts be made to remedy the prime causes prompting desperate individuals to risk their lives by boarding boats bound for Europe. The Assembly calls on all member states to step up their efforts to promote peace, the rule of law and prosperity in the countries of origin of potential immigrants and asylum seekers.

12. Finally, in view of the serious challenges posed to coastal states by the irregular arrival by sea of mixed flows of individuals, the Assembly calls on the international community, particularly the IMO, the UNHCR, the International Organization for Migration (IOM), the Council of Europe and the European Union (including Frontex and the European Asylum Support Office) to:

12.1. provide any assistance required to those states in a spirit of solidarity and sharing of responsibilities;

12.2. under the auspices of the IMO, make concerted efforts to ensure a consistent and harmonised approach to international maritime law through, *inter alia*, agreement on the definition and content of the key terms and norms;

12.3. establish an inter-agency group with the aim of studying and resolving the main problems in the area of maritime interception, including the five problems identified in the present resolution, setting clear policy priorities, providing guidance to states and other relevant actors, and monitoring and evaluating the use of maritime interception measures. The group should be made up of members of the IMO, the UNHCR, the IOM, the Council of Europe, Frontex and the European Asylum Support Office.