

Resolution 1872 (2012)¹

Final version

Lives lost in the Mediterranean Sea: Who is responsible?

Parliamentary Assembly

1. In 2011, at least 1 500 persons lost their lives attempting to cross the Mediterranean Sea.
2. One tragedy, revealed by the British newspaper *The Guardian*, involved a small rubber dinghy which left Tripoli on 26 March 2011 with 72 people on board. It washed up on the shores of Libya fifteen days later with only 10 survivors. What made this case different, beyond the tragedy of the lives lost, was that the boat's distress calls appear to have been ignored by a range of fishing vessels, a military helicopter and a large military vessel. Whereas many people have lost their lives in the Mediterranean Sea, the people involved in this boat tragedy could have been rescued if all those involved had complied with their obligations.
3. Concerned about the implications of these allegations, the Parliamentary Assembly launched its own investigation in order to establish what happened and who might be responsible for failing to go to the rescue of these people.
4. From the survivors' testimonies and other sources, a credible story emerges. It took place during the conflict in Libya and at a time when NATO's Operation Unified Protector was under way off the shores of Libya. The sub-Saharan passengers – 50 men, 20 women and 2 babies – were accompanied to the boat by Libyan militia. They were boarded by smugglers who removed most of their water supplies and food in order to get more people into the boat. After over eighteen hours at sea with almost no petrol, little food and water and no sight of land, the "captain" called an Eritrean Priest living in Italy by satellite phone, sending a distress alert. The Italian Maritime Rescue Coordination Centre (MRCC) in Rome was immediately informed. It had the position of the boat plotted by the satellite provider and sent out a large number of calls to the ships in the area to look out for the boat. Some of these messages clearly indicated that the boat was in distress. It was from this point that things started to go seriously wrong.
5. Within a few hours of the first distress signal, a military helicopter hovered over the boat and provided water and biscuits and indicated to the passengers that it would return. It never did. According to the survivors' testimonies, the boat also encountered at least two fishing vessels, neither of which came to its assistance. The boat drifted for several days. With no water and food, people started to die. On about the 10th day of its voyage, when half of the passengers were dead, an unidentified aircraft carrier or helicopter-carrying vessel sailed near to the boat, close enough for the survivors to see the sailors on board, who were not identified as belonging to a specific navy, looking at them through binoculars and taking photos. According to the witnesses, despite obvious distress signals, the military vessel sailed away. The boat eventually washed up on the Libyan shores after fifteen days at sea. The 10 survivors were imprisoned, where one of them died from lack of medical care. Eventually the nine survivors were released, after which they fled the country.
6. From this tragedy a catalogue of failures becomes apparent. The Libyan authorities were responsible for what was a *de facto* expulsion of the sub-Saharan passengers and they failed to maintain responsibility for their search and rescue (SAR) zone. The smugglers showed reckless disregard for the lives of the passengers, overloading the boat and failing to provide adequate provisions.

1. Assembly debate on 24 April 2012 (12th Sitting) (see [Doc. 12895](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Strik). Text adopted by the Assembly on 24 April 2012 (12th Sitting).



7. Although the Rome MRCC verified the position of the boat and made a general broadcast of the distress calls, it did not ensure that the passengers were rescued. It failed to contact the vessels which were close to the boat in distress and to request them to rescue these boat people. Since it was known that the Libyan SAR zone was not covered, Italy, as the first State to receive the distress call, should have taken responsibility for the co-ordination of the SAR operation.

8. NATO had declared the region a military zone under its control, but failed to react to the distress calls sent out by the Rome MRCC. According to a reliable source, at least two vessels involved in NATO's operations were in the boat's vicinity when the distress call was sent, namely the Spanish frigate *Méndez Núñez* (11 miles away) and an Italian ship, the *ITS Borsini* (37 miles away). Both had helicopter-carrying facilities. Although the Spanish vessel was under NATO command, the flag State of this ship and of other ships in the area *prima facie* failed to act in accordance with their search and rescue obligations.

9. Of particular concern to the Assembly is the worrying failure of a military helicopter and a large military vessel to intervene and rescue the boat after they had come into contact with it. The same applies to at least two fishing vessels. None of these have as yet been identified with any certainty.

10. There was also a failure of the maritime legal framework, which does not make it clear who is responsible for an SAR zone when a country is unable to fulfil its SAR obligations.

11. Finally, there was a failure by NATO and individual member States involved in planning Operation Unified Protector off the Libyan coast. It was foreseeable that there would be an exodus of people fleeing the country, including by the dangerous sea route. In the present case, NATO did not fully take up its responsibilities, as indicated by the failure of NATO headquarters in Naples to forward communications about the boat to vessels under its control.

12. In short, there were failures at different levels and many opportunities to save the lives of the people on board the boat were lost. In the light of the information available, it has become apparent that NATO was not very accessible with regard to requests for SAR operations. Although it was known that many refugees were leaving Libya by the Mediterranean Sea route in order to reach Europe, there seemed to be no working agreement between the SAR authorities and NATO headquarters in Naples. This non-communication contributed to the situation in which help was not given to those on board.

13. While the investigation focused on a single incident, the lessons learned have implications for the way in which search and rescue operations should be carried out in the future. As a consequence, the Assembly recommends that member States:

13.1. fill the vacuum of responsibility for SAR zones left by a State which cannot or does not exercise its responsibility for search and rescue, as was the case for Libya. This may require amending the International Maritime Search and Rescue Convention (SAR Convention). In the case in question, two Maritime Rescue Coordination Centres (Rome and Malta) were aware that the boat was in distress, but neither started an SAR operation. The Rome MRCC was the first to be informed of the distress situation, and thus had a greater responsibility to ensure the boat's rescue;

13.2. ensure that there are clear and simple guidelines, which can then be applied, on what amounts to a distress signal, so as to avoid any confusion over the obligation to launch an SAR operation for a boat in distress;

13.3. avoid differing interpretations of what constitutes a vessel in distress, in particular as concerns overloaded, unseaworthy boats, even if the boat's engine still works, and render appropriate assistance to such vessels. Whenever safety requires that a vessel be assisted, this should lead to rescue actions;

13.4. tackle the reasons why commercial vessels fail to go to the rescue of boats in distress. This will require dealing with:

13.4.1. the economic consequences for the rescuing vessel and its owners, and the issue of compensation;

13.4.2. the disagreement between Malta and Italy as to whether disembarkation should be to the nearest safe port or to a port within the country of the SAR zone. The International Maritime Organization should be urged to find a solution to the matter and step up its efforts towards a harmonised interpretation and application of international maritime law;

13.4.3. the fear of criminalisation (trafficking or aiding and abetting irregular migration) by those who go to the rescue of boats carrying irregular migrants, asylum seekers and refugees;

13.4.4. legislation to criminalise private shipmasters who fail to comply with their duty under the law of the sea, as is already the case in certain Council of Europe member States;

13.5. ensure that, in accordance with the *Hirsi v. Italy* judgment of the European Court of Human Rights, after the rescue operation, people are not pushed back to a country where they risk being treated in violation of Article 3 of the European Convention on Human Rights (ETS No. 5);

13.6. tackle the issue of responsibility sharing, particularly in the context of rescue services, disembarkation, the administration of asylum requests, setting up reception facilities and relocation and resettlement, with a view to developing a binding European Union protocol for the Mediterranean region. The heavy burden placed on frontline States leads to a problem of saturation and a reluctance to take responsibility;

13.7. respect the families' right to know the fate of those who lose their lives at sea by improving identity-data collection and sharing. This could include the setting-up of a DNA file of the remains of those retrieved from the Mediterranean Sea. In this context, the ongoing work of the International Committee of the Red Cross (ICRC) and other organisations should be acknowledged and supported;

13.8. follow up Assembly [Resolution 1821 \(2011\)](#) on the interception and rescue at sea of asylum seekers, refugees and irregular migrants;

13.9. ensure that the lack of communication and understanding between the Rome MRCC and NATO – which led to no one taking responsibility for the boat – is not reproduced in future NATO operations, and ensure that NATO introduces a mechanism to co-ordinate its assets in SAR operations in direct contact with relevant MRCCs wherever possible.

14. In the light of the seriousness of the allegations that vessels under national and/or NATO command failed in their duty to rescue a boat in distress, the Assembly recommends that:

14.1. NATO and the member States involved in NATO's operation provide a comprehensive reply to the Assembly's outstanding requests for further information on the involvement of their respective assets. This is in order to identify the military helicopter that allegedly dropped provisions and never returned, as well as the large military vessel that allegedly ignored the boat's distress calls after half the passengers had already died;

14.2. NATO, including its Parliamentary Assembly, conduct an inquiry into this incident, and take whatever steps are required in the light of the findings of that inquiry;

14.3. NATO, when preparing its operations, take into account possible refugee movements and reach agreements with neighbouring countries to ensure that refugees are protected;

14.4. national parliaments, or their relevant committees, on the basis of relevant leads, launch parliamentary inquiries into the possible responsibility of their respective countries;

14.5. the European Parliament make use of its institutional power to request and obtain further information, including relevant satellite imagery, so that the full facts concerning this incident can be brought to light.

15. Finally, the Assembly recommends that, in view of the ordeal of the survivors, member States use their discretionary power in humanitarian matters to look favourably on any claims for asylum and resettlement coming from these persons.