



Doc. 12895 – Compendium of written amendments

(Final version)

Lives lost in the Mediterranean Sea: Who is responsible?

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A. Draft Resolution

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 was washed up on the shores of Libya 15 days later with only nine survivors. What made this case different, beyond the tragedy of the lives lost, was that the boat's distress calls would appear to have been ignored by a range of fishing vessels, a military helicopter and a large military vessel. Whereas many people were reported missing, 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 the people in the boat.
4. From the survivors' testimonies and other sources, a credible story emerges. It takes place during the conflict in Libya and at a time when NATO's Operation Unified Protector was ongoing off the shores of Libya. The Sub-Saharan passengers, 50 men, 20 women and two babies, were accompanied to the boat by Libyan militia. They were boarded by the smugglers who removed most of their water supplies and food in order to get more people into the boat. After over 18 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) was immediately informed and 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 went 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. 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 tenth day of its voyage, when half of the passengers were dead, a large aircraft carrier or helicopter-carrying vessel sailed near to the boat, close enough for the survivors to see the sailors on board looking at them with binoculars and taking photos. Despite obvious distress signals, the military vessel sailed away. The boat eventually washed up on the Libyan shores after 15 days at sea. The ten survivors were imprisoned, where one of them died from lack of medical care. Eventually nine survivors were released after which they fled the country.

Amendment 1

Tabled by Mr José María BENEYTO, Ms Carmen QUINTANILLA, Ms Meritxell BATET, Mr Gabino PUCHE, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 2, third sentence, after the words "fishing vessels", insert the following words: ", a small patrolling aircraft,"

Amendment 8

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Ms Eva PARERA, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 4, delete the following words: "It was from this point that things went seriously wrong."

Amendment 9

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Ms Eva PARERA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 5, after the words "It never did.", insert the following words: "According to the survivors' testimonies,"

Amendment 20

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Alejandro MUÑOZ-

ALONSO, Ms Carmen QUINTANILLA, Ms Eva PARERA, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 5, after the words "at least two fishing vessels", insert the following words: "of unknown flag,"

Amendment 19

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Alejandro MUÑOZ-ALONSO, Ms Carmen QUINTANILLA, Ms Eva PARERA, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 5, replace the words "a large aircraft carrier" with the following words: "an unknown aircraft carrier".

Amendment 2

Tabled by Mr José María BENEYTO, Ms Carmen QUINTANILLA, Ms Meritxell BATET, Mr Gabino PUCHE, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 5, sixth sentence, delete the words "or helicopter-carrying vessel".

Amendment 21

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Alejandro MUÑOZ-ALONSO, Ms Carmen QUINTANILLA, Ms Eva PARERA, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 5, after the words "to see the sailors" insert the following words: ", which were not identified as belonging to specific navy,".

Amendment 10

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Ms Eva PARERA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 5, before the words "Despite obvious distress signals", insert the following words: "According to the witnesses,"

Amendment 11

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Ms Eva PARERA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 6, replace the words "From this tragedy a catalogue of failures

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.

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 the 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 also failed to act in accordance with their search and rescue obligations.

*becomes apparent." with the following words:
"Due to these facts, the following conclusions
might be made."*

Amendment 4

(If adopted, amendment 12 falls)

Tabled by Mr Giacomo STUCCHI, Ms Deborah BERGAMINI, Mr Pasquale NESSA, Mr Renato FARINA, Mr Paolo GRIMOLDI, Mr Luigi VITALI

In the draft resolution, delete paragraph 7.

Amendment 12

(Falls if amendment 4 is adopted)

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 7, delete the words "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."

Amendment 3

(If adopted, amendments 5, 6 falls)

Tabled by Mr José María BENEYTO, Ms Carmen QUINTANILLA, Ms Meritxell BATET, Mr Gabino PUCHE, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 8, after the first sentence, delete the remainder of the paragraph.

Amendment 5

(Falls if amendment 3 is adopted)

(If adopted, amendment 6 falls)

Tabled by Mr Giacomo STUCCHI, Mr Luigi VITALI, Ms Deborah BERGAMINI, Mr Pasquale NESSA, Mr Renato FARINA, Mr Paolo GRIMOLDI

In the draft resolution, paragraph 8, delete the words: "Although the Spanish vessel was under NATO command, the flag State of this ship and of other ships in the area also failed to act in accordance with their search and rescue obligations."

Amendment 6

(Falls if amendments 3, 5 are adopted)

Tabled by Mr Giacomo STUCCHI, Mr Luigi VITALI, Ms Deborah BERGAMINI, Mr

Pasquale NESSA, Mr Renato FARINA, Mr Paolo GRIMOLDI

In the draft resolution, paragraph 8, delete the words: "and of other ships in the area also"

9. Of particular concern to the Assembly was 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.

Amendment 13

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, delete paragraph 9.

10. There was also a failure of the maritime legal framework, which left it unclear who was responsible for an SAR zone when a country was unable to fulfil its 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, with communications about the boat in distress not being forwarded by NATO headquarters in Naples to vessels under its control.

Amendment 14

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, delete paragraph 11.

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 information from reliable sources, it has become apparent that NATO was not very approachable 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 those on the boat were denied help.

Amendment 15

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Ms Eva PARERA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 12, replace the words "In the light of information from reliable sources," with the following words: "In the light of the information available,"

Amendment 16

(If adopted, amendment 22 falls)

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 12, delete the words "This non-communication contributed to the situation in which those on the boat were denied help."

13. While the investigation focused on a single incident, the lessons learnt have implications for the way in which search and rescue should be carried out in the future. As a consequence, the Assembly recommends that member States:
- 13.1. fill the vacuum of responsibility for an SAR zone left by a State which cannot or does not exercise its responsibility for search and rescue, such 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 a boat was in distress, but neither took the responsibility to start a SAR operation. Rome, being the first MRCC informed of the distress situation, had a greater responsibility to ensure the boat's rescue;
- 13.2. ensure that there are clear and simple guidelines, which are then followed, on what amounts to a distress signal, so as to avoid any confusion over the obligation to launch a 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 under propulsion, 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

Amendment 22

(Falls if amendment 16 is adopted)

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Alejandro MUÑOZ-ALONSO, Ms Carmen QUINTANILLA, Ms Eva PARERA, Mr Ramón JÁUREGUI

In the draft resolution, paragraph 12, replace the words "those on the boat were denied help" with the following words: "help was not given to those on board."

Amendment 23

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Alejandro MUÑOZ-ALONSO, Ms Carmen QUINTANILLA, Ms Eva PARERA, Mr Ramón JÁUREGUI

In the draft resolution, after paragraph 13, insert the following paragraph:

"The previous recommendations should be considered in the context of military operations and taking in consideration the crew's safety, under the command of the commander of the naval force."

Amendment 7

Tabled by Mr Giacomo STUCCHI, Mr Luigi VITALI, Ms Deborah BERGAMINI, Mr Pasquale NESSA, Mr Renato FARINA, Mr Paolo GRIMOLDI

In the draft resolution, paragraph 13.1, delete the words: "but neither took the responsibility to start a SAR operation. Rome, being the first MRCC informed of the distress situation, had a greater responsibility to ensure the boat's rescue;"

- 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;
 - 13.6. tackle the issue of responsibility sharing, particularly in the context of rescue services, disembarkation, 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 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

Amendment 17

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, paragraph 13.9, delete the words "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".

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, takes into account possible refugee movements and reaches agreement with neighbouring countries to ensure that refugees are protected;

Amendment 18

Tabled by Mr José María BENEYTO, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Alejandro MUÑOZ-ALONSO, Mr Roberto SORAVILLA, Mr Arcadio DÍAZ TEJERA, Mr José Antonio ALONSO, Mr Antonio GUTIÉRREZ LIMONES

In the draft resolution, delete paragraph 14.3.

- 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 makes 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 humanitarian discretion to look favourably on any claims for asylum and resettlement coming from these persons.