



Doc. 13532 – Compendium of written amendments

(Final version)

The “left-to-die boat”: actions and reactions

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A. Draft Resolution

1. The Parliamentary Assembly refers to its Resolution 1872 (2012) "Lives lost in the Mediterranean Sea: Who is responsible?", which was the result of a thorough investigation into the responsibilities of those who could have gone to the rescue of 72 people on board a small rubber dinghy, later known as the "left-to-die boat", who set off towards Europe on 26 March 2011, of whom only nine survived.
2. Unfortunately, the catalogue of lives lost at sea did not end with this incident. More recently, in October 2013, two vessels capsized within sight of the coast of Lampedusa, leading to the loss of over 400 lives. Again, in May 2014, two shipwrecks resulted in the deaths of dozens of people with hundreds missing. These catastrophes once again revealed the crucial need for Europe and the rest of the world to fill in the gaps in the legal framework, policies and practices of rescue at sea.
3. The Assembly acknowledges that important efforts have been engaged by member States, Italy in particular, towards saving more lives at sea. However, a number of concerns still remain, including failures to co-operate, define and admit responsibility and learn lessons. The left-to-die incident clearly highlighted the urgent need to guarantee fundamental rights, while respecting the legitimate security imperatives of border controls.
4. The Assembly therefore wants to reinforce its previous recommendations and encourage further measures to prevent communication and responsibility gaps when it comes to saving lives of people in distress in the future.
5. With a view to applying zero-tolerance towards lives lost at sea, the Assembly further recommends that member States:
 - 5.1. with regard to rescue at sea and lives lost:
 - 5.1.1. adopt clear, binding and enforceable common standards with regard to search and rescue operations, including disembarkation, fully consistent with international maritime law and international human rights and refugee law obligations;
 - 5.1.2. work towards extending the recently adopted rules for the surveillance of the European Union external sea borders in the context of the operations of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), to national operations outside the framework of Frontex operations;
 - 5.1.3. commit to improving the recording and identification of migrants who die or disappear at sea, and ensure that survivors and relatives of the victims have prompt access to information about them;
 - 5.1.4. ensure family links are maintained or restored following rescue operations;

- 5.1.5. commit to swiftly, independently and thoroughly investigating any reported failures to rescue people at sea and to ensuring accountability;
- 5.1.6. commit to assisting coastal States to increase resources for search and rescue operations;
- 5.2. with regard to criminalisation of irregular migration:
 - 5.2.1. abolish factors which dissuade private vessels from carrying out rescues, by ensuring that the people rescued will be allowed to land quickly and by ending the threat of prosecution on charges of aiding and abetting irregular immigration which give rise to moral and financial damages;
 - 5.2.2. urge shipmasters and fishermen to comply with their obligations under international law to assist and report to the relevant authorities of the member States any migrant boats in distress;
 - 5.2.3. ensure financial compensation for shipmasters and fishermen for possible financial losses incurred as a result of rescue operations;
- 5.3. with regard to push-back practices:
 - 5.3.1. end all push-back practices and ensure that practices of rescue at sea are compliant with the right to seek asylum and the right to be protected against refoulement;
 - 5.3.2. ensure the credibility of any judicial probe or investigation into push-back incidents by guaranteeing their independence, impartiality and transparency;
 - 5.3.3. publicly condemn any occurrence of summary removals or collective expulsions which come to their attention and ensure accountability for any such incident;
 - 5.3.4. ensure, in particular, that any accelerated asylum procedures and the assessment of personal circumstances in the context of search and rescue operations respect a person's right to be protected from refoulement, in line with the Council of Europe 2009 Guidelines on human rights protection in the context of accelerated asylum procedures; ensure that all those intercepted have access to individual procedures to seek international protection or raise other protection needs, and have access to an effective remedy against return decision;
 - 5.3.5. ensure that any bilateral readmission agreement is drafted and implemented in a manner fully consistent with international human rights and refugee law standards and includes effective safeguards of human rights and access to an individualised fair and effective assessment;
- 5.4. with regard to the left-to-die boat incident:
 - 5.4.1. fully co-operate to find answers to the outstanding questions, by informing the rapporteur swiftly and adequately about the location of their vessels during the time the boat in question was drifting in search of help, and the messages their vessels received;

- 5.4.2. grant the right to residence for the survivors whose applications for asylum or residence on humanitarian grounds are still pending;
- 5.5. show further solidarity with third countries by giving more refugees access to resettlement or temporary reception programmes, and guarantee a safe journey to protection.
6. With a view to encouraging the creation of safe legal channels and preventing irregular migrants, asylum seekers and refugees from undertaking hazardous journeys to Europe, and to sharing the responsibility for asylum seekers inside the European Union, the Assembly recommends that the European Union:
 - 6.1. encourage its member States to increase resettlement quotas for persons in need of international protection and adopt a common approach to humanitarian visas; explore further possibilities for protected entries and migration routes enabling migrants to reach Europe in a regular manner;
 - 6.2. take steps to further harmonise the common asylum standards and procedures in the European Union, by, for example, considering a joint processing of asylum applications and the creation of a uniform asylum status; explore further possibilities to reinforce solidarity for asylum seekers and refugees within the European Union;
 - 6.3. strengthen Regional Protection Programmes and ensure their sustainability through sufficient funding; support neighbouring countries in improving their asylum and protection systems through mobility partnerships, and make further co-operation on migration and border control dependent on a sufficient level of protection for asylum seekers in these countries;
 - 6.4. ensure that Frontex makes the protection of fundamental rights a priority of its joint operations, and in particular seeks the ability – which is still lacking in the recently adopted regulation – to apply the rules (on search and rescue, disembarkation and non-refoulement) to migrant boats within the territorial waters of third States which clearly cannot meet their international obligations regarding search and rescue at sea or uphold the rights of irregular migrants, asylum seekers and refugees;
 - 6.5. ensure that Frontex establishes an effective mechanism for individual complaints of violations of fundamental rights, in order to improve its accountability;
 - 6.6. ensure that the mechanism of the European border surveillance system (EUROSUR) contributes to protecting and saving lives at the European Union's external borders;
 - 6.7. adopt measures to prohibit penal sanctions on private vessels carrying out search and rescue operations and to compensate them when they face economic loss after engaging in rescue operations;
 - 6.8. set up a proper system of data collection of the mortal remains of people who lose their lives in the Mediterranean and make it swiftly accessible to relatives.

7. The Assembly recommends that the North Atlantic Treaty Organisation (NATO):
 - 7.1. take into account possible movements of people in need of international protection in all NATO operations and reach agreements with all countries concerned to ensure that people in need of international protection are cared for;
 - 7.2. ensure that all NATO assets are equipped with Global Maritime Distress and Safety Systems, in any of its versions, and have the means to receive Hydrolant distress messages;
 - 7.3. publish the results of the lessons learned process in which it has been examining ways to strengthen information sharing and procedures related to search and rescue at sea during NATO-led operations.
8. The Assembly believes that the International Maritime Organisation (IMO) should play a role in promoting a common application of the legal framework of rescue at sea, as different approaches still today create excessive delays and failures to rescue people in distress at sea. To this end, it recommends that the IMO step up its efforts with a view to elaborating a regional memorandum of understanding on procedures to facilitate the disembarkation of persons rescued in the Mediterranean Sea.

Amendment 1

Tabled by Ms Tineke STRIK, Mr Philippe MAHOUX, Mr Tiny KOX, Mr Hans FRANKEN, Mr Tadeusz IWŃSKI

In the draft resolution, replace paragraph 8 with the following paragraph:

"The Assembly believes that the International Maritime Organisation (IMO) should play a role in promoting a common and effective application of the legal framework of rescue at sea, as today different approaches still create excessive delays and failures to rescue people in distress at sea. To this end, it recommends that the IMO:
- *step up its efforts with a view to elaborating a regional memorandum of understanding on procedures to facilitate the coordination of search and rescue operations and the disembarkation of persons rescued in the Mediterranean Sea;*
- *promote new consultations for amending and implementing the current legal framework, and in particular the IMO Conventions, with clearer and stricter rules and definitions;*
- *amend the International Convention for the Safety of Life at Sea (SOLAS) to expressly provide that exemptions generally applying to ships of war and troopships do not apply to Search and Rescue equipment and devices essential to transmitting and receiving distress signals and for communicating during Search and Rescue operations."*

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2014) "The 'left-to-die boat': actions and reactions".
2. The left-to-die boat tragedy and other recent ones that led to the loss of hundreds of lives need to trigger a radical change in search and rescue (SAR) policies and practices in Europe. Serious problems have arisen due to a lack of accountability, transparency and co-ordination. The Assembly considers that the Council of Europe has an important role to play in assisting member States in this respect.
3. With a view to preventing the human rights violations which result from the vacuum of responsibility in search and rescue and disembarkation, and to safeguarding solidarity among the member States, the Assembly calls on the Committee of Ministers to:
 - 3.1. instruct the Steering Committee for Human Rights (CDDH) to carry out a feasibility study on a common approach to fill crucial gaps in the legal framework on search and rescue in the Mediterranean Sea, namely the definition of distress, the obligation to respond immediately to a distress call, irrespective of the SAR zone the call comes from, the criteria according to which member States are responsible for disembarkation, and the abolition of factors which dissuade shipmasters and fishermen from carrying out rescues;
 - 3.2. on the basis of this feasibility study, hold a thematic debate, with the participation of the Assembly, on the above-mentioned issues, on finding safe routes for people in need of international protection (through resettlement and other types of protected entries), as well as solidarity mechanisms for European Union member States to share the responsibility for those rescued (such as relocation and joint processing of asylum requests in or outside Europe), in order to exchange best practices and offer solutions, and to find ways to facilitate agreements between States facing regular disputes on the co-ordination of rescue at sea and disembarkation;
 - 3.3. adopt guidelines on how to comply with the Hirsi Jamaa and Others v. Italy judgment of the European Court of Human Rights and urge member States to refrain from push backs.

Amendment 2

Tabled by Ms Tineke STRIK, Mr Philippe MAHOUX, Mr Tiny KOX, Mr Hans FRANKEN, Mr Tadeusz IWŃSKI

In the draft recommendation, paragraph 3.2, after the words "outside Europe", insert the following words: ", with due regard to the concerns of the Assembly in respect of the establishment of transit or processing centres adopted in Recommendation 1808 (2007) and Resolution 1569 (2007)."