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The large-scale arrival of mixed migratory flows on Italian shores

Report[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Mr Christopher CHOPE, United Kingdom, European Democrat Group

Summary

Europe has to face an increasing number of arrivals of mixed migratory flows on its southern shores and the hardships at the Italian borders will not fade away easily.

Commendable efforts have enabled the Italian authorities and their partners to respond to the emergencies, yet there is a dire need of further structural challenges in Italian migration policy to make the system fit for purpose.

It is time for Europe to take a new direction in order to provide a more structured and comprehensive response to these challenges.

1. Reference to Committee: Doc. 12557, Reference 4010 of 22 November 2013.

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A. Draft resolution[2]

1. The increased arrival of mixed migratory flows to Italian shores has put the migration policies of Europe in general, and of Italy in particular, under considerable pressure. Comprehensive approaches to the evolving trends are still required for the international protection and human rights of many children, women and men.

2. In 2013, 42 925 irregular migrants, around 27 800 of them asylum seekers, arrived in Italy via the Mediterranean Sea. Hundreds of others perished at sea. In 2014, by 12 May, 36 627 had already arrived.

3. On 3 October 2013, the unprecedented loss of 368 migrants' lives in a single shipwreck off the coast of Lampedusa caused a global shock wave and served as a turning point for change.

4. The Parliamentary Assembly commends the improved efforts by the Italian authorities to respond to the emergencies, in particular through the *Mare Nostrum* operation, but there is still a dire need of structural challenges to make the Italian and European systems fit for purpose. On the one hand, adequate reception capacities, proper identification and subsequent control of movement of the identified people, and swift and transparent processing of mixed migration flows are requirements that need to be fully met by the Italian authorities. On the other hand, the European authorities have to redefine their immigration policies and regulations and to support them with adequate financial and operational means.

5. Many migrants do not want to stay in Italy because they want to join their relatives or look for better job opportunities in other European countries. This causes irregular movements to other parts of Europe which undermine confidence in the European legal order and highlight the need for a review of the Dublin Regulation and its implementation.

6. The Assembly recalls its Resolution 1820 (2011) "Asylum seekers and refugees: sharing responsibilities in Europe", and stresses that all Council of Europe member States and the European Union should display more solidarity with Italy and other European front-line countries currently faced with arrivals of migrants from the southern Mediterranean. In return, Italy and the other European front-line countries need to assure their European partners that they will take all necessary measures to ensure that people who enter the country irregularly do not continue their journey into other member States of the Council of Europe. The same Resolution 1820 (2011) called on the European Union to "modify the Dublin system, … both to ensure fair treatment and appropriate guarantees for asylum seekers and beneficiaries of international protection and also to assist individual member States to face possible situations of exceptional pressure".

7. The Assembly therefore calls on the Italian authorities to implement a comprehensive series of measures to deal with mixed migratory arrivals in Italy, including:

7.1. with regard to managing the arrival of mixed migratory flows, to:

7.1.1. continue to carry out its supportive search and rescue operations, in close co-operation with other member States' operations and joint operations of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex);

7.1.2. step up its efforts to arrest traffickers and smugglers and ensure that those arrested are brought to justice; well publicised deterrent sentences for those convicted should follow;

7.1.3. secure a reliable, fair and transparent system to identify migrants immediately after their arrival on the shores and to establish swiftly who is entitled to asylum and international protection, in order to protect genuine refugees and asylum seekers;

7.1.4. ensure the respect of principles and provisions of the Dublin Regulation as regards the responsibilities of the country of first arrival;

7.2. with regard to reception and detention capacities, to:

7.2.1. ensure adequate reception conditions and medical assistance in accordance with relevant human rights and humanitarian standards;

7.2.2. set up an independent monitoring body to check that conditions and standards in reception and detention facilities are in compliance with international standards;

7.2.3. reduce the 18-month maximum period of time allowed to detain foreign nationals without any legal permit to stay;

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2. Draft resolution adopted by the committee on 3 June 2014.

7.2.4. step up the exchange of best practices in terms of governance, and provide training courses for operating staff in the field of migration;

7.2.5. facilitate the access to the centres by international organisations and non-governmental organisations (NGOs);

7.2.6. properly inform irregular migrants, asylum seekers, and refugees of their rights and obligations.

8. The Assembly welcomes the announcement by the Italian authorities of the priority to be given to the development of a common European response to arrivals of mixed migratory flows on Europe's southern shores during the upcoming Italian Presidency of the Council of the European Union (July-December 2014), and calls for concrete solutions.

9. The Assembly calls on Council of Europe member States to:

9.1. provide financial and operational assistance to the *Mare Nostrum* operation in order to ensure its continuing success;

9.2. promote changes in the Eurodac regulations to facilitate the identification of migrants and asylum seekers through the use of DNA records in addition to fingerprints;

9.3. implement measures to make border controls more effective;

9.4. respond positively to the suggestion of the Italian Minister of the Interior and others that camps should be set up in North African countries to process applications for asylum and international protection, and that the aim should be to intercept migrants before they set sail; consideration should be given to establishing centres to which the United Nations High Commissioner for Refugees would have access so that human rights can be protected;

9.5. take action to identify, arrest and bring to justice those engaged in trafficking;

9.6. respond positively to the request of the Libyan coastguard for financial and other support from the European Union to strengthen the capacity of the coastguard.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution ... (2014) on the large-scale arrival of mixed migratory flows on Italian shores.

2. It considers that the Council of Europe has an important role to play in assisting Italy and other member States in dealing with the human rights challenges of mixed migration flows across the Mediterranean, including the respect of *non-refoulement*, as has been highlighted by the Assembly recently in Recommendation 2010 (2013) on migration and asylum: mounting tensions in the eastern Mediterranean.

3. The recent tragic events off the coast of Lampedusa in October 2013, and in particular one incident in which well over 350 people drowned within sight of land, as well as in April-May 2014, have underscored the urgent need for increased efforts to counteract humanitarian tragedies.

4. The Assembly therefore recommends that the Committee of Ministers make use of the expertise of the Council of Europe to help tackle the human rights challenges arising from these mixed migration flows. It recommends in particular that the Committee of Ministers:

4.1. launch a reflection on how best to introduce a new international crime, whether or not defined as a crime against humanity, when a person receives a financial benefit directly or indirectly for transporting people in a vessel which is unsafe for the purpose and which may endanger life or cause death or injury at sea;

4.2. open negotiations to ensure that migrants who are intercepted within the territorial waters of a non-European Union country can be returned automatically to that country;

4.3. encourage the authorities of the countries concerned to open negotiations on the modalities and conditions of return to countries of embarkation of migrants intercepted in international waters;

4.4. for the coming year, make it a top priority to find solutions to the issues arising from the judgment of the European Court of Human Rights in the case of *Hirsi Jamaa and others v. Italy* (judgment of 23 February 2011, Application No. 27765/09) and make this judgment compatible with the established principle that each member country of the Council of Europe is entitled to maintain control over its own borders and to grant asylum or a lesser form of international protection to those who meet the necessary requirements;

4.5. consider the need for an extensive review of the Dublin Regulation and its implementation.

3. Draft recommendation adopted by the committee on 3 June 2014.

C. Explanatory memorandum by Mr Chope, rapporteur

1. Introduction

1. The increased arrival of mixed migratory flows on Europe's southern shores has been receiving the Parliamentary Assembly's attention for more than a decade.[4] In particular, the Assembly held an urgent debate in April 2011 and adopted Resolution 1805 (2011) on the large-scale arrival of irregular migrants, asylum seekers and refugees on Europe's southern shores.

2. Alarmingly, an increasing number of irregular migrants, asylum seekers and refugees are willing to risk their lives crossing the Mediterranean in dinghies in winter weather conditions on turbulent seas. Recent events prove that the trend and the pressure on member States borders are not be declining and are on the contrary reaching new worrying proportions.

3. The current report deals more particularly with the specific challenges faced by Italy. On 3 October 2013, the most tragic shipwreck took place off the coast of the Italian island of Lampedusa, Europe's most southern territory, when 366 people drowned and 155 were rescued, including about 40 minors. This incident was shortly followed by a second one on 11 October 2013, in which at least 38 people lost their lives.[5] These events created a global shock wave.

4. I had previously visited Lampedusa together with the members of an ad hoc sub-committee of the Assembly on 23 and 24 May 2011, when the arrivals were at a peak.[6] I also returned to Italy in order to go to Rome and Sicily from 9 to 11 October 2012. In the aftermath of the October 2013 tragedy, the Italian parliamentary delegation to the Council of Europe was keen that I should see in practice Italy's subsequent revised policies towards migration. I am most grateful to Mr Sandro Gozi, former President of the Italian Delegation, and his colleagues, in helping to arrange a most productive and informative visit, between 9 and 13 February 2014, to Rome, Lampedusa and Sicily. I would like to thank the Italian authorities and all interlocutors for the information provided during these visits.

5. One must acknowledge the commendable efforts by Italy over the last few years, and again, most recently, to save lives at sea. Although meeting with some success, the Italian emergency responses are proving to be insufficient to reception and protection needs in the long run. A few days after my visit in February 2014, Italy appointed a new Prime Minister with a new government which I believe is committed to implementation of reform. It is now more than ever that Italy should be encouraged to plan and carry out a structured approach to migration.

2. Arrivals in Italian coastal areas and Italy's emergency-based response

6. The geographical situation of Italy makes it prone to mixed arrivals of irregular migrants, asylum seekers and refugees. The gravity, complexity and extent of the issues raised by these arrivals in Italy have now reached crisis proportions. This is an emergency which demands an emergency response in addition to longer term policy changes.

2.1. The facts: mixed arrivals in Italy reach new dimensions

7. In 2011, a total of 62 692 non-nationals managed to cross the Mediterranean Sea, mainly from Tunisia and Libya, as a result of the armed conflicts in the southern Mediterranean countries, and landed on Italian shores. In 2012, some 12 000 people arrived in Italy by boat. In 2013, 42 925 migrants landed in Italy, among which 8 336 minors and 5 477 women. 34 000 people reached the Italian shores in the second half of the

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4. See, in particular, Resolution 1872 (2012) "Lives lost in the Mediterranean Sea: who is responsible?", Resolution 1821 (2011) on the interception and rescue at sea of asylum seekers, refugees and irregular migrants, Resolution 1637 (2008) "Europe's 'boat people': mixed migration flows by sea into southern Europe", and Resolution 1521 (2006) on the mass arrival of irregular migrants on Europe's Southern shores.

5. Since 1988, at least 19 524 irregular migrants, asylum seekers and refugees have drowned or gone missing while attempting to cross the Mediterranean Sea, of which 2 352 in 2011, at least 590 in 2012 and 801 in 2013. See, Fortress Europe, Blog by Gabriele Del Grande, collecting data on the basis of a census of international press. See also Resolution 1872 (2012) "Lives lost in the Mediterranean Sea: who is responsible?" (report Doc. 12895) and the "left to die" boat incident as one of the most notorious examples of failed rescue operations.

6. Ad hoc Sub-Committee on the large-scale arrival of irregular migrants, asylum seekers and refugees on Europe's southern shores, declassified report on the visit to Lampedusa (Italy), 23-24 May 2011, document AS/Mig/AHLARG (2011) 03 REV 2.

year. By mid-February 2014, Italy faced an unusual peak of arrivals, noting a tenfold increase compared to early 2013.[7] This surge in arrivals has not only continued unabated in 2014 but has accelerated to new unprecedented levels. By 12 May, 36 627 migrants had already arrived on Italy's southern coast according to the Ministry of the Interior.

8. Just before I arrived in Italy, on 5 February 2014, the Italian authorities had rescued more than 1 100 migrants drifting on eight rubber boats. Again, between 19 and 21 March 2014, an unprecedented 4 457 migrants and asylum seekers reached Sicily safely thanks to the Italian rescue operation. Such large-scale rescue operations are still ongoing.

9. Among the sea arrivals, according to the Office of the United Nations High Commissioner for Refugees (UNHCR), the largest populations originated from Syria (11 307), Eritrea (9 834), Somalia (3 263), Egypt (2 728), Nigeria (2 680), Gambia (2 619), Pakistan (1 753), Mali (1 674), Senegal (1 314), Palestine (1 075). They mainly leave from Libya.

2.2. Italy's response to arrivals: From the North African Emergency to the Mare Nostrum Operation

10. In 2011, Italy was confronted with serious difficulties in coping with the increased arrivals. As soon as the first boats arrived on Italian shores, the government declared, by decree of 12 February 2011, a state of humanitarian emergency. Within this framework, the government adopted urgent measures, using extraordinary funding, in addition to co-operating with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), to deal with the large-scale arrivals. The so-called "North African Emergency" was extended until 31 December 2012.

11. According to the UNHCR, a phasing out strategy from the emergency reception plan was put in place only in September 2012 by granting failed asylum seekers, regardless of their continued presence in the emergency reception system, a one-year residence permit on humanitarian grounds, and based on a review by the Territorial Commissions.

12. In response to the October tragedies, on 18 October 2013, Italy launched *Mare Nostrum*, a sea-based search and rescue squadron of ships supported by aircraft which operates in the Mediterranean between Italy and North Africa.[8]

13. *Mare Nostrum*'s avowed purpose is to ensure that no more migrants drown in the Mediterranean and, so far, it has been very successful in achieving this. The massive humanitarian success of *Mare Nostrum* should not be undermined by the reports of further sinking of vessels with consequent loss of life in April and May 2014.[9]

14. In 2013, a total of 281 boats, with 30 682 people on-board, were rescued by the Italian military assets, mostly in the Italian search and rescue (SAR) region, although also in the Libyan (66 boats) and Maltese SAR regions (79 boats).[10]

15. Since October 2013, those rescued are for the most part screened at sea and then transferred to centres in Sicily. This has rendered redundant the reception centre in Lampedusa which had accommodated the survivors of the October tragedy up until shortly after Christmas.

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7. Statistics provided by the Department for Civil Liberties and Immigration of the Ministry of the Interior.

8. Mare Nostrum includes 782 Italian Navy personnel aboard five naval vessels and four helicopters patrolling the Italian territorial zones supported by Carabinieri, Coast Guard, Police and Air Force units.

9. On 30 April, up to 40 Somalis drowned. On 2 May, 80 people were saved from a sinking vessel but four drowned. On 6 May, 36 migrants died and 42 were missing after a boat carrying 130 people from Burkina Faso, Cameroon, Gambia, Mali and Senegal capsized east of Tripoli. These tragedies took place inside Libyan territorial waters and involved unseaworthy and/or overloaded vessels trying to go beyond territorial waters into the Mediterranean with the specific purpose of them being able to be rescued and transported to Europe under the auspices of *Mare Nostrum*. See *The Guardian*, "Dozens dead as migrant boat sinks off coast of Libya", 11 May 2014. See also Amnesty International, "European Union leaders must urgently act to stop the increasing death toll in the Mediterranean Sea", Public Statement, Brussels, 13 May 2014.

10. Data from the Maritime Rescue Co-ordination Centre Rome, Italian Coast Guard Headquarters, Ministry of Infrastructure and Transport, February 2014.

2.3. The counter-effects of the Mare Nostrum operation

16. There can be no doubt that the *Italian Mare Nostrum* operation is saving thousands of lives. Between October 2013 and mid-May 2014, the operation had rescued some 27 790 migrants, of which 3 034 minors. It has also resulted in some of those engaged in the vile crime of people smuggling being apprehended (207 were allegedly charged by mid-May).[11] Well-publicised deterrent sentences on those convicted should follow.

17. Ironically, however, it is also thought to have contributed to a much increased flow of seaborne migrants setting out from North Africa and heading for Italy. The tenfold increase in January 2014 compared with January 2013 is considered to be related to the greater certainty on the part of migrants that they will reach their chosen destination alive. I heard evidence from the Italian Navy that mother ships are now operating out of Alexandria in Egypt which carry large numbers of migrants on board and then transfer them to small dinghies when they are just outside Italian territorial waters, where they are almost certain to be rescued by the Italian Coastguard. Many migrant boats are equipped with a mobile phone which has the direct number for the Italian Coastguard.

18. Organised crime is heavily involved in facilitating this much increased volume of migration. The business of transporting and facilitating the movement of migrants into Europe is a highly profitable international criminal activity. People displaced from the Syrian conflict, the Eritrean civil war and the political problems in Sudan, mixed with people from other parts of Africa seeking a better life in Europe are able to obtain passage across the Mediterranean for between $1 500 and $5 000 each, dollars being the preferred currency of the smugglers. The best estimate is that the passengers on the ship which went down off Lampedusa in October comprised a human cargo for which smugglers had received well over $1 million. Countries have to recognise that they are dealing with international crime generating well over $100 million a year.

19. The Assembly should be concerned to note that there are reported to be as many as 800 000 people along the Libyan coast waiting to obtain passage to Europe.[12] Many of these are reasonably well educated with sufficient resources to enable them to purchase preferential access to Europe by way of the Mediterranean. Such flows of irregular migration were not possible when Libya had an effective government. Now it is a disparate mass of war lords and militias whose only interest is in exploiting those who are en route to Europe. Forced labour and sexual exploitation is rife and on such occasions as Libyan authorities intercept vessels which are leaving Libya, the fare paying passengers find themselves locked up in detention camps from which they can only be released through financial help from their relatives. With no prospect of political stability in Libya in the near future, it seems inevitable that the people trafficking will continue to flourish.

20. It still remains to be seen whether the Minute signed on 3 April 2012 by the Ministers of the Interior of Italy and Libya in which Italy confirmed its support to strengthening Libya's normative and institutional capacities to control their borders and safeguard the human rights of third country nationals, will have a lasting impact on the shattered situation. I was informed by the former Foreign Affairs Minister, Ms Emma Bonino, that Italy is committed to supplying Libya with technical means and equipment, namely drones, to improve the surveillance of its borders, and has invited Libya to sign the 1951 Geneva Convention relating to the Status of Refugees.

3. Italy's policy to cope with mixed arrivals: between resolute fight and laissez-faire

21. Measures to control borders and counter irregular migration are a legitimate prerogative of the State. They are essential for an effective migration management system. These measures, however, have to be carried out in full respect of international human rights and refugee standards, and in particular the principle of *non-refoulement*.

3.1. Italy's efforts to restrain from push-back policies and decriminalise irregular migration

22. For several years, Italy was criticised for fighting irregular migration at its borders by practicing push-backs and criminalising migration, in contradiction with international human rights and refugee law.

23. Eventually, Italy was condemned by the European Court of Human Rights for its push-back practices aimed at intercepting migrants' boats on the high sea and returning them to Libya.[13] Since the Court's ruling, the Italian Government has indicated that they no longer undertake push-back operations, as those ended

11. ANSA," Immigrant row erupts as 1 000 land", 7 May 2014.
12. *The New York Times*, "Europe's migration Emergency", The Editorial Board, 18 May 2014.

when the above-mentioned April 2012 Minute was signed. Yet, a concrete, comprehensive and consolidated action plan from Italy remains to be seen by the Committee of Ministers of the Council of Europe supervising the execution of the case.

24. Moreover, the worrying *Salamis* and *Adakent* incidents which occurred in August 2013 and are described in the report on "The 'left-to-die boat': actions and reactions" by rapporteur Tineke Strik (Doc. 13532) have raised again the issue of push-backs. This concern requires careful attention and safeguards.

25. Furthermore, criminalising migration was also seen as a way to deter irregular migration.[14] Fishermen have also been prosecuted for smuggling irregular migrants into Italy. With growing numbers of arrivals, it became apparent that criminal sanctions alone would not provide an adequate solution to the problem. On 21 January 2014, the Italian Senate voted to repeal the previous legislation criminalising irregular migration. The lower house of the parliament still needs to take a stand on the legislative change for it to take effect.

3.2. Italy's return policies

26. According to the Italian Ministry of the Interior, 28 000 expulsion orders were issued in Italy in 2013, of which 7 000 were taken to the border.[15] The ability to effectively perform expulsions depends largely on effective co-operation with the countries of origin and this has proven to be difficult at times.

27. Since the beginning of the 2011 migratory arrivals, Italy has entered into agreements with the new North African governments.[16] These co-operation and readmission agreements focused on reinforcing border controls through preventing irregular migration and fighting trafficking and smuggling. They also facilitated the return and readmission of those who crossed the Mediterranean.

28. These recent readmission agreements were, however, criticised during my visit by local and international non-governmental organisations (NGOs), as they provide for simplified return procedures for new arrivals and allow direct repatriations. While a swift processing of irregular migrants presents an effective means of avoiding lengthy detention periods, accelerated procedures might amount to collective summary removals[17] if they are not done in conformity with the procedural guarantees set out in the European Union Returns Directive, the European Convention on Human Rights (ETS No. 5) and the Schengen Borders Code. If people are not given time to make an asylum claim, the procedures may also raise concerns under asylum law.

29. Furthermore, according to the UNHCR, the April 2012 Minute signed with Libya does not include specific protection safeguards for asylum seekers and refugees. Proper implementation of the human rights clauses contained in the bilateral agreements must be guaranteed in practice. The Council of Europe Committee of Ministers has adopted in May 2005 "Twenty Guidelines on forced return" which can be referred to. It also called on Mediterranean member States receiving mixed flows of irregular migrants, refugees and asylum seekers to "promote the use of assisted voluntary return programmes with the support of the International Organization for Migration (IOM)".[18]

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13. Judgment of 23 February 2011 [Grand Chamber] in the case of *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09.
14. In March 2011, the chief criminal prosecutor of Agrigento in Sicily started to open criminal cases on charges of "illegal immigration" against around 6 000 Tunisians who arrived on the island after mid-January 2011.
15. On the basis of return agreements, 2 076 charter flights, 1 029 regular flights and 100 Frontex co-funded flights were organised to carry out expulsions.
16. On 5 April 2011, Italy reached an agreement with Tunisia according to which Italy granted a six-month temporary residence permit to most of the Tunisian migrants who arrived in Italy between 1 January and 6 April 2011 in exchange for strengthened border controls by Tunisia with a view to preventing departures. As a consequence, irregular departures from Tunisia declined significantly. Approximately 18 000 humanitarian permits were issued by the Italian authorities. These were extended on request in October 2011 for about 5 000 Tunisians and again automatically in May 2012.
17. Based on these agreements, nationals from these countries are generally processed within 48 hours after landing, with the assistance of consulate authorities.
18. Resolution 1637 (2008) "Europe's 'boat people': mixed migration flows by sea into southern Europe". See also Resolution 1742 (2010) "Voluntary return programmes: an effective, humane and cost-effective mechanism for returning irregular migrants".

30. I acknowledge the steps that have been undertaken by the Italian authorities to increase the number of voluntary returns. The authorities support in particular the Italian Network for Assisted Voluntary Return (RIRVA). Since 2009, 38 000 cases of voluntary returns were reported and as of 2013, the programme has allocated the sum of €2 100 per person, in addition to social and professional reintegration measures in the country of origin.[19]

3.3. Laissez-faire policy: Italy's flaws in identifying adequately the mixed arrivals

31. At my meeting with the former Foreign Affairs Minister in Rome in February 2014, Ms Bonino told me of her concerns about the grave threat to international and European security posed by this latest movement of people from North Africa. In her view, Al Qaeda sleepers are among those making the illegal passage to Europe.

32. The security threat to Europe is compounded by the insufficiencies of the Italian authorities' practice in identifying successfully those being smuggled. While *Mare Nostrum* is ensuring that far fewer migrants can reach Italy undetected, even once detected those migrants may still refuse to disclose their identity or even allow their fingerprints to be taken.

33. I spent some time discussing this aspect with the Italian authorities, not least because I was concerned at reports that none of the survivors of the Lampedusa tragedy allowed themselves to be fingerprinted while in the reception centre. After they were transferred to the Italian mainland just after Christmas, they were put into open reception centres from which most have now disappeared but without any record of their identity having been obtained. This means that they are free to roam unchecked within the Schengen Zone and can claim asylum in a country of their choosing without any record being held that they were even in Italy.

34. The vulnerability to exploitation which this lack of identification facilitates remains a serious cause for concern, as indeed does the fact that so many people are entering Europe without permission and without the European authorities having any record of their presence or information about their identity. The potential plight of minors aged over 14 exposed to exploitation by reason of refusing to allow themselves to be identified should be of great concern to the Assembly.

35. European Union legislation is clear in requiring that member States of the European Union and other countries which have signed the Dublin Regulation, namely Iceland, Norway and Switzerland, must comply with what is known as the "Eurodac system".[20] Chapter III of the 2000 regulation addresses "aliens apprehended in connection with the irregular crossing of an external border". Article 8 requires that each "Member State shall, in accordance with safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child, promptly take the finger prints of all fingers of every alien of at least fourteen years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back". The article then requires that the "Member State concerned shall promptly transmit to the central unit … data relating to any alien including the place and date of apprehension, finger print data and the date on which the data were transmitted to the central unit".

36. The knowledge among migrants, particularly those from Eritrea, that they can use Italy as a staging post without being identified, has contributed to the pull factor of Italy as a destination.

37. I challenged the Italian authorities on their failure to comply with European legislation designed to protect the borders of the European Union. They told me that, under Italian law, they do not have the right to obtain fingerprints from a person without that person's consent. I find this surprising, particularly when it applies to people who prima facie have unlawfully entered Italian territory. Moreover, in practice, the lack of swift identification of 'aliens apprehended in connection with the irregular crossing of an external border' and kept in prison most often for several months, results in forcing a double sentence on those persons who are often transferred to a Centre for Identification and Expulsion (CIE). When I visited the CIE Contrada Milo (Trapani), half of the 156 detainees had come directly from prison.

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19. Conference of RIRVA (Rete Italiano per Ritorno Volontario Assistito – the Italian Network for Assisted Voluntary Return) on "Assisted Voluntary Return, Migratory Policy, and Co-development", Chamber of Deputies, Rome, 9 April 2014.
20. The relevant regulations of December 2000 (Nos. 2725/2000 and 407/2002) set out the rules of the so-called "Eurodac" Regulation.

3.4. The obligation for asylum seekers to co-operate

38. I also find it bizarre that those who are fleeing from conflicts in Syria or other parts of Africa should refuse to co-operate with the Italian authorities when they are seeking a safe haven from their persecutors. United Kingdom law emphasises the importance of the principle of equity, a key element of which is that if somebody seeks the protection of the law, they are under an obligation to co-operate. It is said that migrants from Syria and Eritrea do not wish to apply for asylum in Italy because they would prefer to apply for asylum in, for example, Sweden, Switzerland or Germany where they can join relatives and find better quality reception conditions and integration prospects. But it is exactly such "forum shopping" that the Dublin Regulation is specifically designed to prevent. Reunification with family or diaspora should be done in a transparent and legal manner.

39. As many of the migrants who ultimately reach Italy do not wish to stay in Italy but would prefer to engage in forum shopping, a part of any solution could be for Italy, as an emergency measure, to close access to other parts of the Schengen area. The message would then, hopefully, reach potential migrants that they would not be able to go beyond Italy and would, therefore, think twice about whether to make the journey in the first place.

40. There is a vivid account of one of the asylum seekers, Fanus, who survived the Lampedusa tragedy, reported in *The Guardian* newspaper of 22 March 2014.[21] It refers to how she did not want to start a new life in Italy because of high unemployment, poor social security and limited training and education opportunities for refugees. In order to avoid being registered as an asylum seeker in Italy, she tried to burn and disfigure her fingers by using melted boiling plastic. She later left a reception centre in Sicily and made her way to a centre controlled by people smugglers in Rome where she was told that she needed to pay $850 for a fake passport and an airline ticket to Stockholm. Her chosen route was by train to Milan and a plane to Stockholm via Barcelona. Once in Stockholm she claimed asylum. *The Guardian* article confirms that all but two of the 155 survivors of the Lampedusa disaster, all from Eritrea, have now left Italy for other destinations in Europe.

41. *The Guardian* article corroborates other stories which I heard during my visit and is a direct challenge to the Italian authorities who told me that they had more or less solved the problem of non-identification of migrants. One possible way of overcoming any problem in obtaining fingerprint evidence would be to allow the collection of DNA evidence which can be taken less intrusively. Unfortunately, this is currently specifically excluded by the Eurodac regulations and even from the "updated" regulation which comes into effect in 2015. This is a lacuna in the law which can and should be filled without delay.

42. During my visit, I was interviewed by television journalists from Sweden who informed me of the concern in Stockholm at the very large numbers of asylum seekers there who are thought to have transited without detection through Italy. Among the 42 925 arrivals in 2013 in Italy, an increasing number of people potentially qualify for international protection. Around 27 800 asylum requests were registered in 2013 in Italy.[22]

43. Yet, Italy says that the nationalities which particularly avoid supplying fingerprint information are Syrians and Eritreans.[23] This is borne out by Sweden which had received 4 844 asylum applications from Eritreans compared with the Italian number of 2 216. The same is apparent in relation to Syrians, only 695 of whom sought asylum in Italy while 16 317 chose Sweden.

44. Other data from the UNHCR shows that Italy is not the special case which so many Italian politicians and officials tried to tell me it is. In the ranking of asylum seekers per 1 000 inhabitants in 2013, Italy is ranked below 22 other European countries.[24] The rate of asylum applications per 1 000 inhabitants in Italy was only 0.3 while it was 4.6 in Sweden and 4.8 in Malta. Sweden, Germany, France and the United Kingdom all had larger numbers of asylum seekers and a higher proportion relative to total population. In calling, therefore, for more European Union solidarity, Italy should recognise that it must make its own proportionate contribution to addressing the surge in asylum seekers.

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21. "Lampedusa boat tragedy: a survivor's story".
22. The number accounted for a 60% increase compared to 2012, but it remained below the 34 000 asylum claims reported in 2011. See UNHCR, Asylum levels and trends in industrialized countries, 2013, 21 March 2014.
23. Fleeing from the crisis or persecution, the Syrians and Eritreans, alone, account for nearly half (circa. 20 000) of the migrants that landed in Italy in 2013. Yet, they only account for 2 911 of the asylum applications.
24. UNHCR, Asylum levels and trends in industrialized countries, op. cit.

45. The figures for 2014 are likely to show that Italy is receiving many more asylum claims, not least because a much higher proportion of those arriving will be obliged to register in Italy and thereby incentivised to make their asylum claim in Italy. This will help Italy make its case for more solidarity and sharing of responsibility to address this crisis.

4. Detention, reception and integration: a way to go towards sustainability

46. The sudden increase in numbers of people arriving from North Africa certainly put Italian reception capacities under strain and revealed structural deficiencies concerning the emergency-based approach in managing mixed migration flows.

4.1. Immigration detention conditions

47. More than 6 000 irregular migrants, including nearly 600 women, were detained in 2013.[25] According to Italian law, foreign nationals without any legal permit to stay can be detained in administrative detention facilities, known as Centres for Identification and Expulsion (CIEs), for a period of 30 days, renewable for a maximum period of 18 months, both for identification purposes and pending their removal. The IOM advised that the period be reduced "to what is strictly necessary for the identification and release the migrant when the identification is impossible for reasons that cannot be attributed to the migrant".

48. Currently, only five of the 13 CIEs are operating in Italy, bringing down the full capacity from 1 551 to 668 places. The eight others were temporarily closed due to damages to the structures, riots or management problems. The conditions of detention differ considerably throughout Italian CIEs, and only a few centres reach satisfactory standards.

49. The large number of riots and escapes, as well as the recent incidents of self-harm and suicide attempts among migrants are a sign of frustration and despair. More than 900 detainees managed to escape from CIEs in 2013.[26] Fifteen days before I visited Italy in February 2014, a group of migrants sewed their lips in protest against the poor conditions and silence with regard to their asylum applications in Ponte Galeria's CIE.

50. Protection from self-harm and violent behaviour among detainees needs to be reinforced. Means to identify vulnerable persons in detention, including age determination procedures, need to be seriously improved. The UNHCR and other NGOs reported difficulties asylum seekers face in accessing the asylum procedure during detention, even in cases where the intention to seek asylum had been expressed prior to the transfer to the CIE.

51. In addition, Centres for first aid and reception (CSPAs) have also had a history of being used to detain irregular migrants upon arrival. This was the case for Lampedusa's main reception centre, which at times had been functioning as an immigration detention centre without providing the necessary safeguards applicable to detained people.[27]

52. The October 2013 tragedies put further strain on the tiny island of Lampedusa, and on 17 December 2013 video evidence of the humiliating conditions of migrants in the centre of the island was broadcasted around the world and gave rise to a further polemic debate on the recurrent ill-treatment of the detainees and lack of an effective monitoring system. I visited that reception centre which is now undergoing reconstruction and modernisation with a view to it being reopened later this spring with a new annex to the centre where 800 could be lodged. The Lampedusa community, with the lead of its Mayor, Ms Nicolini, is committed to making the island a safe harbour. Italian authorities must honour this commitment by ensuring the proper functioning of the reception facilities, once they open again in the spring.

53. Access to asylum procedures and monitoring of reception conditions in all governmental reception facilities have been improved. Italy must continue to ensure that national regulations define minimum standards for detention facilities and independent monitoring procedures allow for regular visits to places of detention.

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25. In comparison, nearly 8 000 irregular migrants (including more than 900 women) were detained in 2012. See Medici Per I Diritti Umani, The CIE Archipelago, Inquiry into the Italian Centres for Identification and Expulsion, Summary, May 2013.

26. Medici per i Diritti Umani, Italian Centres for Identification and Expulsion: National Data for 2013. Even more useless and distressing structures, Press release, 25 February 2014.

27. Council of Europe Commissioner for Human Rights, report by Thomas Hammarberg following his visit to Italy on 26 and 27 May 2011, 7 September 2011, paragraph 61.

4.2. The reception system for asylum seekers in Italy (SPRAR):

54. I welcome the intention of the Italian authorities, stated in a decree of 17 September 2013, to increase the reception capacity of the SPRAR (Protection System for Asylum-seekers and Refugees) system, managed by the National Association of Italian Municipalities (ANCI), from 8 000 places to 16 000 places, by means of a triennial plan (2014-2016).

55. Although many asylum seekers are welcomed by their communities present in Italy, it is clear that the existing capacities in Italy in terms of reception are insufficient to meet the increasing needs and that the quality of the reception conditions, especially when the situation involves children, has been questioned recently in the European Court of Human Rights case of *Tarakhel v. Switzerland*.[28]

56. Reports, confirmed by my discussions with the NGO Medici per i Diritti Umani (MEDU), of migrants being allegedly given strong doses of sedative medicine in CARAs and CIEs, reportedly leading to suicides, are worrying and should be given full attention by the Italian authorities.[29]

57. Particular attention must continue to be paid to the situation of vulnerable persons, including vulnerable women, unaccompanied migrant children (UMCs), disabled persons and elderly persons. I encourage the Italian authorities to implement the European Directive on Returns that provides for the possibility to release a temporary residency permit to vulnerable migrants.[30]

58. Reports of worrying overcrowding of centres are still recurrent, namely in the reception centre in Sicily and particular that of Mineo, near Catania (Sicily). The situation has been particularly worrying in Rome, given that many new asylum seekers were moved to the city. In February 2014, nearly 3 000 people – the majority coming from Afghanistan, Sudan, Ethiopia, Somalia and Eritrea and having obtained residence permits – have been living in large unoccupied buildings, informal squats, so-called "hotspots", or even on the streets in squalid conditions. The Council of Europe Commissioner for Human Rights had already criticised the "intolerable circumstances" of refugees and other beneficiaries of international protection who were forced to live in "destitute conditions", which he considered "unacceptable in a country like Italy".[31]

59. When I visited centres in Trapani (Sicily) in mid-February 2014, the president of the Territorial Commission for the recognition of international protection (*Commissioni territoriali per il riconoscimento della protezione internazionale* – CTRPI) informed me of the establishment of a new CTRPI in Palermo to cope with the increase of arrivals in Sicily. The UNHCR has also expressed[32] their appreciation of the work performed by the CTRPIs and their compliance with the guidelines regarding the criteria to be applied, namely the European "Qualification" Directive.[33] A mechanism of systematic quality monitoring, aimed at ensuring a harmonised approach in all CTRPIs, and minimum quality standards still need to be put in practice.

60. The Italian authorities must ensure strong governance, and enhance planning. During my visit to Sicily, I was also able to observe first-hand the management of the "Salina Grande" Reception Centre for Asylum Seekers (CARA) in Trapani. Such best practices should be further shared.

4.3. After the emergency – sustainability?

61. One must commend the recent efforts of the Italian authorities to improve the reception scheme, yet the lack of support for the integration of refugees and other beneficiaries of international protection has become even more apparent and problematic.

62. The emergency approach has seriously hampered integration prospects for beneficiaries of international protection. I remain convinced that giving the opportunity for asylum seekers and refugees to work is a beneficial measure to the person and to any receiving society.

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28. *Tarakhel v. Switzerland*, Application No. 29217/12, judgment of 12 February 2014 [Grand Chamber].
29. Statewatch, Ongoing calls for the closure of immigration detention centres, 15 April 2014.
30. European Union: Council of the European Union, Directive 2008/115/EC of 16 December 2008 on common standards and procedures in member States for returning illegally staying third-country nationals, articles 9 and 14.
31. Council of Europe Commissioner for Human Rights, "For human rights protection, Italy needs a clear break with past practices", press release after the Commissioner's visit to Rome from 3 to 6 July 2012.
32. UNHCR, Recommendations on important aspects of refugee protection in Italy, July 2013.
33. European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011.

63. During my visit in February 2014, I was able to meet with the former Minister of Integration (without portfolio), Ms Cécile Kyenge, who advocated for more attention and funds to the Italian integration policy. I encourage the new government to make integration a key solution to sustainability.

5. The European dimension: Europe's insufficient response to the arrivals of migrants

64. I have described above the efforts and the remaining difficulties encountered by Italy in dealing with the new arrivals. The Italian authorities have, however, promptly called on the European Union and its member States for assistance.

5.1. Financial and operational assistance provided to Italy

65. In the context of the North African Emergency, the European Union replied to Italy's appeal by allocating supplementary emergency funding of €25 million, in addition to the €75 million Italy had at its disposal in 2011 through the European Commission's four migration-related funds for 2007-13.

66. Operational assistance has been provided via Frontex, which stepped up maritime operations and surveillance in response to the arrivals.

67. On 4 June 2013, Italy and the European Asylum Support Office (EASO) signed a Special Support Plan, providing for EASO support, until the end of 2014, to Italy in a number of prioritised areas, such as data collection and analysis, Country of Origin Information (COI), Dublin system, reception system and emergency capacity, and training of independent judiciary.

68. For 2014-20, simplified funding programmes have been established in the context of an Asylum, Migration and Integration Fund (AMIF) and an Internal Security Fund (ISF), amounting to €3.1 billion and €2.8 billion respectively, namely just over 0.5% of the overall European Union budget up to 2020.[34] The Commission has set aside funding (including emergency funding) of up to €30 million in support of Italy, including for border surveillance operations under the Frontex mandate.[35]

5.2. An opportunity for intra-European solidarity

69. Italy has long advocated the need for a common European approach to migration to guarantee the effective management of migration flows and access to protection. It is a regrettable that this opportunity for more European solidarity has not yet been seized.

70. However, Italy's policy response of providing irregular migrants with temporary residence permits and failure to carry out identification,[36] allowing them in practice to travel freely inside the Schengen area, as well as the *Mare Nostrum* Operation, reportedly creating a pull-effect, has not helped convince other European Union member States to share responsibility. Many considered these moves counterproductive – and in the end it had the effect of jeopardising potential efforts for more solidarity and responsibility-sharing. The inability to address the problems of migration has resulted in extensive loss of public faith in governments and institutions in the European Union and its member States. Recent euro-barometer polls show that in many countries, two thirds of people have no faith in the European Union.

71. A European Commission convened "Task Force Mediterranean" was established in the aftermath of the October 2013 shipwrecks and identified five priority areas of actions for a holistic approach to preventing deaths at sea and better addressing migratory and asylum flows.[37] Assessment of progress in relation to the 38 short-term objectives, and discussion on the long-term solutions, should take place in June 2014 in the context of the discussions on the post-Stockholm programme.[38]

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34. European Parliamentary Research Service, European Union funds for asylum, migration and borders, Briefing, 2 February 2014

35. Commission to the European Parliament and the Council, Communication on the work of the Task Force Mediterranean, 4 December 2013, COM(2013)869.

36. Italian Minister of the Interior, Angelino Alfano, has recently said that without help from the rest of Europe to stem the tide of arrivals from North Africa, Italy will defy European Union rules about the need to register all migrants who arrive in Italy. He was quoted in *The Daily Mail* of 15 May as saying "We'll just let them go. Since migrants do not want to stay in Italy, they should have the opportunity to exercise their right of asylum in the rest of Europe".

37. Commission to the European Parliament and the Council, Communication on the work of the Task Force Mediterranean, op. cit.

38. The Stockholm Programme sets out the European Union's priorities for the area of justice, freedom and security for the period 2010-14.

72. Frontex should be given a greater role in supporting the *Mare Nostrum* initiative to demonstrate European solidarity with Italy.

73. When *Mare Nostrum* is considered in conjunction with the 2011 ruling of the European Court of Human Rights in *Hirsi*, this has the consequence that as soon as migrants reach international waters from North Africa, they can use the mobile telephone which is invariably supplied to call the Italian coastguard and be rescued by *Mare Nostrum*. Prior to *Hirsi*, such migrants could have been returned to the transit country or their country of origin, but such action has been outlawed by the decision to apply an extraterritorial interpretation to Article 4 of Protocol No. 4 to the European Convention on Human Rights (ETS No. 46) regarding the collective expulsion of aliens. The rules on *non-refoulement* ensure that as soon as a migrant reaches the open Mediterranean they are assured of being able to stay in Europe, albeit with only limited protection.

74. When the Italian Government made its submission to the Court in *Hirsi*, it said that, "The European pact on immigration and asylum provides for limits on migratory flows, the need to control illegal immigration by ensuring that illegal immigrants are returned to the country of origin or to a country of transit, the need to make border controls more effective and to make partnerships with countries of origin or transit". There is, however, a collective failure to implement this European pact. We must ensure that the principle that European Union border controls are made effective becomes a reality.

75. The building blocks for more effective protection systems in Europe are there but there are still achievable steps that can be taken to strengthen the existing legal and policy framework in all member States of the Council of Europe.[39] I encourage the member States to ensure, through the Common European Asylum System (CEAS), the effective operation of a common policy on asylum and international protection. All member States should guarantee the proper transposition of European Union instruments into national legislation and the correct implementation of the Dublin Regulation, with care given to all applicable responsibility criteria. A dialogue should be created between administrations and courts in and between member States on the interpretation of legal provisions and the consequences of decisions on the persons concerned.

76. I welcome the European Commission's objective for EASO to set up a new project on support for processing of asylum applications, where European Union member States officials will come to front-line countries to support the processing of asylum applications.

5.3. Solidarity going beyond Europe

77. Faced with the pressure of such increasing numbers of arrivals of irregular migrants, refugees and asylum seekers, the Italian Minister of the Interior, Mr Angelino Alfano, has suggested that Europe should intercept the migrants in Libya, setting up camps there and offering aid.[40] Mr Alfano's suggestion was endorsed in a leading article in *The Independent*[41] which said that "month by month it becomes harder for European Union leaders to ignore the migrant crisis on the Continent's southern shores… The European Union should aim to intercept migrants before they set sail". It does not, however, say how this is to be achieved while being compatible with the current state of European Union law. These comments, however, exemplify the apparent impotence of the governments of the countries of Europe both individually and collectively in the face of the new emergency which, by reason of its scale and extent, is overwhelming the authorities.

78. Meanwhile, Libya's Minister of the Interior, Mr Salah Mazek, stated in May: "I am warning the world – and Europe in particular – if they do not assume their responsibilities, Libya could facilitate the transit of this flood."[42]

79. I encourage initiatives to support institutional and normative capacity building of third countries. As proposed by the Commissioner for Home Affairs, Cecilia Malmström, EASO could also co-operate with third countries to reinforce asylum and reception capacities as well as regional protection programmes.[43] European Union funding is also made available by the new Asylum and Migration Fund (2014-2020) for more

39. UNHCR, Asylum and international protection in the EU: strengthening cooperation and solidarity, January 2014.
40. *Daily Mail*, "United even in death", 15 May 2014.
41. *The Independent*, "EU can't keep looking away as migrants perish at sea", editorial, 15 May 2014.
42. *The Guardian*, Dozens dead as migrant boat sinks off coast of Libya, 11 May 2014.
43. European Commission, European Union's external migration policy: a bolder approach, Press release, Brussels, 21 February 2014.

resettlement and humanitarian admission places. Although effective results are not easily reached, these efforts are positive steps towards promoting international protection and respect for fundamental rights, as well as functioning border and migration management systems and effective return policies.

80. Trafficking and smuggling activities, which have shown themselves to be very lucrative, should be considered as a a new international crime, whether or not defined as a crime against humanity, when a person receives a financial benefit directly or indirectly for transporting people in a vessel which is unsafe for the purpose, whether by being overcrowded, overloaded or lacking basic safety equipment for passengers such as life jackets. More efforts should go towards promoting an international crime to cover the situation where a person endangers life or causes death or injury at sea by reason of providing transport in a vessel which is unsafe. Every effort by Europe and member States should be taken to fight against those crimes.

81. Besides the fact that EUROPOL should be given a stronger and more effective role in this area, more links can be created to exchange operational data, in the context of early warning systems, concerning the people and organisations involved in smuggling migrants, asylum seekers and refugees and trafficking human beings. The “Seahorse Mediterranean network” between European Union Mediterranean member States and North African countries should be established by 2015 for States to directly exchange information on incidents and patrols via satellite communication.

82. I encourage the implementation of further awareness-raising programmes, through the media, local associations, diaspora communities and in countries of origin and transit on the conditions in Europe and the dangers of irregular travel. To this end, member States should put political pressure on these countries as well, to allow for the safe work and access to migrants of international organisations and NGOs. This need is particular critical in Libya. Countries should be encouraged, if they have not yet done so, to ratify the 1951 Geneva Convention relating to the Status of Refugees.

6. Conclusions

83. The large-scale arrival of migrants in Italian coastal areas resulting from the unrest surrounding the “Arab Spring”, the Syrian crisis, the fall-out of national institutions, persecutions, and the absence of economic prospects is not a “one-off”, but is continuing. Italy has become a transit destination for tens of thousands of irregular migrants, asylum seekers and refugees.

84. Italy is increasingly aware that it needs to work towards elaborating an integrated and structural strategy with effective mechanisms to identify, manage and receive increased arrivals of mixed migratory flows, while safeguarding the human rights of the people caught up in those flows.

85. The Italian authorities must ensure that the asylum package currently being discussed transposes effectively the European recast Directives and guarantees a reliable system for the protection of vulnerable people and the return of those not in need of protection.

86. The Italian authorities should take the necessary legal and other steps to fully implement the Dublin Regulation, in particular as regards what is known as the Eurodac system and effective protection of the European Union borders.

87. I hope that during the Italian European Union presidency (July-December 2014) the Italian authorities remain committed to their promises to put the management of mixed migratory flows on top of their agenda as a global, economic, political and humanitarian issue.