

PRIORITISING BORDER CONTROL OVER HUMAN LIVES

# Violations of the Rights of Migrants and Refugees at Sea



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
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## Executive Summary

Following the tragic death of 366 migrants off the coast of Lampedusa on 3 October 2013, the European Commission set up the “Task Force for the Mediterranean” to “tackle” the issue of deaths at sea on its southern border.

However, it is evident from both the Task Force’s recommendations as well as its first working document on their implementation<sup>1</sup> that these do little more than offer more of the same, repackaging already existing policies and placing a disproportionate focus on cooperation with third countries, reinforced border control, and voluntary returns. Among other things, it suggests strengthening Frontex’s role in rescue operations and highlights the importance of EUROSUR as a system that can both carry out surveillance and save lives. But increased surveillance and border control do not in themselves save lives.

Through concrete examples of cases where the rights of migrants and refugees have been violated, and a critical analysis of European Union (EU) policy-making regarding maritime operations, this brief aims to raise awareness of the policies and

legal frameworks which not only put the lives of migrants and refugees at risk at sea but also undermine their rights. It also provides examples of actions taken by civil society organisations to challenge current policies, which it hopes will inspire further advocacy and awareness-raising actions.

The policies envisaged by the EU and its member states do not offer real and comprehensive solutions to the loss of lives in the Mediterranean. It is the reluctance of states to shoulder the responsibility of accommodating those rescued that has led to delayed reactions in launching search and rescue operations. More surveillance will not change this, as clearly shown by the fact that the Mediterranean is one of the deadliest and yet most surveilled seas.

It is also not enough for EU states to devise policies that merely “save lives.” They are also obligated to ensure that their policies fully protect the rights of migrants and refugees.

This is not currently the case, nor will it be if and when the Task Force’s 38 recommendations are fully implemented. Policies presented as being able to “prevent” deaths at sea include several provisions which put the lives of migrants and refugees at risk, for example by allowing for disembarkation in third countries when interception or rescue is on the high seas. In its most extreme form, the prioritisation of border control over other factors encourages push-backs at sea of refugees and other persons in need of protection to countries where their lives are in danger. EU states are increasingly

1 See the [Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean](#), COM(2013) 869 final, 4 December 2013; the Working Document ‘[Implementation of the Communication on the Work of the Task Force Mediterranean](#),’ 27 May, 2014.

circumventing their international obligations by concluding migration agreements with non-EU countries or delegating these push-backs to commercial ships. While every legal text mentions the need to respect the principle of “non-refoulement,” in practice, guarantees are weak.

Human rights organisations have not been the only ones to condemn the EU’s migration policy. In his 2013 report, the United Nations Special Rapporteur on the Human Rights of Migrants regretted that “migration and border control have been increasingly integrated into security frameworks that emphasise policing, defence and criminality over a rights-based approach.”<sup>2</sup> The Commissioner for Human Rights of the Council of Europe also issued a damning report, highlighting how EU migration policies with third countries effectively violate the right of all individuals to leave a country, including their own.<sup>3</sup>

The Euro-Mediterranean Human Rights Network recalls that it is the lack of legal channels of entry to EU territory which is forcing migrants and refugees to risk their lives by crossing the Mediterranean. Any genuine solution to deaths in the Mediterranean must take this into account, and must be fully in line with the international obligations of EU states. In particular:

- Migrants at sea must be protected. Their safety must be guaranteed and

responsibilities clearly distinguished between search and rescue and border control authorities. Search and rescue operations should be prioritised when migrants are detected. In the eventuality of interceptions during border controls operation, border guard authorities should transfer these persons to search and rescue authorities;

- Each person intercepted at sea should be given access to EU territory where his/her individual situation shall be examined before any return decision is made;
- No one should be transferred to a non-EU coastal state and international obligations with regards to *non-refoulement* must be respected at all times, including on the high seas;
- The EU and its member states should refrain from sea border cooperation with non-EU states that do not guarantee the rights of migrants and refugees, in law and in practice, and that criminalise unauthorised emigration.

2 United Nations Special Rapporteur on the Human Rights of Migrants, [Regional study: management of the external borders of the European Union and its impact on the human rights of migrants](#), 24 April 2013.

3 Council of Europe Commissioner for Human Rights, [The Right to Leave a Country](#), Issue Paper, October 2013.

## Introduction

Approximately 20,000 migrants and refugees have lost their lives since 1988 attempting to cross the Mediterranean to reach Europe.

After the tragic death of 366 migrants and refugees off the Sicilian coast in October 2013, European governments were forced to take action. However, their responses – such as Italy’s Mare Nostrum initiative and the European Union’s (EU) Task Force Mediterranean – remain limited and shaped by security concerns, even if Mare Nostrum has rescued almost 30,000 migrants at sea since its inception. Despite the recognised need to “tackle” deaths at sea, the main concern of the EU and its member states remains that of preventing migrants and refugees from departing from Southern Mediterranean countries and from reaching EU territory.

As a result, policies aimed at addressing the loss of lives at sea are either undermined by, or intrinsically linked to, policies aimed at limiting access to EU territory. The following policy brief looks more in-depth into how this continues to put the lives of migrants and refugees at risk and undermines the full respect of their rights in the Mediterranean and when they are disembarked on land.

The first part looks at how the reluctance to host migrants and refugees has meant **a continued lack of clarification of responsibilities at sea, leading to delayed reactions when migrants are in distress.**

The second part looks at how EU policies to effectively limit access to EU territory has led to **a blurring of lines between search and rescue and border control**, increasing the vulnerability of migrants and refugees at sea and distorting their rights. Finally, the third part looks more deeply into how EU states have sought to limit access to EU territory through **push-backs of refugees and other persons in need of protection**, either through agreements with non-EU states and privatised push-backs carried out by commercial ships.

Through concrete cases of human rights violations at sea, this brief provides an overview of the reasons why these violations have and continue to take place from both a legal and policy perspective. The analysis, complemented by examples of actions taken by civil society in reaction to these violations, aims to inform both civil society organisations and policy makers in the current context where the issue of rescue at sea has taken the front page. The brief concludes with a set of recommendations to the European Union, European Parliament, Frontex, and EU member states.

## Lack of clarification of responsibility at sea: delayed reactions putting lives at risk

The obligation to provide assistance at sea to people in distress irrespective of their status is enshrined in international maritime law.<sup>4</sup> Moreover, international human rights law requires that states abide by the principle of *non-refoulement* whereby no one should be returned to a country where his/her life may be at risk.

Despite the clarity of these principles, however, the sovereign right of member states to decide who should be allowed onto their territory has prevailed over basic humanitarian principles, a trend reflected in EU law making. Consequences on the safety of the lives of migrants and refugees at sea are significant, and have on numerous occasions led to deaths at sea which could have been easily avoided:

» **In March 2011**, 72 people, including two babies, left Libya for Italy on a small boat which drifted for 14 days.

Those on board had hardly any food or water. They were however spotted: a helicopter distributed 8 bottles of water and a few packs of biscuits on one occasion and survivors reported seeing a military ship in the vicinity. The Italian and Maltese authorities, despite being informed, did not think they were obligated to take action based on their diverging interpretation of their search and rescue obligations. **63 people died** before the boat eventually drifted back to Libya. This tragic incident, later known as the *Left-to-Die* Boat case, was taken very seriously by the Council of Europe who launched an inquiry to “prevent impunity.” A year later, Rapporteur Tineke Strik concluded to a “catalogue of failures”<sup>5</sup> and asked NATO, the military authorities of the UK, France, and Spain, as well as the Italian and Maltese search and rescue authorities to explain why the vessel was ignored.

» **On 25 October 2012**, a rubber inflatable boat was detected in the night by an aircraft operating in the framework of the Frontex Indalo operation deployed in the strait of Gibraltar. Migrants were only rescued in the evening of the same day: in this case, it took more than 16 hours for the search and rescue authorities from Spain, Malta and Morocco to coordinate their action and finally provide assistance to the persons in distress,

4 See also UNHCR’s [Rescue at Sea, Stowaways and Maritime Interception](#), Selected Reference Materials, 2011.

5 Parliamentary Assembly of Council of Europe - Committee on Migration, Refugees and Displaced Persons, Rapporteur: Ms Tineke Strik, Netherlands, Socialist Group, [Lives Lost in the Mediterranean Sea : Who is responsible ?](#), 29 March 2012.

although the inflatable boat was overflown by a Spanish aircraft for at least 30 minutes without any assistance being provided. **14 corpses were found on board** the vessel upon its interception, 18 persons were rescued. Although the boat was first detected in the Moroccan search and rescue area, the people were rescued by the Spanish search and rescue body. It is therefore not clear about who should have acted or was in the capacity to act, despite being in the territorial waters of a specific country.

- » **On 11 October 2013, 268 refugees from Syria, including more than 100 children, died at sea, between Sicily and Malta.** The three distress calls made by satellite phones were left unaddressed by the Italian authorities who told the refugees that they should call the Maltese authorities instead.<sup>6</sup>

## HOW CAN THIS HAPPEN?

Several grounds explain, although do not justify, why such tragedies happen despite the existence of clear applicable legal frameworks.

*Not all member states are bound by the same obligations*

Some states have not signed the amended versions of both the Convention on Safety of Life at Sea (SOLAS), 1974<sup>7</sup> and the Convention

on Maritime Search and Rescue at Sea (SAR), 1979.<sup>8</sup> The 2004 version of the SAR convention requires that the conduct of a search and rescue operation is the responsibility of the state in which search and rescue area the ship is found in distress. Several countries have not signed any of the amended versions of the SAR and the SOLAS conventions; in particular, Malta has decided not to sign, arguing that migrants intercepted in its (very large) search and rescue area should not systematically be on its territory and should instead be brought back to the port of embarkation.

This different positioning has created tensions, especially between Malta and Italy, and resulted in both countries hesitating to rescue migrants in a timely manner despite their situation of distress.

It has, moreover, also made commercial ships reluctant to rescue migrants in distress. The “cost” for commercial tankers of rescuing migrants at sea is perhaps best exemplified by the case of the Greek tanker *Salamis* (see textbox). As states disagree over ports of disembarkation and are reluctant to accept rescued migrants onto their territory, commercial ships risk incurring delays in their itineraries as they are forced to deviate from their original route, or of being left with stranded migrants on board with nowhere to disembark them.

6 Lampedusa shipwreck : those 268 dead could have been avoided, L'Espresso, 7 November 2013.

7 Consolidated text of the International Convention for

the Safety of Life at Sea, 1974, and its Protocol of 1988, including 2004 amendments.

8 International Convention on Maritime Search and Rescue, 1979 and 2004 amendment.

### THE SALAMIS TANKER CASE

On 4 August 2013, the *Salamis* rescued 102 migrants off the Libyan coast, from where it had departed. The boat was closer to Italy than Malta and the captain therefore informed the Italian authorities of the intercepted migrants' need for assistance; the Italian Maritime Rescue Coordination Centre asked the *Salamis* to head back to Libya, assumed to be the port of departure, and to disembark migrants there. The vessel refused to do so, for commercial reasons not wanting to deviate from its route to Malta. The captain then informed the Maltese authorities of the presence of these migrants on board, some of them being in need of medical assistance.

Malta refused entry in its territorial waters to the *Salamis* and asked the crew to disembark migrants in Libya, for the same reasons as Italy. Italy and Malta argued that international law commanded that migrants be disembarked in Libya, while EU Home Affairs Commissioner Cecilia Malmström argued that this would be a breach of international law given the humanitarian need for assistance and that Libya did not constitute a place of safety for those on board. Italy eventually agreed after two days of diplomatic dispute to have the migrants disembarked in the port of Syracuse.

See: Watch The Med, [Tanker « Salamis » carrying migrants stopped from entering Malta](#), August 2013.

#### *Interpretation of key principles*

This difference in the applicable conventions is reinforced by the absence of a common understanding of key principles. For example, there is no definition of what a “place of safety” means or regarding whether or not a search and rescue operation should be launched.

There is also no common agreement on what “distress” means. The SAR Convention states that a distress situation is a situation

“wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.” The new provisions included in the 2004 amendment to the Convention widen the scope of intervention to situations where the person “**is, or appears to be**, in distress at sea” (Article 2-1(1)).<sup>9</sup> The problem remains, however, that not all countries in the EU are signatory of the 2004 amended version of the SAR Convention and are therefore not bound by this new provision in force since 2006.

### AVOIDING RESPONSIBILITY IN THE CONTEXT OF A LACKING COHERENT EU FRAMEWORK

Despite the applicability of International and European Law, reluctance to sign amendments to conventions which would entail greater responsibilities reflects – at a fundamental level – that no state wants to take the responsibility of supporting and disembarking migrants. The *Left-to-Die Boat* case is particularly emblematic in this respect: even if migrants were thrown biscuits and mineral water, no vessel took the responsibility to bring them on board.

This attempt to avoid responsibility is partly explained by the current reception mechanisms for irregular migrants and asylum seekers in Europe. The absence of a clear coherent framework amongst EU

<sup>9</sup> International Maritime Organisation, [1979 International Convention on Maritime Search and Rescue](#) (incorporating the 1998 and the 2004 amendments).



states affects the efficiency of maritime interceptions and ultimately the rights of migrants and refugees. The existing framework puts coastal states in the front line regarding the interception, the disembarkation and the reception of migrants, particularly regarding the examination of asylum claims in application of the Dublin III regulation. The Dublin Regulation was adopted in 2004 and posits that asylum requests must be made and assessed in their first EU state of entry, except when family members are established in another member state. As a consequence, countries located at the external border of the EU have to deal with a disproportionate number of asylum applications in comparison to other EU states, despite often having lower processing and reception capacities. While the Regulation was amended in 2013, this principle has not been changed.<sup>10</sup>

This is one of the reasons that Malta has refused to sign the 2004 amended versions of the SAR and the SOLAS conventions, and has also refused to take part in Frontex sea operations since 2010. The Council Decision 2010/252 relating to Frontex previously in force, as well as the new one, states that migrants intercepted during a Frontex operation should be disembarked either in the non-EU country of embarkation, or in the member state hosting the Frontex sea operation.

<sup>10</sup> Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

### ITALY'S MARE NOSTRUM INITIATIVE – A REAL POLICY SHIFT?

In October 2013, Italy launched its Mare Nostrum rescue initiative. Until now, it has intercepted and saved the lives of over 27,000 migrants. While this constitutes a dramatic shift in Italy's search and rescue approach, human rights organisations have expressed concern regarding the reception conditions and fate of those who are saved once disembarked.

The Italian government has repeatedly called upon the EU for greater support, threatening to allow migrants to travel onwards in Europe, in violation of the Dublin Regulation. In this context where migrant arrivals are represented as a "crisis situation," there are reasons to doubt whether Mare Nostrum reflects a real policy shift and long-term commitment by authorities to saving lives.

Despite Mare Nostrum, 17 people died off the coast of Sicily on 12 May, 2014. Both UNHCR and human rights organisations have highlighted that increased resettlement and legal entry channels into Europe are needed, so as to avoid similar tragedies from taking place in the future.

### ACTIONS BY CIVIL SOCIETY

The multiplication of tragedies at sea, despite the deployment of increasingly sophisticated means, has prompted civil society initiatives aimed at monitoring practices during maritime interceptions, identifying responsibilities, and informing policy-making:

- » In April 2012 two researchers from Goldsmiths University published the "*Left-to-Die Boat*" report, documenting the events that led to the death of 63

migrants in March 2011.<sup>11</sup> The authors of the report collected geo-referenced locations as well as testimonies, especially from the survivors, and managed to establish a clear chronology of the events and of the responsibilities involved.

This work inspired a group of migrant rights organisations and of lawyers who filed law suits in several European countries whose military was involved in the NATO operation in Libya. The survivors lodged a claim in France in 2012. Following the decision of the Paris Prosecutor's Office to take no action on the complaint, two survivors of the *Left-to-Die Boat* case filed complaints in France and Spain. These proceedings, filed as civil parties, will force the opening of judicial investigations in the matter.<sup>12</sup>

Meanwhile, the two Goldsmiths researchers launched a platform called **Watch The Med** aiming to map incidents across the Mediterranean: *“Through the accounts of survivors and witnesses, but also the analysis of ocean currents, winds, mobile phone data and satellite imagery, it is possible to determine in which Search and Rescue zone, jurisdictions and operational areas an incident occurred as well as showing*

*other boats who were in the vicinity of those in distress. Spatializing such information is essential to determine responsibility for violations at sea.”*<sup>13</sup>

## Impeding access to EU territory: Blurring the lines between search and rescue and border control

The creation of an internal space of free movement within the EU has been, in parallel, accompanied by the strengthening of its external borders, a policy which critics have referred to as the creation of a “Fortress Europe.”

At the EU's southern sea borders, this has meant the increased blurring of lines between search and rescue obligations and border control. Despite the fact that the 2004 amended SOLAS Convention clarifies that rescue obligations should prevail over border management objectives, the opposite is most often the case in the EU. The result has been a distortion of the rights of migrants at sea through the increased criminalisation of solidarity and the

11 Charles Heller, Lorenzo Pezzani and Situ Studio, *Forensic Oceanography Report on the “Left-To-Die Boat,”* April 2012.

12 *Death of 63 migrants in the Mediterranean: Complaint in France holds the French military to account*, FIDH, 12 April 2012 (latest update dating March 2014 available [here](#)).

13 [www.watchthemed.net](http://www.watchthemed.net)

development of border control tools such as Frontex and EUROSUR (*European Border Surveillance System*) which, while also sold as “life-saving” instruments to avoid deaths at sea, have the primary aim of blocking access to EU territory for those intercepted at sea.

#### IRREGULAR ENTRY OR PEOPLE IN DISTRESS?

In July 2012, two similar cases happened within a couple of days, where 127 and 125 migrants respectively – including families with children – were left adrift off the Italian coast for up to two days before they were “intercepted.” In both cases, the small vessels were detected by an Icelandic aircraft operating within the framework of the AENEAS Frontex operation, deployed in the central Mediterranean. According to Frontex, the Italian authorities were immediately informed of the presence of both vessels following their detection, but did not consider that a search and rescue operation should be launched. The presence of more than 100 people on a fishing boat, among them families, was not deemed sufficient to justify that they be provided assistance. Indeed Frontex reported the interceptions as being of “irregular migrants”, including “suspected facilitators”, reflecting the security-oriented approach which dominates the discourse on persons intercepted at sea.

On 16 June 2013, a group of migrants were clinging to the fishing cage of a vessel sailing near Sicily. When spotted, the crew cut the wires of the cage, leading to 7 migrants drowning. The dangerous situation of migrants at sea did not prevail when assessing the situation: they were primarily seen as irregular migrants. 95 people were eventually rescued by the Italian coast guards.

#### CRIMINALISING SOLIDARITY

A signatory to the 2000 Palermo Protocol,<sup>14</sup> the EU adopted a directive in 2001 that imposes penal sanctions to carriers who may transport persons not authorised to enter the EU territory (the so-called “carriers’ liability directive”).<sup>15</sup> If found guilty of facilitating the unauthorised entry of migrants, carriers are liable to a fine worth between €3,000 and €5,000 “for each person carried”. Another directive was adopted in 2002 calling on member states to enact national legislations against the facilitation of unauthorised entry, transit and residence.<sup>16</sup>

Although rescuing migrants in distress should not be sanctioned, seamen are increasingly pushed to check if there is no stowaway on board and may incur fines if they disembark unauthorised migrants. The line is fine between solidarity and illegality:

» An emblematic case is the so-called **Cap Anamur case**, where three persons (the head of the Cap Anamur humanitarian organisations, the captain of the vessel and the staff captain) were convicted

14 The Protocol on the Smuggling of Migrants by Land, Sea and Air supplementing the 1999 UN Convention Against Transnational Crime was adopted in 2000. It criminalises the facilitation of entry – in exchange for financial benefits - of a person who has no legal right to enter the territory of a state. The Protocol requires, however, not to criminalise migrants who have been smuggled, but instead to “preserve and protect the[ir] rights.”

15 [Council Directive 2001/51/EC of 28 June 2001](#) supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

16 [Council Directive 2002/90/EC of 28 November 2002](#) defining the facilitation of unauthorised entry, transit and residence.

by an Italian court after they rescued migrants in distress in the Strait of Sicily in 2004 and disembarked them in Italy. The three men were arrested upon disembarkation in the port of Agrigento (Sicily) and accused of facilitating the illegal entry of unauthorised migrants pursuant to Italian law; they were sanctioned with a €40,000 fine and four years of imprisonment, a decision which was annulled in 2009 after the convicted successfully appealed the decision.

- » On 18 November 2009, the same tribunal of Agrigento withdrew the charges filed against seven Tunisian fishermen in February 2007 after they rescued a boat with 44 migrants that was about to capsize in the Strait of Sicily. Migrants were disembarked on the island of Lampedusa. The fishermen were initially accused of facilitating irregular entry and their boats were seized during two years. Charges were eventually withdrawn after an important support campaign including the Euro-Mediterranean Human Rights Network, ASGI, Migreurop, Rete antirazzista Siciliana, the Tunisian Human Rights League (LTDH) and the Fédération Tunisienne des Deux Rives (FTCR). However, although their boats were returned to them, in addition to financial compensation, two captains were sentenced to two and a half years in prison because they had refused to comply with orders given by public officers upon disembarkation back in 2007. They were later acquitted in 2011.<sup>17</sup>

Cases similar to those mentioned above has made fishermen and ship captains increasingly reluctant to come to the rescue of vessels in distress for fear of facing sanctions, putting further at risk the lives of those in distress.

## EU BORDER MANAGEMENT TOOLS: FRONTEX AND EUROSUR

### *Frontex sea operations*

One of the flagship measures taken by the EU to address unauthorised immigration by sea was to encourage increased cooperation between member states, especially through the use of the Frontex Agency. Sea border operations now represent almost a quarter of the Agency's 2014 budget (24%) and half of its operations budget (combining land, air, and sea borders). Frontex is not directly mandated to conduct search and rescue operations, which remains a competence of member states, and the Agency claims it does not intercept migrants, limiting its interventions to detection, search and rescue and to escorting migrants to the safest port of embarkation.<sup>18</sup>

Since the adoption of the new mandate of the Agency in October 2011, Frontex's role goes beyond coordinating operations to also initiating them. It is also in charge

November 2009; Migrants at Sea, [Italian Appeals Court Acquits 2 Tunisian Fishing Boat Captains Who Rescued Migrants in 2007](#), 29 September 2011.

18 Statewatch, [Criticism mounts of Frontex's operations at sea - "I try to avoid giving the impression I'm somehow sneaking out of the responsibility"](#), Frontex's Executive Director on search and rescue at sea, 24 October 2012.

17 1000 Bâbords, [Verdict de l'affaire des 7 d'Agrigente](#), 24

of administrating the upcoming maritime border surveillance system EUROSUR (see below) which aims to detect small vessels and intercept migrants trying to cross the EU's territorial waters irregularly.

Over the years, criticism mounted regarding the discrepancy between the Agency's significant involvement in maritime operations and the absence of clear search and rescue obligations directly applicable at sea. The European Commission attempted to address this criticism by proposing Council decision 2010/252 on the surveillance of the external sea borders during Frontex operations. In particular, the non-binding text authorised teams deployed during Frontex sea operations to apprehend migrants suspected of circumventing border checks and to hand them over to the authorities of non-EU countries.

In September 2012, the European Court of Justice annulled the Council decision after agreeing with a complaint lodged by the European Parliament challenging the legality of the procedure followed for its adoption. Following the Court's request, the European Commission presented a new proposal for a legally-binding Council regulation in April 2013. In April 2014 the European Parliament voted in favour of a revised proposal,<sup>19</sup> which, after formal approval by the Council, should come in force in summer 2014.

The Regulation, which combines search and rescue and interception in the high seas, is a reflection of how border control and search

and rescue are increasingly blurred. Civil society organisations, the UNHCR, as well as EU parliamentarians all raised several major concerns<sup>20</sup> regarding the proposed Regulation while it was still under discussion. While the final text marks an improvement compared to the original proposal and the previous Council Decision, many problematic issues remain:

- A definition of a “place of safety” which is not geographically restricted to the EU. This leaves the possibility to consider non-EU countries a place of safety to disembark migrants and refugees;
- While push-backs are forbidden, Frontex and member states have the right order a vessel detected in the territorial sea or contiguous zone of an EU Member state to alter its course to another destination;
- The regulation does not consider cases whereby migrants are intercepted in the territorial waters of third states. This is problematic as it may allow for push-backs to take place in the territorial waters of third states, where Frontex and member states have and continue to operate (Frontex in Mauritanian and Senegalese waters, Italy previously in Libyan waters);
- While member states are required to use all means to identify intercepted migrants, assess their circumstances

<sup>19</sup> See the final version of the Regulation [here](#)

<sup>20</sup> See, for example, [the Note on the Proposal](#) prepared by the Meijers Committee (23 May 2013), [Statewatch's analysis](#) (April 2013), the [Joint Briefing](#) by Amnesty International, International Commission of Jurists and ECRE (6 September 2013) as well as the [comments and recommendations](#) by UNHCR on the Proposal (April 2014). Statewatch issued an [analysis of the adopted text](#) following its approval by the LIBE committee (February 2014).

and inform them of the place of disembarkation so that the latter have the opportunity to make a non-refoulement claim, interpreters and legal advisors on shore must only be provided for “when necessary” – leaving excessive discretion to officials on board as to when this is the case;

- The point above, combined with the possibility of disembarking migrants intercepted on the high seas in non-EU countries, increases the risk of push-back operations and the refoulement of refugees. Many organisations have documented the situation of migrants in non-EU countries and where, in most of the cases, the human rights of migrants and refugees are not guaranteed, for example in Libya or in Tunisia;<sup>21</sup>
- Frontex is presented only as the coordinator of maritime surveillance although it can initiate joint operations. This risks discharging the Agency of any direct responsibility in the case of human rights violations during maritime operations.<sup>22</sup>

#### UNCLEAR DEFINITION OF DISTRESS...

The new Regulation also provides definitions of “distress”, “uncertainty” and “alert” situations like in the SAR convention. However, contrary to the latter that requires that urgent steps are taken if the person **is, or appears to be** in distress, Article 9 of the Regulation seems to limit the launch of search and rescue operations when it is established that people **are** in distress.

In the case of “uncertainty” and “alert”, it seems that Frontex patrols are not obliged to render assistance and can limit their action to informing the Rescue Coordination Centre responsible for the search and rescue area. However, a vessel in “uncertainty” may eventually become in “distress”. The distinction between degrees of vulnerability bears the risk of letting situations of distress happening although they may have been avoided. Through this logic, different degrees of protection are applied to different groups deemed more or less in danger. It ultimately increases the vulnerability of migrants and refugees who may be left at sea because they were not considered as being “in distress”.

#### EUROSUR - European Border Surveillance System

EUROSUR is an information system that acts as a channel for the transmission of information on the situation at the EU’s external borders; it was launched in December 2013 on the EU’s southern and eastern external borders and will be put in place in December 2014 for the remaining member states. The main purpose is to increase awareness of the situation at sea, and especially regarding the presence of small vessels that very often enter the EU’s territorial waters undetected. This involves the use of satellites and potentially drones at the EU’s external border, as well as in non-

21 FIDH, Migreurop, JSFM, *Libya: the hounding of migrants must stop*, November 2012; Joint press release FTDES-Cimade, *Risques de refoulement d’exilés vers la Libye*, August 2013; Jesuit Refugee Services, *Beyond Imagination*, January 2014.

22 It should be reminded here that, in the case of *Hirsi Jamaa and Others vs. Italy*, Italian coast guards were conducting some of the push-backs in the framework of Frontex coordinated operations, as confirmed in the ECtHR’s judgment.



EU countries that agree to have EUROSUR deployed at their maritime border.

The objectives of EUROSUR are threefold:

- “Reduce the number of irregular immigrants who manage to enter the EU undetected;
- Increase the internal security of the EU as a whole, by contributing to the prevention of cross-border crime;
- Enhance the search and rescue capacity of irregular immigrants and persons in need of international protection in order to reduce the number of deaths at sea.”<sup>23</sup>

The search and rescue aspects have been particularly emphasised by the supporters of the initiative, as a means to legitimise the project and counterbalance the impression that the arsenal deployed through EUROSUR is meant to increase detection and the interception of migrants and further impede access to EU territory.

However, the development of EUROSUR is not sufficient to save lives at sea. This was confirmed by Frontex’s own Deputy Director in May 2014, who confirmed that the information collected by EUROSUR would not be useful for rescue operations and that its border control function was unrelated to search and rescue.<sup>24</sup> Alongside this, members of the European Parliament as well as human rights organisations and researchers<sup>25</sup> have warned against the

serious political implications EUROSUR will have on the rights of migrants and refugees.

### **IMPLICATIONS FOR THE RIGHTS OF MIGRANTS UPON DISEMBARKATION**

The blurring of border control and search and rescue responsibilities distorts the rights of migrants and refugees at sea and increases their vulnerability in an already dangerous context. The criminalisation of solidarity means an increased hesitance on the part of vessels to rescue people in distress. Moreover, the increased scope of Frontex’s mandate and the implementation of EUROSUR to “save lives” raises serious questions regarding the extent to which access to the EU will be permitted for those intercepted and the extent to which their safety and protection will be prioritised over their main goal of fighting irregular migration.

The blurring of lines between who is a person in distress and who is an irregular migrant has other ramifications in terms of the vulnerabilities of migrants and refugees rescued or intercepted at sea.

For intercepted migrants who are brought to EU territory, their status as irregular migrants prevails. Member states’ sovereign right to control their external border seems to legitimate the use of protection practices including systematic detention

23 Council of the European Union, [The Council adopts external border surveillance system](#), 22 October 2013.

24 EU Observer, [EU border surveillance system not helping to save lives](#), 14 May 2014.

25 [The EU’s New Border Surveillance Initiatives: Assessing](#)

[the Costs and Fundamental Rights Implications of EUROSUR and the “Smart Borders” Proposals](#) - A study by the Heinrich Böll Foundation written by Ben Hayes and Mathias Vermeulen, June 2012.

in some EU countries. According to the UN Rapporteur on the human rights of migrants in his annual report, detention is now used as “a tool in border control.”

For detention not to be considered arbitrary under EU law, deprivation of liberty for unauthorised entry shall be explicitly authorised (Article 5(1)f of the European Charter on Fundamental Rights). Such legislation does not exist in Malta where those who arrive irregularly, whether asylum-seekers or not, are systematically detained upon disembarkation.<sup>26</sup> Moreover, recent reports and court judgments have proved, in the case of Greece, Italy and Spain<sup>27</sup>, that the rights of migrants are violated in detention – including when detained upon disembarkation. It is for this reason that civil society organisations have been lukewarm in their response to Italy’s Mare Nostrum project, concerned about the fate of these migrants once they are disembarked in Italy, where detention practices are widespread and conditions worrying.

#### ACTIONS BY CIVIL SOCIETY

» In July 2011, in the wake of the political turmoil in northern African countries and the *Left-to-Die* Boat case, a group

of Euro-Mediterranean organisations (trade unions, NGOs, journalists, activists) called for the launch of a “flotilla” to stop deaths in the Mediterranean and monitor the situation at sea.<sup>28</sup> The **Boats4People** project,<sup>29</sup> bringing together 17 organisations, was launched a few months later to denounce deaths in the Mediterranean, the impossibility to reach Europe safely for migrants, and enhance solidarity amongst seamen and activists on both sides of the Mediterranean. A three-week action was organised in July 2012 with a sailboat leaving from Italy to Tunisia, a symbolic route in the aftermath of the Tunisian revolution.

» The human rights impact of Frontex’s external cooperation with non-EU countries, as well as the lack of liability of the Agency has also been subject to strong criticism, including by the EU’s Ombudsman. In March 2013, 21 civil society organisations, including the Euro-Mediterranean Human Rights Network, launched the **Frontexit campaign**<sup>30</sup> in Europe and in Africa. The campaign calls on the European Union to make Frontex more accountable given its involvement in the management of the EU’s external border, including the maritime border. One of the axes of work of the campaign is to document practices during maritime interceptions through information requests to Frontex and through field missions. This information is used to

26 See for example Human Rights Watch, [Boat ride to detention : adult and child migrants in Malta](#), July 2012.

27 Human Rights Watch, [The EU’s dirty hands: Frontex involvement in ill-treatment of migrant detainees in Greece](#), September 2011, and Statewatch, [‘Detainees’ rights overrule absconding and rioting charges, courts rule](#), January 2013.

28 [A flotilla to stop deaths in the Mediterranean](#), 7 July 2011.

29 [www.boats4people.org](http://www.boats4people.org)

30 [www.frontexit.org](http://www.frontexit.org)



feed in analyses, advocacy strategies and litigation. The campaign aims to show that Frontex is putting the rights of migrants and refugees in jeopardy and that its existence reinforces the criminalisation of migration.

- » In April 2013, Amnesty International launched its own initiative called “**SOS Europe,**” part of the “**When You Don’t Exist**” campaign.<sup>31</sup> Amnesty denounces push-backs and is calling for an EU to adopt common search and rescue guidelines as well as to acknowledge responsibility for the deaths of migrants and refugees at sea. “Restrictive migration policies that solely focus on preventing arrivals to Europe do not stop people from trying to reach Europe”, the campaign argues.

## Push-backs of refugees and persons in need of protection

The UNHCR has issued clear guidelines on the main principles and practices which must be applied to fully respect the rights of refugees and migrants at sea (see text box). The increased prioritisation of border control, however, has been accompanied by a growing practice of systemic push-backs of

refugees and persons in need of protection. These push-backs are increasingly used by EU states in order for them to avoid their obligations as stipulated in the 1951 Convention relating to the Status of Refugees and other international conventions.

### UNHCR - GUARANTEEING RIGHTS OF REFUGEES AND MIGRANTS AT SEA (SELECTED DOCUMENTS)

- » [Rescue at Sea: A guide to principles and practice as applied to migrants and refugees](#)
- » [Background note on the protection of asylum-seekers and refugees at sea](#)

### PRACTICES GROWING IN SCALE

In past years, cooperation has been reinforced with North and West African countries to ensure a better detection and interception of irregular migrants at the earliest stage of the migratory route possible, and to facilitate their removal.

#### *Spain-Senegal*

Much criticism has been expressed by NGOs as regards to Frontex’s Joint sea operation HERA (launched in the framework of a Spain-Senegal bilateral agreement) during which several migrants were diverted back to Senegal or intercepted and sent back to Senegal. Whether these cases constitute push-backs remains to be proven but some elements lead to think that this may not have been unlikely, for example the fact that, according to the Agency, many intercepted migrants were “either [...] convinced to turn back to safety

<sup>31</sup> See the campaign here: [www.whenyoudontexist.eu](http://www.whenyoudontexist.eu)

or [...] escorted back to the closest shore.”<sup>32</sup> It may, however, in all cases be considered a violation of one’s right to leave a country.

### *Italy-Libya*

A clear push-back operation happened in May 2009 when Italian coast guards intercepted about 200 migrants in the high seas and directly sent them back to Libya, based on a co-operation agreement signed between both countries in August 2008 that included specific provisions on the readmission by Libya of irregular migrants, including non-Libyans, in exchange for economic cooperation with Italy. On 24 May 2009, a complaint was lodged by 24 of the migrants before the European Court of Human Rights (ECtHR). On February 2012, Italy was condemned in the landmark *Hirsi Jamaa and Others v. Italy* judgment.<sup>33</sup> Victims were from Eritrea and Ethiopia, countries where the life of people may be at risk due to instability and indiscriminate violence.

The court reiterated that migrants intercepted in the EU’s territorial waters could not be sent back directly and had to access the EU territory in application of the right to a fair remedy and the principle of *non-refoulement*. The ECtHR also clarified a fundamental point: if intercepted in the high seas, migrants are under the jurisdiction of the state where the intercepting vessel is registered, and should enjoy the same rights as any person under this state’s jurisdiction. Despite the European Commission’s public

<sup>32</sup> Frontex, *Hera 2008 and Nautilus 2008 statistics*.

<sup>33</sup> See *Hirsi Jamaa and others v. Italy* (Appl. No. 27765/09).

disapproval of push-backs and its official commitment to monitor practices in each member state with maritime borders in this respect, incidents and cases of what seem to be systemic pushbacks continue to be reported.

### *Greece-Turkey*

Push-back operations are particularly frequent between Greece and Turkey, as documented by many organisations. Greek border guards almost systematically send back intercepted migrants to Turkey by violent and degrading means, including refugees from Afghanistan, Syria, Palestine, Iraq, Iran, Eritrea or Sudan.

Amnesty International and ProAsyl have recently published recent reports based on extensive field research and reports from migrants and refugees in this border region. These detail the circumstances of the systematic push-backs from the Greek territorial waters and from the Greek islands, i.e. the Aegean Sea, leading the violation of the rights of men, women and children, if not their death.<sup>34</sup> Refugees fleeing the conflict in Syria have also been victim of these pushbacks. EMHRN, in collaboration with FIDH and Migreurop, has also recently published a report in the framework of the Frontexit campaign highlighting similar violations and Frontex’s involvement in these.

<sup>34</sup> Pro Asyl, *Pushed-back : Systematic human rights violations against refugees in the aegean sea and at the Greek-Turkish border*, November 2013; Amnesty International, *Greece: Frontier of Hope and Fear, Migrants and Refugees, Pushed Back at Europe’s Border*, April 2014; EMHRN, Migreurop and FIDH, *Frontex entre Grèce et Turquie: la frontière du déni*, June 2014.

*Internal push-backs*

Although less covered by the media, the problem of internal push-backs among EU states also raises concern. For example, many informal removals have occurred between Italy and Greece. Many try to escape racist violence and exclusion in Greece but are pushed back by the Italian coast guards, including minors.<sup>35</sup> While returns to Greece would be applicable under the Dublin Regulation, removals have been officially suspended by all EU countries following Greece's condemnation by both the ECtHR and by the Court of Justice of the EU for the systemic failure of its asylum system to deal with asylum seekers and its unsatisfactory reception conditions.

**WHY ARE PUSH-BACKS POSSIBLE IN EUROPE?***Cooperation with non-EU countries*

The Palermo protocol calls on cooperation with the view not only to suppress but also to prevent the smuggling of migrants. This new element has, since then, encouraged EU member states to take measures that anticipate the illegal crossing of the border by smuggled migrants. This is done mainly through the signature of working arrangements between Frontex and non-EU states, or on the basis of bilateral/multilateral cooperation supported by the EU (like the Seahorse border surveillance

programme funded by the EU to support cooperation between Spain, Mauritania, Morocco and Cape Verde).

**THE PRE-FRONTIER AREA**

A new concept encapsulating these policy changes has emerged recently: the "pre-frontier area." This term has been officially used for the first time in the EUROSUR proposal in 2008 although, in practice, the displacement of the border to the territorial waters of non-EU Mediterranean states is well established as shown by recent examples at the bilateral (e.g. Spain-Morocco cooperation; Malta-Libya cooperation) or at the EU level (Frontex is currently negotiating a cooperation agreement with Tunisia, Egypt, Morocco and Libya).

See Frontex's [website](#)

One can expect this trend to be further enforced with the signature of working arrangements between Frontex and southern Mediterranean states and the implementation of the Regulation on sea surveillance given the text allows for the disembarkation of intercepted migrants in a non-EU country. Let alone the poor human rights record in southern Mediterranean countries and lack of respect for refugee and migrant rights, the question remains of how Frontex officers will be able to assess, on board a vessel and in a very short time, the individual situation of migrants intercepted at sea. Which guarantees and which safeguards will be in place to ensure that returning the person to a non-EU country will not put his/her life at risk? How will the disembarkation of a group of intercepted migrants in a non-EU country be in accordance with the prohibition of collective expulsion

<sup>35</sup> [Treated like human cargo : Italy pushes protection seekers back to Greece](#), ProAsyl, 3 July 2012.

under EU law? None of these crucial aspects are addressed in the new Regulation.

EUROSUR will also deepen cooperation with third countries and may jeopardise the rights of migrants intercepted at sea, particularly the rights of asylum-seekers. Libya already agreed on the deployment of the surveillance system in its territorial waters.<sup>36</sup> Although exchange of personal information is strictly prohibited, scenarios cannot be excluded where EUROSUR will serve to detect migrants before they reach EU territorial waters and are diverted back to the North African coast, as suggested by the spirit of the new Regulation for the surveillance of external sea borders mentioned above.

#### *Privatised push-backs*

Over the past year, many migrants have reportedly been rescued/intercepted by private or commercial vessels and being brought back to the Libyan coasts. According to Watch The Med, these “privatised push-backs” are growing in number. It is reported, for instance, that the Italian coast guard authorities, once informed of the presence of migrants and refugees in distress at sea, ask a merchant vessel in the area to intercept them and bring them to Libya, in direct breach of the non-*refoulement* principle.<sup>37</sup>

<sup>36</sup> Through the Seahorse Mediterraneo project, see Council document [15906/12](#), November 2012; EMHRN, [The Seahorse Mediterraneo maritime surveillance programme: EU security dangerously off-beam?](#), 27 September 2013.

<sup>37</sup> [Gommone-carretta approda a Lampedusa sbarcati 54 somali, ci sono anche bambini](#), La Repubblica Palermo, 26 May 2012.

In August 2013, a Turkish boat was asked by Italy to rescue 96 migrants in distress in the Libyan search and rescue area. In June 2013, an oil platform allegedly rescued Eritrean refugees and handed them over to Libyan authorities, in complete breach with EU law.<sup>38</sup>

Privatised push-backs seems to be the new strategy found by member states to avoid responsibility: search and rescue obligations are manipulated to force commercial vessels to bring assistance to a vessel close to them, although the boat was initially identified by an EU member state bound by the obligation to respect the principle of non-*refoulement*. It remains to be seen whether legal action will prove Italy wrong in refusing responsibility in such cases.

#### ACTIONS BY CIVIL SOCIETY

Push-backs are extremely difficult to monitor. Operations are either conducted informally or are presented as being respectful of the applicable legislation: obligation for a commercial ship to provide assistance to people in distress pursuant to international maritime law (e.g. disembarkation to the “nearest port of safety” away from EU shores); cooperation with non-EU countries made legal through policy developments described above.

Confronted with the invisibility of push-backs, civil society initiatives have attempted to document what is really happening. A

<sup>38</sup> Boats4People, [Les États méditerranéens rêvent ils d'une « Papouasie européenne » où enfermer les boat-people ?](#), 6 August 2013.

few reports, some of them corroborating practices unveiled in the media as well,<sup>39</sup> have substantiated claims that push-back are a reality in Europe.

- » **Monitoring and documentation have allowed for successful litigation strategies** like in the *Hirsi Jamaa and Others vs. Italy* case, where organisations including Human Rights Watch, Amnesty International, the Aire Centre, and the International Federation for Human Rights (FIDH) have submitted written contributions to the European Court of Human Rights proving the systematic nature of push-back operations between Italy and Libya at the time.

The same documentation strategy is now in place regarding push-back operations in the eastern Mediterranean. Testimonies and other evidence of push-back practices have been collected regarding the situation between Italy and Greece, and Greece and Turkey. These initiatives usually bring together NGOs and activists from both sides of the border.

- » **Public events and relations with the media** are another way to ensure visibility and counter the strategies deployed by the EU and its member states to turn a blind eye to the human tragedies they are contributing to.

- » Finally, through **field missions and reporting, civil society organisations are informing policy-making and calling for more accountability from policy-makers**. Some publications can bring crucial information and help substantiate the institutional debates, like the recent ProAsyl and Amnesty International reports on push-backs from Greece to Turkey, and the EMHRN-Migreurop-FIDH report on the possible responsibility of Frontex in violations that have taken place at the Greek-Turkish border.<sup>40</sup> These reports, in addition to regular monitoring through initiatives like Watch The Med, provide much needed information and help bring crucial issues onto the political agenda.

<sup>39</sup> [Syrian refugees turned back from Greek border by police](#), The Guardian, 7 December 2012.

<sup>40</sup> EMHRN, Migreurop, FIDH, [Greece-Turkey: “The route is dangerous, people are dying”, The tragic limits of European migration policies](#), 18 November 2013.

## Conclusions and Recommendations

In June 2012, the UN Working Group on the Smuggling of Migrants recommended that “State parties [to the UN Protocol against the Smuggling of Migrants by Land, Sea and Air] should prioritize the preservation of life and safety upon detection of a vessel used to smuggle migrants.”<sup>41</sup>

However, by binding together migration and security issues – branding migrants as a security threat – the EU has encouraged national avoidance strategies where member states limit the assistance they provide to migrants and refugees at sea to the very minimum – when they do not ignore them altogether.

Cooperation with non-EU countries is a clear sign that the priority is to push away “undesirable” people. However, International Maritime Law commands that intercepted migrants are brought to a place of safety; the ECtHR recalled in *Hirsi Jamaa and Others vs Italy* that this notion “should not be restricted solely to the physical protection of people, but necessarily also entails respect for their fundamental rights.”

The current legislation on maritime interception not only acts as a further distortion of the human rights discourse for

internal security purposes, it also endangers the lives of migrants and refugees at sea. The deployment of Frontex off the West African coast, off the Canary Islands, and in the Mediterranean has forced migrants to divert their routes and undertake even more dangerous journeys to avoid being caught – often risking their lives in the process.

The need for change in the EU’s migration policy at sea is urgent. The continued deaths at sea are a tragic indicator of the inefficiency, if not the indecency, of the reinforcement of border control at the EU’s external sea border and beyond. The “solutions” which the EU has found, consisting of the 38 recommendations proposed by the Task Force for the Mediterranean, reflect a continuation and reinforcement of this policy.<sup>42</sup>

Civil society has denounced the incoherence and inefficiency of the border management and search and rescue policies implemented by the EU and its member states. Different strategies have been developed to raise awareness of the number of tragedies happening in the Mediterranean, identify responsibilities but also to critically analyse why these policies are contributing to the violation of the rights of migrants and refugees at sea, including the death of many. Now, more than ever, civil society must continue to be an essential watchdog to counter the escapism of the EU and its member states.

<sup>41</sup> [Report on the meeting of the Working group on the Smuggling of Migrants](#) held in Vienna from 30 May to 1 June 2012, CTOC/COP/WG.7/2012/6.

<sup>42</sup> [Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean](#), COM(2013) 869 final, 4 December 2013; the Working Document ‘[Implementation of the Communication on the Work of the Task Force Mediterranean](#)’, 27 May, 2014.

## RECOMMENDATIONS

### *To the European Union and its member states*

- Increase legal avenues for entry into Europe as well as resettlement places for refugees in need of and entitled to international protection;
- Increase efforts to establish an EU-wide relocation mechanism of migrants and asylum-seekers and implement Decision 281/2012/EU on resettlement and relocation in order to encourage responsibility-sharing amongst EU member states;
- Refrain from engaging in maritime cooperation agreements with non-EU countries where the human rights of migrants and refugees are not guaranteed by law and in practice;
- Cooperate on rescue operations with non-member states when the lives of persons at sea are at risk, but guarantee that these persons be disembarked in a place of safety on EU territory;
- Refrain from diverting migrants to non-EU coastal states and from transferring intercepted migrants to non-EU authorities, even if maritime interception occurs on the high seas;
- Guarantee that all migrants intercepted at sea are given access to the EU territory where their individual circumstances shall be examined, associated with the right to a suspensive appeal of a rejection of the right to enter EU territory;
- Refrain from detaining migrants upon disembarkation and recall that detention is a measure of last resort, as stipulated by International Law;

- Clarify within Frontex's legal framework the Agency's responsibilities, so that it may be held legally accountable when violations take place in the framework of operations which it initiates or carries out.

### *To the European Parliament*

- Demand that the European Parliament approves any agreement signed with third countries before any cooperation on border management takes place, including Frontex working arrangements and agreements to deploy EU surveillance systems over the territory of non-EU countries;
- Refer the new Regulation for Frontex-coordinated surveillance of external sea borders to the European Court of Justice on the basis that certain articles may lead to violations of International and European Law by Frontex and member states.

### *To Frontex*

- Refrain from engaging in sea border cooperation with non-EU states that do not guarantee, in law and in practice, the full respect of the rights of migrants and refugees;
- Ensure that the equipment used is up to search and rescue standards and the personnel on board is trained in maritime search and rescue;
- Guarantee that interpreters are on board each vessel deployed to intercept migrants at sea; if this is not possible access to interpreters must be guaranteed on EU territory;
- Adopt a mechanism whereby the host



state of the operation should, when migrants are intercepted during a Frontex sea border control operation, ensure the transfer of these persons to its search and rescue personnel in the swiftest manner.

#### *To coastal EU member states*

- Ratify the amended versions of the SAR and the SOLAS conventions;
- Deploy search and rescue authorities, and not border guards authorities (when they are distinct bodies) when a vessel is detected. Border control procedures can be carried out afterwards but search and rescue should be given the priority (preventive human rights mechanism);
- Refrain from engaging in sea border cooperation with non-EU states that do not guarantee, in law and in practice, the rights of migrants and refugees;
- Guarantee that medical staff and interpreters are on board each vessel deployed to intercept migrants at sea;
- Refrain from detaining migrants intercepted at sea upon disembarkation; ensure that detention is used only as a measure of last resort and that those detained have access to their rights while in detention;
- Guarantee dignified and safe reception conditions for all migrants disembarked on their territory;
- Prohibit the transfer of migrants to non-EU countries if the individual situation of each person has not been examined with all the appropriate guarantees these persons are entitled to according to EU law (right to an effective remedy, to submit an asylum application, reception conditions, etc.);
- Guarantee that seamen who provide assistance to migrants at sea are not be subject to penalties.

#### *To other EU member states*

- Refrain from engaging in sea border cooperation with non-EU states that do not guarantee, in law and in practice, the full respect of the rights of migrants and refugees;
- Guarantee that seamen who provide assistance to migrants at sea are not be subject to penalties;
- Suspend removals to EU coastal states where migrants and refugees may be at risk of particular discrimination, unfair and/or inhuman or degrading treatment.



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