

Italy- Malta Non-paper

(Proposal from the Ministries of Interior)

"New scenarios, new rules: for a legal framework on irregular migration by sea and for a reform of asylum strategies"

The current dynamics of migration call for a comprehensive review of the strategies and rules relating to irregular migration by sea and the management of asylum applications, which must also include the return of persons whose request for international protection has been rejected.

SAR rules that can no longer be exploited

The definition, at the EU level, of a specific legal framework for irregular migration by sea cannot be delayed any longer, since it is not possible to use the rules governing "Search and Rescue" operations (conceived to ensure the rescue in the event of single situations of distress at sea) which were never intended to cope with the different phenomenon of mass migration by sea.

Without prejudice to the need to protect human life and provide assistance to any person in distress, it is no longer possible to continue to confuse the two types of activity.

Indeed it is now a proven fact that migrant smugglers exploit SAR rules to facilitate their criminal activity.

SAR rescue calls and procedures are exploited to prompt intervention by vessels in international waters or territorial seas of an EU member State or of a Third Country, so as to take on board migrants and subsequently transfer them to European ports.

The repeated transshipment of irregular migrants by private vessels objectively constitutes an essential link of a more articulated and structured chain, which leads to the violation of the rules on the legal entry of individuals in the European Union.

This is a modus operandi proven by investigative evidence and risk analyses made by bodies such as Italy's National Anti-Mafia Directorate and EU Frontex Agency and other stakeholders.

In particular, according to the National Anti-Mafia Directorate, a uniform interpretation of international law provisions, intended to safeguard fundamental human rights is the only effective countermeasure to the international trafficking in migrant smuggling. Such interpretation would enable us to act against migrant smugglers.

It is worth mentioning that interpretative note to Article 8 - the *Travaux préparatoires* to the 2000 Palermo Convention and its Additional Protocol against the smuggling of migrants – interprets the concept of "ship engaged in the case of facilitating illegal migrants", where the term "engaged" refers to both cases of direct involvement and indirect engagement.

It is therefore necessary to immediately put a stop to the systematic activity at sea to rescue foreigners in the waters falling within the competence of Third Countries as well as to the autonomous identification of the disembarkation port for unidentified migrants boarded on private vessels.

Legitimate requirements of internal security and compliance with the immigration rules relating to Third-country nationals rule against an abuse of international conventions on rescue at sea in scenarios not catered for by those provisions.

This unacceptable situation is made even worse by European rules that require the Member States to manage the asylum process and to return irregular migrants. The point is that these Member States are exposed to considerable pressure and committed to the protection of the EU's borders.

It is therefore necessary to undertake a political reflection that, starting from the current migration scenario, can define, at the EU level, a specific legal framework for irregular migration by sea, including through an evaluation of the role played by the newly enhanced Frontex.

In this regard, we request the new Finnish Presidency and the next European Commission soon to be appointed to give the highest priority to this issue, with a twofold objective: to create the conditions for a real fight against the smuggling of migrants and to face, without prejudice, the question of the pressure suffered by the most exposed countries.

As a first step in this direction, we believe that it is urgent, at European level, to convene a ministerial conference in order to define the future lines of action.

A truly European asylum system

All the Member States agree on the need to reform the Common European Asylum System, but this unanimity of intent has not been matched by negotiating positions aimed at overcoming the contraposition between States of first entry and States that are geographically less exposed.

We need a reform that clearly recognizes the peculiarities of the management of maritime borders while concretely addresses the issue of the management of those (the majority) who are not recognized as beneficiaries of international protection.

It has to be recognized that it is not possible to address a problem that has to be faced by the European Union as a whole through the creation of hotspots only in a few maritime border States. We can no longer accept those proposals that continue to assign to first entry States, not only the burden of receiving those who are entitled to asylum, but also the return of those who are not entitled to international protection.

A concrete form of shared responsibility must be sought precisely on this last ground: in the face of rejected asylum applications, returns must be shared equally among all

Member States or, otherwise, managed directly by the European Union, for example through the newly-enhanced Frontex Agency.

Therefore, the possibility of mutual recognition by Member States of decisions to reject international protection applications should also be assessed. Consequently, the EURODAC database should be updated, providing for the possibility of recording the outcome of the international protection procedure.

Externally, it is necessary to work concretely - through a consequent political and financial commitment - to implement disembarkation agreements (and related reception centers) with Third countries.

This is a crucial issue that could also contribute to the resolution of conflicts at the European level in terms of solidarity/redistribution.

We envisage a system that, in line with the expectations of the most exposed Member States, provides for compulsory redistribution measures. This objective may be secured if agreements or arrangements on the lines set out above are functioning well. Once the disembarkation agreements and the related centers in Third countries are in place, solidarity measures could be easier to be implemented.

Finally, it is necessary to think of a system providing for safe and legal entry channels in the European Union. This structured system would cater for the needs of persons in need of international protection. In this sense, we need to think about a more active role for the European Union, which should be able to act directly on the territory of Third States close to the Countries of origin to select, in collaboration with UNHCR, people in need of protection to be resettled to the different Member States.
