



## Hidden Emergency

### Migrant deaths in the Mediterranean

By Judith Sunderland

The mothers of young Tunisian men who disappeared without a trace after setting off in early 2011 on the dangerous voyage across the Mediterranean are still searching for their loved ones. In meetings with Tunisian and Italian officials, they are asking for help and for the truth. As one mother who travelled to Italy explained, “If I can’t find my own son, I will find at least one son. I want to be told what happened to them.” They hope their sons arrived safely, but the reality is that they may be among the thousands who have died attempting to cross the Mediterranean.

The number of migrant deaths in the Mediterranean, a sea with many busy shipping lanes where international law and centuries of custom oblige ships to assist those in need, is shocking.

The United Nations High Commissioner for Refugees (UNHCR) estimates that 1,500 people died in the Mediterranean in 2011 alone, making it the deadliest year on record.<sup>1</sup> Fortress Europe, an internet blog that tracks deaths of those seeking to reach Europe, puts the number at over 2,000. The real number may be even higher.

Political upheaval and armed conflict in North Africa last year created particular circumstances that may have led to more people embarking on even more dangerous crossings. Yet, migration to Europe by those fleeing persecution or just seeking a better life is a regular, yearly phenomenon, and so too are deaths at sea. According to Fortress Europe, over 13,500 people have died attempting these crossings since 1998.<sup>2</sup>

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<sup>1</sup> UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011,” Briefing Notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html> (accessed February 1, 2012).

<sup>2</sup> Fortress Europe, “La Fortezza” (The Fortress), <http://fortresseurope.blogspot.it/p/fortezza-europa.html> (accessed August 3, 2012).

The death toll during the first six months of 2012 has reached at least 170.<sup>3</sup> An Eritrean man lived to tell of the deaths of every one of his 54 fellow passengers when their small dinghy sank in the Mediterranean in early July. He clung to the remains of the dinghy for days before being sighted by fishermen and rescued by the Tunisian Coast Guard. Unless more is done, it is certain that more will die.

Europe has a responsibility to make sure that preventing deaths at sea is at the heart of a coordinated European-wide approach to boat migration, not a self-serving afterthought to policies focused on preventing arrivals or another maneuver by northern member states to shift the burden to southern member states like Italy and Malta.

With admirable candor, EU Commissioner Cecilia Malmström said recently that Europe had, in its reaction to the Arab Spring, “missed the opportunity to show the EU is ready to defend, to stand up, and to help.” Immediate, concerted efforts to prevent deaths at sea must be part of rectifying what Malmström called Europe’s “historic mistake.”<sup>4</sup>

## Europe’s Response to Boat Migration

People have been risking their lives to come to Europe, either in search of economic stability or a safe haven from war and persecution, for decades. Major sea routes to Europe include from North Africa (particularly from Libya, Egypt, Tunisia, and Morocco) to Italy and Malta across the Sicilian Channel and from West Africa (but also from Morocco and Algeria) to Spain’s Canary Islands in the Atlantic Ocean. There is also some travel to Spain’s southern coast across the Strait of Gibraltar.

Arrivals by sea have varied over the past decade, with a high of 54,000 recorded arrivals in 2008.<sup>5</sup> The numbers fell sharply in 2009 and 2010, reflecting Italy’s abusive policy of intercepting and summarily returning migrant boats to Libya in 2009, and tighter EU member state immigration cooperation with countries of departure. Crossings surged once

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<sup>3</sup> UNHCR, “One survivor, 54 die at sea attempting the voyage to Italy from Libya,” Press Release July 10, 2012, <http://www.unhcr.org/4ffc59e89.html> (accessed July 11, 2012).

<sup>4</sup> “EU’s rejection of migrants during the Arab Spring: a « historic mistake » according to Commissioner Malmström,” Statewatch, <http://www.statewatch.org/news/2012/jun/17-migrants-arab-spring.htm> (accessed July 16, 2012).

<sup>5</sup> UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011,” Briefing Notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html> (accessed February 1, 2012).

more in 2011, in the midst of chaos and conflict in North Africa, with an estimated 58,000 arrivals by sea throughout the year.<sup>6</sup>

Since the early 2000s, Libya has been a major departure point for migrants and asylum seekers hoping to reach Europe. Smugglers' routes, both into the country through the desert and out of the country on rickety boats, have flourished.

Irregular border crossing, whether by land, air, or sea, is a dangerous business. Some of those attempting by land and air—the vast majority of irregular entries into Europe—take considerable risks: hiding in and under trucks, stuffed into car trunks, crammed into containers where lack of air, food, and water have claimed hundreds of lives. Discovery en route or at the border can mean mistreatment at the hands of smugglers, unwitting transporters (e.g. truck drivers), and border guards, detention, or summary return to a country of transit or the country of origin, or, as Human Rights Watch has documented, being dumped in the desert along remote stretches of North African borders and left to die.<sup>7</sup>

The risks at sea are even greater. Smugglers often overload unseaworthy boats—sometimes simple wooden boats or rubber dinghies with a small outboard motor—with men, women, and children whose lives are put in the hands of “captains” with little experience. Passengers are prevented from taking sufficient water and food to limit weight.

As a result, many migrants have died at sea due to exposure and thirst, adverse weather conditions, mechanical problems, or human error. The captains are often told to throw satellite phones and GPS devices into the water once sighted by coast guard patrols, so they will not be identified as the smuggler. If not intercepted or rescued, this means the boat will continue its journey without any navigational aid. Tactics at disembarkation points also cost lives, with smugglers throwing passengers overboard when land is in sight and speeding away to avoid detection. Not all can swim, especially in strong currents, and it is impossible to know how many have drowned while flailing towards shore.

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<sup>6</sup> Ibid.

<sup>7</sup> Human Rights Watch, Pushed Back, “Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers,” September 2009, <http://www.hrw.org/reports/2009/09/21/pushed-back-pushed-around-o>.

European countries most affected by boat migration—Italy, Malta, Greece and Spain—have saved many lives through rescue operations. But those governments and the European Union as a whole have focused far more effort on seeking to prevent boat migration, including in ways that violate rights. Cooperation agreements with countries of departure for joint maritime patrols, technical and financial assistance for border and immigration control, and expedited readmission of those who manage to set foot on European soil have become commonplace.

The EU’s border agency Frontex has become increasingly active through joint maritime operations, some of which have involved coordination with countries of departure outside the EU such as Senegal. Even though in September 2011 the EU gave Frontex an explicit duty to respect human rights in its operations and a role in supporting rescue at sea operations, these operations have as a primary objective to prevent boats from landing on EU member state territories. This has also prevented migrants, including asylum seekers, from availing themselves of procedural rights that apply within EU territory.

The European Parliament and the European Council are currently negotiating a proposal to create EUROSUR, a surveillance system that would, among other things, use technology, including satellite imagery and drones, to monitor the Mediterranean and North African coasts. In principle, EUROSUR aims to improve surveillance and coordination among member states and Frontex to reach three objectives: preventing irregular migration, tackling cross-border crime, and protecting and saving lives.

The draft legislation to create EUROSUR requires member states and Frontex to “give priority” to the special needs of persons in distress at sea, as well as children, asylum seekers, victims of trafficking, and those in need to medical attention. The proposal does not, however, lay down any procedures, guidelines, or systems for ensuring that rescue at sea is implemented effectively as a paramount objective. Beyond the stated goal of saving lives, the new system reflects the traditional focus on securing borders and preventing arrivals.

Italy’s previous push-back policy was perhaps the most notorious expression of Europe’s “keep ‘em out” mentality. In collaboration with authorities in Gaddafi’s Libya, Italy began in May 2009 to intercept migrant boats in international waters and literally force them back to Libya from where they had embarked. In some cases, the Italian Coast Guard physically

returned to Libya the migrants they intercepted at sea. In other cases, migrants were interdicted by Italian forces and then transferred onto Libyan vessels for return. This occurred without even a cursory screening to see whether some might be refugees or whether others might be sick or injured, pregnant women, unaccompanied children, or victims of trafficking or other forms of violence against women.

In February 2012, the European Court of Human Rights condemned Italy for these practices. The Court found that summary push-backs to Libya amounted to collective expulsions and exposed people to torture and cruel, inhuman, or degrading treatment in Libya or in their countries of origin if subsequently returned by Libyan authorities. In short, Italy had violated its obligations under the European Convention on Human Rights and international law.

Italy had suspended its cooperation agreements with Libya in February 2011, and has indicated it will respect the European Court's ruling and will no longer engage in push-backs. However, past experience suggests that an immigration cooperation agreement signed with the Libyan authorities in April 2012, the exact contents of which have neither been made public nor submitted to parliamentary scrutiny, is unlikely to give migrants' human rights the attention and focus they need if those rights are to be properly protected.

## **2011: Europe's Shame**

Upheaval in Tunisia and the conflict in Libya in 2011 displaced hundreds of thousands of people. An estimated 28,000 Tunisians crossed to Italy in the first six months of the year and a similar number, primarily African and other migrants and asylum seekers who had been living in Libya, made the crossing from Libya to Italy and Malta throughout 2011.<sup>8</sup> In reality, the vast majority of the hundreds of thousands of people displaced from Libya fled over land to neighboring Tunisia and Egypt.

A combination of desperation, particularly unseaworthy boats, and increasingly dangerous practices by smugglers in Libya put the lives of those who attempted the crossing at risk. But why so many lives were actually lost, in a heavily-trafficked Mediterranean under heightened surveillance, demands a detailed and honest examination.

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<sup>8</sup> UNHCR, "Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011," Briefing Notes, January 31, 2012, <http://www.unhcr.org/4f27e01f9.html> (accessed February 1, 2012).

In February 2011, Frontex deployed a joint operation “to assist the Italian authorities in managing the influx of migrants from North Africa”, with ships as well as aerial patrols. In the second half of March 2011, NATO launched Operation Unified Protector to enforce the arms embargo on the Gaddafi regime, with as many as 21 ships in the Mediterranean at the height of operations. NATO command in Naples boasted of relentless surveillance, including through use of sophisticated sea and land-based technology, to ensure that no ship was able to transit the embargo area without permission.

As the situation in Libya, particularly for sub-Saharan African migrants, deteriorated and more and more people fled to the sea on rickety boats, calls for action mounted. UNHCR urged all ships in the Mediterranean to treat overcrowded migrant boats as presumptively needing rescue. EU Commissioner Malmström called for greater solidarity from member states to resettle recognized refugees who had fled to Tunisia and Egypt. Human rights organizations called for the creation of a humanitarian sea corridor to ensure safe passage and for the EU to evacuate people from Libya directly to Europe. None of these calls were heeded.

### **The “Left-to-die” Case**

Abu Kurke was clearly traumatized when he described to a Human Rights Watch researcher in late April 2011, by phone from a hide-out in Tripoli, his attempt to flee war-torn Libya in an unseaworthy boat earlier that month. He was one of nine survivors of a fateful crossing that led to the deaths of 63 people, including 20 women and 2 babies. The “left-to-die” case demonstrated the deadly consequences of inaction by individual ships, the European Union, and the international community at large.

The small ten-meter boat on which Abu Kurke was a passenger ran into trouble soon after leaving Libya under cover of darkness on the night of March 26, 2011. Using a satellite phone, the passengers called an Eritrean priest in Rome, Don Musei Zerai, who alerted both the Italian Coast Guard and NATO headquarters in Naples. Despite distress calls sent out by Italian authorities, and contact with a military helicopter and a warship, the boat received no help. It drifted for two weeks in the Mediterranean before the tides pushed it back to Libya on April 10, 2011. By that time, 61 people aboard had died. One more died upon arrival, and a second died shortly afterwards in a Libyan jail.

An in-depth inquiry conducted by the Parliamentary Assembly of the Council of Europe (PACE) published in March 2012 found a “catalogue of failures” had led to these deaths. At least two military ships—a Spanish frigate under NATO command and an Italian ship under Italian command—in the vicinity of the boat did not respond to distress calls, while one still unidentified warship and one still unidentified military helicopter failed to provide or ensure assistance after coming into direct contact with the boat. Apparently because the boat was in the Libyan search and rescue area, Italy and Malta, though aware of the boat in distress, did not go to its aid. At the time, it should have been clear that Libya was unable to live up to its obligations. The inquiry’s rapporteur, Dutch senator Tineke Strik, also pointed to the lack of planning by NATO and the international community for a predictable exodus of people fleeing Libya.

Many questions remain unanswered, in large part due to uneven and incomplete cooperation from NATO, individual member states, and the European Commission. Over a year later, NATO and the European Commission have not provided satellite imagery that could help pinpoint the location of navy assets at the time. Spain has provided contradictory information about whether its frigate, the *Méndez Nuñez*, received the distress alerts; the United States says its records cannot confirm that its naval assets received the alerts; and the United Kingdom has simply not responded to questions about its ships. PACE adopted a resolution in April 2012, calling for in-depth investigations by NATO and national parliaments as well as steps to address the systemic failures that contributed to the deaths in this case.

Ships operating under NATO command in 2011 did assist migrant boats in distress on a number of occasions, rescuing, according to NATO itself, approximately 600 people at sea. Italian and Maltese coast guards also saved—and continue to save—many lives through their search and rescue operations. Yet, continuing tragedies point to the failure to abide effectively by the international laws of the sea as well as to gaps in the existing legal and policy framework.

## **International Obligations**

International maritime law has developed over the centuries to ensure humanitarian assistance to those in distress. Both the 1974 International Convention for the Safety of

Life at Sea (SOLAS) and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) oblige all shipmasters to provide assistance swiftly to persons in distress if they are made aware of the need and are in a position to provide help. States have an obligation to ensure effective communication and coordination of rescue operations in designated areas.

Italy, Malta, Greece, Spain, and Libya all have what are called “Search and Rescue” (SAR) Areas for which they are responsible. Each country has a Rescue Co-ordination Centre (RCC) to receive, process, and share information about vessels in distress. Distress alerts should be relayed through international channels to all vessels in a particular area so that the closest ship can provide assistance. The SOLAS and SAR conventions were amended in 2004 to help ensure safe disembarkation of persons rescued at sea, including by placing responsibility for providing or finding a place of safety on the country responsible for the area where the persons were rescued, and mandating coordination among states.

The system is however far from perfect, nor is it perfectly applied. The law sets a high standard for the concept of distress, allowing ships to ignore dangerously overcrowded and ill-equipped migrant boats unless there are very clear signals of need for assistance.

A case described by the Centre for Research Architecture at London’s Goldsmith’s University underscores the risks of such an approach. The Canadian frigate HMCS Charlottetown, participating in NATO’s Operation Unified Protector, assisted a migrant boat on March 25, 2011. Members of the crew boarded the migrant boat, ascertained that the engine functioned and they had sufficient fuel. Though the boat had a “rudimentary steering system” and was “crowded”, the Canadian crew determined that their obligations had been met by providing food, water, and blankets. The next day, the Italian military ship Etna assisted a ship in distress that met the same description, and which, according to a NATO briefing, had been given food and water by another NATO ship. The Etna arranged for helicopter transportation for a newborn baby and mother, as well as a woman in labor; other passengers were subsequently transferred to an Italian coast guard ship and taken to Lampedusa.<sup>9</sup>

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<sup>9</sup> Charles Heller, Lorenzo Pezzani and Situ Studio, « Report on the ‘left to die boat,’ Centre for Research Architecture, Goldsmiths University of London, <http://migrantsatsea.files.wordpress.com/2012/04/forensic-oceanography-report-11april20121.pdf> (accessed May 1, 2012).



Lack of clarity in the legal framework over where rescued persons should be safely disembarked lead to conflicts, notably between Italy and Malta, and unnecessary delays. Malta, a tiny island, has staked out an enormous search and rescue area reaching close to Lampedusa, a small Italian island in the Mediterranean. Malta has not accepted the 2004 amendments to international maritime law, which effectively means that it does not recognize its obligations to ensure a safe port of disembarkation for those rescued within its vast search and rescue area. It has also refused to participate in Frontex joint patrols on the same grounds.

Malta has long insisted that those rescued close to Lampedusa should be disembarked there, while Italy contends that those rescued in Malta's SAR are Malta's responsibility. In September 2011, Italy declared Lampedusa an unsafe port after a fire partially destroyed the reception and detention facility, creating further complications. At this writing, the center has yet to be reopened.

The reluctance of European states to accept disembarkation, and all the legal responsibilities it implies for processing, reception, and assistance, was on dismal display in August 2011. A Spanish frigate participating in the NATO operation rescued over one hundred migrants at sea. While Malta and Spain agreed to take a few particularly vulnerable passengers, the rest remained on board the Spanish ship for five days while negotiations with a variety of European countries continued. In the end, Tunisia—a country in deep economic crisis already hosting hundreds of thousands of persons displaced from Libya—agreed to take them in.

The presence of so many military vessels in the Mediterranean was unusual; migrant boats are more likely, under normal circumstances, to cross paths with commercial ships. The obligation to assist boats in distress applies to all ships, whether they are commercial or military, passenger or freight. Commercial ships may face, however, strong economic and even legal disincentives to provide necessary assistance. Disputes over safe ports of disembarkation and the reluctance of European states to take responsibility can mean delays, with significant costs to commercial activities. In some European states, like Italy, commercial shipmasters and crew face criminal prosecution on charges of abetting irregular migration when they insist on disembarking rescued migrants.

Commercial ships are not clearly bound by international refugee law in the same way as states, and may seek to disembark those they have rescued at the nearest port, regardless of the potential consequences for the individuals concerned. In recent months there have been at least two instances in which commercial vessels rightly have gone to the aid of boats in distress in the Mediterranean, and then returned all passengers to Libya, a country with no asylum system and a recent history of abusing migrants. This effectively prevents people from accessing procedures to seek international or other forms of protection; it also means they may attempt the dangerous crossing again.

## **Preventing Deaths in the Mediterranean**

It may be tempting to blame lives lost at sea on unscrupulous smugglers, the weather, or simple, cruel fate. However, many deaths can and should be prevented. UNHCR's recommendation during the Arab Spring to presume that all overcrowded migrant boats in the Mediterranean need rescue is a good place to start.

European civil society has mobilized around the tragedy unfolding off its shores. A pan-European and Mediterranean coalition of NGOs called Boats4People sailed a boat from Italy to Tunisia and back to Lampedusa in July 2012 to raise awareness about deaths at sea. In collaboration with Goldsmith University, the coalition launched the project WatchTheMed, a web-based map to track and report migrant boats in distress. An overlapping coalition of organizations has initiated a lawsuit in France to seek accountability in the left-to-die case, with discussions underway for similar actions in other NATO member countries.

Recognizing the serious dimensions of the problem, specialized United Nations agencies such as the UNHCR and the International Maritime Organization (IMO), have been working to produce clear recommendations. These include establishing a model framework for cooperation in rescue at sea and standard operating procedures for shipmasters. The latter should include a definition of distress triggering the obligation to provide assistance that takes into account risk factors, such as overcrowding, poor conditions on board, and lack of necessary equipment or expertise. UNCHR has also proposed that countries with refugee resettlement programs set aside a quota for recognized refugees rescued at sea.

The IMO has also been pursuing since 2010 a regional agreement among Mediterranean European countries to improve rescue and disembarkation coordination, as well as burden-sharing. The project, if implemented successfully, would serve as a model for other regions. A draft text for a memorandum of understanding is under discussion. Negotiations should be fast-tracked with a view to implementation as quickly as possible.

If Europe is serious about saving lives at sea, it also needs to amend the draft legislation creating EUROSUR. This new coordinated surveillance system should spell out clearly the paramount duty to assist boat migrants at sea, and its implementation must be subject to rigorous and impartial monitoring. Arguments that such a focus would create a “pull factor” and encourage more migrants to risk the crossing are spurious. History shows that people on the move, whether for economic or political reasons, are rarely deterred or encouraged by external factors.

It is a testament to human courage and tenacity that an Eritrean man survived for days at sea clinging to flotsam. It is an outrage that he had to. There is no shortage of ideas on how to improve to prevent deaths in the Mediterranean. What’s needed now is the political will to put them into practice.