

**NINTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL
CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA
Contribution from Special Procedures Bureau**

1. The Special Rapporteur of the Human Rights Council on the human rights of migrants, Mr. Jorge Bustamante.

The Special Rapporteur on the Human Rights of Migrants engaged in constructive dialogue with a number of countries in the Mediterranean, such as Italy, Libya, Malta, and Morocco with regard to specific cases involving individuals rescued at sea. Amongst the problems identified by the SR are the procedures applied by the receiving countries towards those rescued. They are often denied individual assessment for their respective cases, jeopardizing the rights of asylum seekers. They found themselves in involuntary detention, poorly treated and often facing forcible returns to countries where they may risk torture. Officials from the country of origin of those rescued were asked to identify possible smugglers or traffickers amongst the groups. This could expose individuals fleeing persecution to the risk of involuntary return to their countries of origin under the pretext that they are traffickers or smugglers. The concerns of the Special Rapporteur and the responses of governments were published in their periodic reports.

For instance, by letter dated 7 June 2005, the Special Rapporteur notified the Government of Italy that he had received information regarding the forcible return of some 88 persons to Libya, where they were allegedly at risk of ill treatment and torture, and the possible return of over 1,000 other persons of various nationalities who landed by boat on the island of Lampedusa. All were believed to have been taken from their boats and held at a temporary holding centre for foreign nationals. It was reported that the United Nations High Commissioner for Refugees (UNHCR) was consulted when requested and that apparently those deported were not given adequate opportunity to apply for asylum.

By letter dated 16 August 2005, the Government of Italy acknowledged that 1,170 foreigners had reached Lampedusa in seven different boat landings. All foreigners received adequate medical and personal assistance. Due to the severe overcrowding in the island's detention centre, the UNHCR was temporarily denied access to the centre. As soon as the situation was normalized, visits were promptly authorized. According to the usual procedure, during the identification process all foreigners were allowed to provide information on their personal situations in their countries of origin and those who manifested a desire to remain in asylum were transferred to national shelters. Investigations revealed that the boats in which the foreigners arrived came from Libya, though few foreigners were nationals from other countries. Therefore, two different initiatives were undertaken. Firstly, a Libyan delegation, composed of investigators, visited Lampedusa to cooperate with the Italian authorities in order to identify the criminal organizations involved in the clandestine immigration from Libya to Italy. A charter flight was organized to take alleged Egyptian nationals back to Libya. In fact, during interviews their nationalities were revealed to be the following:

Palestinian (135), Iraqi (43), Jordanian (1), and Egyptian (1). The expulsion was not a collective expulsion as each foreigner was the object of an individual measure of "refoulement".

The latter is a measure provided by law, adopted in cases of foreigners arriving in Italy by bypassing border controls and who are arrested at the moment of entry or immediately after, or who are admitted into the territory in order to provide urgent assistance. A judicial appeal can be made against this measure which can also be presented at Italian representations in foreign countries.

Both the Secretary General (in his Report A/62/299 of 24 August 2007) and the Special Rapporteur on the Human Rights of Migrants (in his report A/HRC/4/24) requested information to all countries regarding the impact of legislation and measures adopted on the human rights of migrants. Among these questions are related to the obligation of States to assist persons at risk at sea.

Below are the responses received from the following States:

In Bosnia and Herzegovina, issues of aid to persons at risk at sea are regulated by article 26 of the Law on Supervision and Control of Crossing the State Border.

Canada's obligation is reflected in the Canada Shipping Act, section 384 of which states that rescues persons on the high seas (i.e., international waters) need not decide upon the merits of asylum claims.

Ecuador is party to an international instrument on the matter, the International Convention for the Safety of Life at Sea (SOLAS).

In Japan, the Japanese Coast Guard has a mission to rescue life in case of marine accidents and to give necessary assistance in case of natural calamities and other events where relief is required, as prescribed in article 5 (2) of Japan Coast Guard Law.

In Malta, the Armed Forces of Malta apply all the norms of international law: the United Nations Convention on the Law of the Sea (UNCLOS 2) places upon the masters of all ships (military included) the obligation to assist a person in distress at sea. The Armed Forces of Malta also ensure that civilian vessels within the Malta Search and Rescue Region (SRR) also observe this behaviour. Further obligations, as outlined in the International Convention on Maritime Search and Rescue (SAR Convention, 1979) and SOLAS Convention of 1974 regarding the way operations are conducted and coordinated.

Maldives states that section 12.1 (c) of its National Coast Guard (NCG) Act empowers the NCG to undertake search and rescue operations in all situations of distress in the maritime zones.

In Mexico, according to article 137 of the General Law on Population, the Governance

Secretary is able to create groups of protection of migrants located in the national territory. Among the functions of these groups are those of examining and programming and participating in the operations of safety, rescue and first aid.

- **In Singapore**, the Singapore Police Coast Guard doctrine stipulates protection of life as first priority, and all efforts should be made to care for any injured person. Any person found to be at risk at sea (man overboard) within Singapore territorial waters would be first rescued and brought onboard, followed by the necessary first aid and medical attention as appropriate. Efforts will be made thereafter to establish the identity and legality of entry.

- **The Government of Spain** indicated that the United Nations Convention on the Law of the Sea (1982) provides in its article 98 the obligation for the master of a ship to render assistance to any person found at sea in danger of being lost. The person should be brought to the nearest Spanish port, in case the State of origin is not able to accept him/her in its territory, for not being a citizen or for not possessing documentation.

- **In its reply**, the Syrian Arab Republic states that its Government provides for rescue operations at sea and it has many bilateral agreements with neighbouring countries on this issue.

- **In Turkey**, according to article 14 of its Law on Safety of Life and Properties at Sea, any captain is liable to do his/her utmost to assist any person at risk at sea without endangering anyone on his/her vessel. Turkish Naval Forces Command performs its rescue and search activities in accordance with the following regulations: the Hamburg Convention which determines the basic principles of the international rescue and search activities; International Convention for the Safety of Life at Sea (SOLAS).
