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COMMITTEE ON MIGRATION, REFUGEES AND DISPLACED PERSONS

**Hearing on
Lives lost in the Mediterranean sea: who is responsible?
(Rapporteur: Ms Tineke Strik, Netherlands, SOC)
Paris, 29 November 2011**

SESSION 1: TRAGEDIES IN THE MEDITERRANEAN SEA AND EUROPE'S RESPONSIBILITY

The sitting opened at 2 p.m. with **Ms Tineke STRIK** (Netherlands, SOC), Rapporteur, in the chair.

Opening of the Hearing by **Ms Tineke STRIK**, Rapporteur

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Welcome to this public hearing.

I will not go back over the whys and wherefores of my report. Everyone here knows about the tragic events in the Mediterranean in March and April 2011, in which 63 people lost their lives, not because their boat sank and they drowned but because they had nothing left to eat or drink! They called for assistance by sending out a distress call, and the authorities knew where the boat was, but no authority or ship came to their aid.

These events shocked the Council of Europe and that is why we decided to conduct an inquiry to try to understand what happened at sea, who knew about these people in trouble and what the authorities' response was to their distress call.

This was such a tragic incident that it is essential to establish who was responsible so that the guilty parties will not go unpunished. However, our work also has much broader implications. We know that a very large number of people have already lost their lives at sea, all around the world, but in particular in the Mediterranean Sea. It is thought that in 2011 alone, over 2000 people drowned in their attempt to reach the European coastline.

We wish therefore to find ways both of establishing the responsibilities in this specific incident and of making more general proposals on how responsibilities are supposed to be divided up at sea, to determine whether they are sufficiently explicit for everyone and, failing that, to look into ways of making them clearer. Perhaps they should also be applied more effectively as it is possible that the authorities know who is supposed to be responsible but they purposefully overlook this. If this is the case, the question is what recommendations we can make to ensure that all authorities fulfil their responsibilities in accordance with international law.

The purpose of this hearing is to gain a broader picture of the issues at stake. We wish to gather more information about the origin of these people, the circumstances and motives behind their decision to flee to the European Union and the reasons why they get into trouble on the Mediterranean. We would also like to gain a general idea of the relevant international and humanitarian law but also of refugee law and understand something about the incompatibilities between these different legal frameworks.

For this purpose, we have invited speakers with considerable expertise in this field and I am convinced that we will be able to take advantage of their contributions to frame the most appropriate recommendations.

However, before we begin our work, I would like to present you with some of the accounts we gathered from the nine survivors out of the 72 people on the boat.

Talking about their experience on the boat, one of them made the following comment: "It was completely overcrowded. Everyone was sitting on everybody else. I had someone sitting on top of me, and this person had someone sitting on top of him. We were packed, we were on top of each other. They don't really care how many people can fit into the boat, all they want is to get the money from each person. ... We all left initially feeling very happy because we were convinced that we were leaving for a better life."

During the tragedy, a helicopter flew by – we think it was a military one – and having spotted the boat, it dropped water and biscuits. In this connection, one of the survivors made the following comments: "a large helicopter arrived. We all began crying, shouting, we reached up with our hands, up to the sky, and we said help us because we're dying, otherwise we're going to die, we're starving, we need food, we need water. The people on the helicopter had rifles pointed at us. Machine guns. They were wearing a uniform and it was a beige, tan colour. There was some sort of rope which they used to tie the water and the biscuits, and then they lowered them down to the rubber boat, and then they left. ... the only reason they came to us was to give us the water and the biscuits, and then they just left."

He continued as follows: "After those five days, everyone had completely lost their strength. By the eighth day, the children started to die away gradually."

Another survivor said: "We'd been travelling for many days, and people started to die, one after the other, and there were corpses all over and they started to smell bad. And so we started to throw them overboard, the corpses. Some people who were really starving and had to find some way to eat, started putting toothpaste on their lips, and sucking and extracting the sugar from the toothpaste. Others – they had to try to survive, and in order to keep their throats moist and humid in some way, some would dip cups into the sea and drink salt water, and others would drink their own urine. And several people started to hallucinate. ... Every day there were more and more people who would die."

This then is what we were told by three of the nine survivors. The boat left Tripoli on 25 March 2011 and drifted back to the Libyan coast by 10 April, spending over two weeks at sea. On the second day, the passengers sent out a distress call.

From these few statements, we can of course identify a number of different responsibilities. There is that of the people who risk their lives by going to sea; but there is also that of the traffickers, who set little store by the plight of individuals but much store by their profits. We were told this morning that Gaddafi and the Libyan authorities forced people to go to sea on makeshift vessels. However, some responsibility is also borne by the states in charge of search and rescue (SAR) zones. And if they bear a responsibility, why did they not act? States also have responsibilities under refugee law; all the Council of Europe member states have signed the Convention on this subject.

What we will try to do therefore is to establish all the responsibilities and raise all the questions arising from this incident, with the goal, of course, of drawing lessons from it for the future and ensuring that such an event cannot happen again and that people are no longer left to their own devices and effectively sentenced to death.

I am delighted that so many experts have come to share with us what they know about the situation. We will begin by listening to Mr Christopher Hein, the Director of the Italian Refugee Council, who will give us an overall idea of the situation, the relevant figures, the origins of those involved and what happens at sea.

Then Mr Stéphane Ojeda, diplomatic adviser to the International Committee of the Red Cross, will provide us with information about refugee law and the right of families to know what has happened. He

will also provide some details about cases of people lost at sea far from their home countries, which cause complications that you can easily imagine.

Lastly, Mr Baldwin de Vidts, Vice-President of the International Institute of Humanitarian Law, will provide some information on the legal framework surrounding events like this at sea.

2011: Annus Horribilis in the Strait of Sicily

Speaker: Mr Christopher Hein, Director of the Italian Refugee Council

Mr Christopher Hein, Director of the Italian Refugee Council – I very much welcome the fact that the Parliamentary Assembly of the Council of Europe has taken the initiative to conduct a detailed investigation to clarify what happened with this boat on which so many people lost their lives at the end of March and the beginning of April 2011. I am equally gratified by the interest it takes in the role that non-governmental organisations play throughout Europe and the work they have been doing for many years now to bring a number of facts to the attention of the general public and of political leaders.

In my brief contribution, I will present some statistics before attempting to distinguish four lines of enquiry, which may help to pinpoint people's responsibilities from a legal and/or political viewpoint. These lines of enquiry follow the paths taken by refugees from their departure up to what happens after their disembarkation, wherever that might be.

You know the first statistic that I am going to present to you, which is the number of people who attempt to cross the Mediterranean. Similar statistics could be given to you for other external EU borders. They are based solely on cases for which we have specific data provided by family members, sometimes thanks to journalists, lawyers or international organisations such as the United Nations High Commissioner for Refugees (UNHCR) or to national maritime forces. Since last year, a number of experts such as the organisation, Fortress Europe, and others have been trying to gather this information. At all events, I ask you to view these statistics as indicative figures, which probably fall short of the reality. All that we are able to describe here is what we know and we are perfectly aware that we do not have any data on the many boats which sank over the same period; nobody knows what happened to these, so they are not included in the statistics.

The first chart attempts to follow the main routes from Africa, the Middle East and Turkey to the countries of southern Europe. Between 1994, which is the year in which we first gathered statistics, and November 2011, over 12 000 people lost their lives on the Mediterranean Sea. The most striking figure is the one for deaths in the Strait of Sicily, where over 6 000 people perished. There were also many deaths in the westernmost areas among people who were attempting to reach the Spanish coastline, including that of the Canaries. If we also take account of the land borders of eastern and central Europe and the border between Turkey and Greece, the figure rises to almost 18 000 people. According to another statistic, in 2011 alone, 1 971 people died in the sea between North Africa and southern Italy including Malta's territorial waters.

Over the first eleven months of 2011, it was in the central Mediterranean that most lives were lost and the figure was lower, although still quite substantial, around Greece and between Morocco and Spain.

If we look at the trends since 2006, there was a clear peak in 2008 and then, fortunately, a decline in 2009 and 2010.

I also wanted to show you this map showing the distances that separate the various places concerned. It clearly illustrates why it is that even though Malta or Italy is not their final destination, people head first of all to Malta, Sicily or Lampedusa, which are not far from the north African coast. This does not mean that this is the final destination for most of these people.

The latest incident occurred last Saturday in Italian waters, on the Adriatic Sea, when three people died just before they reached their destination on a boat from Turkey, which put in in Greece. The other people on the boat are now safe. They were asylum seekers, mostly of Afghan origin, and the distances involved in this case were much greater than in those referred to above.

In recent years, it has become apparent that the more barriers we build and the more obstacles we place in people's way, the more costly and dangerous migrants' journeys become and the longer and more difficult their routes to Europe.

The main routes we are talking about here are those departing from western Libya, particularly Tripoli, and from the beaches and ports of south-eastern Tunisia, particularly Zarzis, and arriving in Lampedusa and in Malta, which, as we have seen, is much further away.

Search and rescue zones (commonly known as SAR zones) vary considerably in size. For instance, the map I have shown you shows that Malta's zone is huge, with a virtual sea border, which is also that of the European Union, measuring over 1000 km. It can also be seen that Malta's and Italy's SAR zones overlap and so it is not at all clear which country bears the responsibilities in this part of the Mediterranean. What is clear, on the other hand, is that Malta alone cannot be expected to supervise the whole area.

I would now like to dwell for a short moment on the cost of the passage for those who are forced to board boats which fail to satisfy any safety or protection standards to try to reach countries where they can be protected from harm or they can be better off economically. As a result of the Schengen System and what is sometimes called "Fortress Europe", there are few legal means of getting into the European Union, even for those who are in need of international protection. Under the European visa system, you can get a visa for a myriad of different reasons but it is simply impossible to acquire a protection visa or a visa to file an application for protection. As a result, it is impossible for anyone from a country required by the European Union to obtain a visa to enter a member state legally. There are exceptions in the rare cases of refugees covered by a resettlement programme under the rules of the United Nations High Commissioner for Refugees, but only a very small number of people are concerned by this and, under the terms of the UNHCR's mandate, this system is subject to the will of each state. In total the member states offer only about 700 places under this scheme per year to refugees from Africa. Resettlement is therefore one possible response but will never be a proper solution as long as there are so few places available.

A very small number of European countries also have a protected entry procedure, under which anyone may go to the embassy of a European Union member state in a country of origin or transit – such as the Italian embassy in Tripoli – and lodge an application for protection. Switzerland still has a mechanism of this type in its legislation and therefore 120 Eritrean refugees went to the Swiss embassy in Tunis and were able to travel to Switzerland to ask for their protection claim to be dealt with. However, once more, only a few individuals are covered by such measures and they do not amount to a collective EU response.

I will turn now to the question of responsibility. These alarming figures relate to people who died because they found themselves at sea without food in very poor conditions, for which it is very difficult to establish the responsibilities. While each incident has its own characteristics, when there are so many of them, there has to be someone, for instance someone in the municipal authorities or the police, who has a duty to do something, either at the departure point or on the arrival of these people in an EU member state. This is clearly what we are talking about here. Somebody has to do something, otherwise the situation will endure.

The second area of responsibility is that of search and rescue operations, the question being who is responsible when such operations are required. Of course, there are international norms on the subject but they do not say anything about what must be done when distress calls are issued at sea or somebody sends out an SOS or even when people have already gone overboard. The point at which anyone's responsibility is incurred is not therefore clearly defined. For about the last twenty years, international maritime law has been changing. I am thinking in particular of the amendments that were made in 2004 to the SOLAS Convention. One European Union member state, Malta, is the only country not to have ratified these. As a result of these amendments, the country which has responsibility in the search and rescue zone is also responsible for ensuring prompt and safe disembarkation, though not necessarily in one of its own ports. However, this is not what happened in the case we are discussing.

Sometimes, the persons concerned are taken on board a military vessel or a fishing boat and negotiations are held – often between Italy and Malta, though sometimes other states may be involved

– to determine who is responsible for taking them to a safe disembarkation site. This is sending out a very negative signal, particularly to the owners of fishing boats and commercial vessels, who may fear that they will suffer financially if they get involved. It is essential therefore to state clearly and immediately who bears the responsibility.

It is also important to select a port of disembarkation which will be safe not only where it comes to providing any immediate assistance that may be required but also in terms of mechanisms to protect people from refoulement and other procedures. We have to be sure for instance that nobody will be sent to a country such as Libya, which is not bound by the 1951 Refugee Convention and does not offer any guarantee of protection or shielding from refoulement.

Questions of responsibility also have to be raised in connection with the processing of people after their disembarkation. As long as we are subject to the Dublin Regulations and Malta is required to examine all the applications of all those who have entered its territory, there will be no way out of the situation! The question of how asylum seekers are shared out among the countries of the European Union has a direct impact on the readiness and willingness of member states to engage in rescue operations.

This is a very delicate exercise that you have embarked upon, Ms Strik. Your task will be to identify the various responsibilities at play, including those of states, but also perhaps those of the International Maritime Organisation, which has established “soft” standards. In any event, it will be very difficult to reach agreement on a clear division of responsibilities.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you for your statement. You talked of several causes for this incident and emphasised the need for more legal means of asking for protection without risking one’s life. You also dealt with conflicts of responsibility in the various search and rescue zones. You talked in particular about Malta, which is the last remaining state not to have ratified the amendments to the Convention – perhaps Mr de Vidts could discuss this matter further. You also talked of the obstacles to and misgivings of fishing boats and other civilian craft, which fear that legal action might be taken against them if they come to the rescue of a vessel in distress. There also seems to be a lack of solidarity among European countries and many misgivings and hesitations about the problems you mentioned, particularly with regard to the resettlement programme.

You looked at the issue from many different angles and I believe that we will have the opportunity to address these matters again.

I now call Mr Ojeda.

Missing Persons in the Mediterranean Sea: the families’ right to know

Speaker: Mr Stéphane OJEDA, Diplomatic Adviser, ICRC

Mr Stéphane OJEDA, Diplomatic Adviser, ICRC – The International Committee of the Red Cross (ICRC) welcomes the importance placed by the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe on the question of missing persons. Allow me to make one clarification right away: when the ICRC is talking of missing persons, it is in the broadest sense possible in order to cover all those whose whereabouts are unknown to their relatives or who, on the basis of reliable information, have been reported missing. Thus, it includes persons fleeing armed conflicts or other situations of violence, persons migrating or persons moving for any other reason.

The fate of hundreds of people who went missing while they tried to cross the Mediterranean Sea during what has been called the “Arab Spring” remains unknown. The ICRC does not concentrate too much on figures though as data collection is still today very difficult. What is sure is that figures never give a complete idea of human suffering.

The legal framework governing search and rescue at sea and the treatment of concerned individuals is contained in the international law of the sea, international refugee law, human rights law, and in international humanitarian law for situations of armed conflict. Thus, if we may put the focus on the armed conflict in Libya for a moment (without forgetting that boats leaving from Algeria and Tunisia have also gone missing), it is worth remembering that as crossings of the Mediterranean Sea

occurred, military vessels of States which took part in this armed conflict had thus to engage in search and rescue operations. And the ICRC seizes the opportunity here to commend all rescuers who have been carrying out their operations in extremely difficult conditions.

Moreover once a disappearance has unfortunately occurred, both international humanitarian law and international human rights law recognise the families' right to know. In other words, the families have the right to be informed of the missing person's fate and may have recourse to authorities for providing the relevant information. In order to uphold this right to know, it is now clearly recognised that the concerned authorities must search for the persons reported missing. This includes the necessity to carry out inquiries in order to provide meaningful answers to the families. In that sense, the ICRC is now helping the Libyan authorities and, in particular, the newly established National Commission for the Missing to create a pool of forensic experts and set up further training and guidance for all those involved.

All stakeholders have to admit though that the challenges facing States and other actors involved on the issue of missing persons at sea are enormous. For instance, the first challenge is to know what legal framework is applicable and by whom. In this context, it is thus difficult to ascertain which authorities are responsible for an individual that goes missing somewhere at sea. To adequately answer the families' request is also a challenge given the geographical scope where the searches should be carried out and the current difficulty to get access to the information related to the persons who reached the European shores and to those who disappeared in the sea. Very often, bodies are not found, making therefore any inquiry much more difficult to carry out. Thus, with regard to those persons, refugees, asylum-seekers and migrants, who crossed the Mediterranean Sea before and during the "Arab Spring" and lost their lives on their way to Europe, answers will be more difficult to find to respond to the families' right to know.

African, Asian and European national societies of the International Red Cross and Red Crescent Movement keep receiving numerous requests from families of persons who went missing in the Mediterranean Sea. These requests are received by our Movement because of our worldwide Family Links Network, through which family members try to restore family links after conflict, situations of violence, disaster or, since recently, also migration. And the International Movement stands ready to share our expertise on the restoring of family links or on the proper management of human remains with all stakeholders.

Moreover, without pretending to being able to provide you here with all the perfect answers, let's stress that a few important measures could already, if implemented, make a huge positive difference for the families of the missing persons:

- States where families are based (usually States of origin of the missing persons) could provide them with a structure or a mechanism, to which these families could willingly turn to in order to ask and to get information on the fate of their relatives;
- European States and other States along the migration routes could gather information in a consolidated and coordinated way and pass on all relevant information on the missing persons to the States of origin of these individuals allowing therefore the latter States to inform the families. Obviously, prior assessment should be carried out in order to ensure that such transfer of information will not put the concerned families at risk in their home countries;
- European States should also provide the International Red Cross and Red Crescent Movement with access to information, or facilitate that the families are informed, and with the possibility to treat and transmit data across borders, which would allow the International Movement to do its restoring family links work. In this respect, the ICRC has always promoted in its activities the respect of data protection principles and it would like to further promote - in national and European data protection regulatory frameworks - a clear recognition of the specific mandate given to the ICRC and National Societies to restore family links and clarify the fate of the missing persons;
- Today, specific information already exists in Europe. Police, judicial and immigration authorities all over Europe are gathering information that is used in asylum procedures and prosecution of illegal activities of all sorts. There is in the ICRC's opinion not yet enough realization that this information

could be useful for humanitarian reasons as well. At this time we can still not exclude whether a person has indeed ever arrived to the European continent;

- There is a necessity to have access to specific information related to persons that managed to enter Europe and are alive, e.g. to get access to the registers at points of disembarkation, to the registers of retention or detention centres, and those at central or ministerial level. Thanks to a crosschecking of all this information, we might progressively find out who got lost at sea and might be probably dead;

- Proper management of the dead and data on deceased persons helps to reduce the number of mortal remains that cannot be identified and therefore associated with a missing person. States can put in place measures to help facilitate the return of remains to families and management of information on the dead. For remains for which identity or State of origin is known, bilateral discussions between embassies can speed the process of identification and return of remains. For remains for which identity and State of origin are unknown, a full post-mortem examination can provide important information leading to identity, such as sex of the individual, estimated age group and living stature, and medical and dental specificities. Likewise, a centralized registry of unidentified bodies, including information on place of discovery and place of disposition following post-mortem examination, can greatly assist in associating unidentified remains with missing persons thereby alleviating families' suffering regarding the fate of missing loved ones.

Again, the difficulty of identification for missing at sea must be acknowledged: many bodies disappear, families have little information on the routes followed, and inter-state cooperation in this field is nascent. It is thus suggested here that the priority could be to review existing procedures, systematize and streamline information gathering as well as creating awareness among stakeholders.

The ICRC will continue to follow with interest the discussion on the issue of missing persons within this Committee and stands ready to contribute to future work and reflection on the matter.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you very much for your statement. It is really awful not to know what has happened to your loved ones. They are reported missing but you do not know whether they are alive or dead or where they went missing. Not knowing is actually more traumatic than knowing.

You talked of the need to improve both procedures and co-operation between states. Would you have any recommendations about the role that the Council of Europe and the European Union might play in this? Is this the level at which something needs to be done?

Mr Stéphane OJEDA – If you will allow me, I would like to ask Ms Hilde Sagon to answer your question. She also works for the ICRC, in our Brussels delegation, and she follows this matter closely in liaison with the European Union.

Ms Hilde SAGON, ICRC, Brussels – Awareness about this matter needs to be raised. Furthermore, data collection is organised in such a way that we encounter restrictions and not all the relevant information can be collected. There is actually a lot of information but it is not all gathered together. Attention should be drawn to the need to improve the collection and passing on of information. One major step forward would be for the national authorities to work closer together and co-operate on this issue and perhaps the Council of Europe could help with this. The most important thing is to provide access to this information to anyone who needs it.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you.

I now call Mr de Vidts, who will focus on the legal framework.

Law of the Sea and Law of Armed Conflicts

Speaker: **Mr Baldwin de VIDTS**, Vice-President of the International Institute of Humanitarian Law

Mr Baldwin de VIDTS, Vice-President of the International Institute of Humanitarian Law – The International Institute of Humanitarian Law is very glad to be able to speak to you about various

aspects of the application of the Montego Bay Convention relating both to the law of the sea and to international humanitarian law, both of which were issues in these regrettable incidents.

Two bodies of law are effectively involved. The arrival of refugees by sea is a problem that has existed for years and the humanitarian situation of refugees and asylum seekers must be reconciled with the needs of the countries in which they arrive when it comes to their policies to combat irregular immigration and their asylum policies.

The Tampa episode, in 2001, showed that there were two conflicting legal systems and also that there were legal considerations on the one hand and moral and humanitarian ones on the other. Many questions were raised at this time and I will talk about only a few of them here, including the duty to provide assistance to persons in distress at sea, the legal and financial considerations, the law on refugees under the 1951 Convention and all other legal instruments, the duty of the authorities of coastal countries to protect their national security and their territorial waters and the obligation of coastal states and flag states to respect the rights of asylum seekers during search and rescue operations. I will conclude that a number of obligations are not fulfilled, or only partly so, with regard to refugee law and the duty to come to people's rescue, particularly those applying to shipmasters and states.

The law of the sea goes back to ancient times when humans first started going to sea. However, little attention was paid then to human and humanitarian issues. Yet, the law of the sea and its instruments and institutions have contributed directly to the body of human rights and humanitarian law designed to provide adequate protection for individuals. The aim of the law of the sea is of course to ensure that universal rights are respected and to secure good governance at sea. The United Nations Convention on the Law of the Sea clearly sets forth the rights and obligations of the states parties. The law of the sea is also governed by a number of customary rules – which are so highly developed that we can talk of a body of codified customary law – and the Convention cannot be dissociated from these. In this context, human rights and humanitarian practices are only assigned a minor, indirect significance with the preamble to the Convention on the Law of the Sea using similar language to that of the United Nations Charter. Both texts therefore pursue the same aims and have the same status. The Convention is not therefore a human rights instrument but neither can it be denied that this aspect is present in the instrument. When persons or boats are in danger or in distress at sea, it is of course essential that they may be provided with assistance or protection.

To ensure that individuals are protected, a series of restrictions and limitations are placed on the powers of coastal states to secure compliance with the laws and regulations in their exclusive economic zone.

Following a leading judgment in 1999, we have noted that courts use various techniques to incorporate human rights principles into cases connected with the law of the sea. The courts take account of international law which lies outside the scope of the Convention on the Law of the Sea alone. All the other international texts relating to the law of the sea follow this logic, even if it is not spelt out explicitly.

I will not go into technical details now but the Vienna Convention allows additional regulations to be taken into account provided that they are not incompatible with the Convention's main purpose.

The principles and concepts of human rights and humanitarian law must be applied in the law of the sea as they are in any other sphere of international law. One of the basic principles of the Convention, set out in Article 98, is the duty to render assistance to any person in danger. This article has been the subject of interpretation in a large number of Council of Europe activities. It is also necessary to look at how international customary law has been codified in order to understand fully what type of assistance must be provided for persons in distress at sea.

Without going over the entire history of this law, it is worth mentioning that as early as 1809, in the case of the *Eleanor*, as in 1880, in the case of the *Kamaranga*, systematic reference was made to the duty to render assistance, particularly for the captain. Another leading decision, this time by the Court of Cassation in the *Carlo Alberto* case of 1832, also refers to the protection of persons in a spirit of good will, humanity and generosity. Article 10 of the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea (Salvage Convention) (Brussels, 1910) also refers to

every shipmaster's duty, so far as possible without endangering his own vessel or passengers, to render assistance to everybody found at sea and in danger of being lost, even if the person is an enemy. Coastguards also have a duty to provide assistance. Even taking account of a number of parameters, no discrimination can be made: if a vessel is in trouble, any other vessel in the vicinity has a duty to go to its aid. The only exception mentioned in the Convention is a situation in which taking action would give rise to a genuine danger.

One of the negative aspects of the international law as it stands, as mentioned before by Mr Hein, is that it does not penalise those who fail to exercise their responsibility. Some exceptions are also allowed in cases in which a rescue would threaten the sovereignty and integrity of a state or for states which are not subject to the authority of the law of the sea.

The Salvage Convention talks of a shipmaster's duty to provide assistance for anyone whose life is at risk at sea. It asks states to adopt all the necessary measures to carry out this obligation. This seems to me to be particularly important as this Convention was drawn up so as to make shipmasters aware of their duties and responsibilities at sea.

To give you the full picture, this obligation is also found in the Geneva Convention on the High Seas of 1958, which was replaced later by the Montego Bay Convention.

There are of course other relevant instruments such as the European Convention on Human Rights, the Rome Convention of 1950 and its extraterritorial application through the relevant judgments of the European Court of Human Rights. To understand the Court's approach, reference can be made to the very important judgment it gave in 2010.

In conclusion, I would insist on the fact that shipmasters have a duty to go to the aid of people in danger as quickly as possible while showing due regard for their own safety. The obligation to provide assistance and relief also applies to states but the main responsibility lies with shipmasters, who must fulfil their obligations under Article 98-2 of the Convention on the Law of the Sea and Chapter IV of the SOLAS Convention.

As has already been said, there are also more flexible instruments, which place an obligation on states to rescue and provide assistance while ensuring the safety of the ship engaged in the operation.

Article 98-2 also establishes a duty to rescue persons, to set up appropriate search and rescue services and to rescue people along its coastlines as well as keeping them secure.

There are therefore, a number of international instruments on maritime law which impose duties on shipmasters whatever flag their ship is sailing under. However, there are also a number of gaps in the law, which can lead to impunity and need to be filled.

More generally – and the ICRC may correct me on this – the legal framework is made up of texts in three overlapping fields, namely international humanitarian law, the law of armed conflict and refugee law.

International humanitarian law regulates the protection of persons and is designed to protect human rights. It also lays down a number of rules, which governments are required to obey during times of both peace and war.

Refugee law is designed to protect people who have fled their country because they have been persecuted or their rights have been infringed or because there is an armed conflict in their country of origin.

International humanitarian law guarantees the protection of each human being without distinction whereas refugee law focuses solely on one group of people. However, the aim of all these texts is to protect life and human dignity and that is of course extremely important.

The underlying principle is that of non-discrimination in the enjoyment of rights, which means that no distinction or discrimination is made between people on the grounds of characteristics such as sex,

skin colour, political opinion, religious beliefs, nationality or ethnic origin. The definition of protection is an absolutely crucial point and, based on the work of the ICRC, the protection proposed could include all activities whose aim is to guarantee total respect of the right of individuals, in accordance with treaties and in keeping with the approach of the various bodies which try to see to it that humanitarian law and refugee law are upheld. Under the protection principle, protective action is intended both to prevent abuses or bring a halt to them and to improve people's situation, restoring their dignity so that they can live dignified lives, which sometimes entails the payment of compensation. The aim is to secure the respect of individuals' rights in accordance with international law.

I would also like to talk about international humanitarian law and the law of armed conflict. The law of armed conflict was already dealt with in a number of texts prior to the Geneva Convention. The Red Cross does some outstanding work in this field and has published a very interesting report on the subject. International humanitarian law and the law of armed conflict are mentioned in Article 3 of the Geneva Convention and in Protocol No. 2

International humanitarian law is very closely related to human rights, refugee law and the law of armed conflict. Together, these laws guarantee a degree of protection for each individual, provided that the rules are respected by the parties to the conflict and the conflict does not fall outside the legal framework.

International maritime law provides a good basis for a legal framework provided that all shipmasters are aware that they must act in accordance with it and with international humanitarian law.

We are extremely interested in the work being done by the Council of Europe and would be very happy, Ms Strik, to help you with this in any way we can.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you for this highly educational description of the legal aspects of today's topic.

If I have understood correctly, the three legal frameworks you have described are supposed not to conflict with one another but to complement and reinforce one another. Unfortunately, things are a little different in practice but it is interesting nonetheless to know how they should work in theory.

You say that the priority is the duty for everyone to provide assistance and rescue people in danger but exceptions are allowed if the rescue operation can endanger the ship itself. However, I assume that, in such cases, the shipmaster is obliged to inform an authority of the situation or ensure that another vessel will be able to carry out a rescue operation.

Mr Baldwin de VIDTS – You are right. This obligation has existed for a very long time – I would say for two centuries – and has been reiterated in a large number of cases.

Commercial aspects cannot come into play and a shipmaster cannot refuse to provide assistance on commercial grounds. This rule takes precedence over any contractual relations between the different parties. It can be imagined for instance that a rescue operation will have an effect on the value of a cargo of bananas. Clearly therefore, many parameters other than the duty to rescue others come into play when a ship goes to someone's aid, but I reiterate that financial considerations should never prevent the shipmaster from intervening.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – In the case we are discussing today, the boat was in Libyan waters but Libya does not have an official search and rescue zone. What happens when a country is not in a position to fulfil its duties and organise rescue operations or it is not a signatory to the SOLAS Convention? Is it then for neighbouring countries to take the situation in hand? Who is responsible for ensuring that there are no loopholes in this area?

Mr Baldwin de VIDTS – This is a highly complex and delicate matter. In my view, there is an obligation under international law. International law has been created by states who thought together about ways of tackling international problems. This means that if a body is not able to exercise its responsibility and act, it must not prevent other bodies from intervening. One of the very purposes of this system was to preclude the possibility of people finding themselves in a legal no-man's-land. It brings us back to Article 98, under which assistance must be provided to anyone in need. If a person

took legal action on the ground that a state was aware that an event might have been occurring in a zone next to its own, even if the state was not directly responsible for this zone, I confess that I do not know what the outcome of the deliberations would be.

In the case of Libya which we are dealing with, we have to remember that the United Nations Security Council acted to protect the population, which is an aim that also figures in its resolution on Syria. This way of thinking has become increasingly prevalent at international level over the last ten years and it clearly applies beyond the frontiers and limits of search and rescue zones.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Reference has been made to the ships under NATO command which were sailing in this zone. Does this alter the responsibilities of ships flying one national flag or another? Does it have any effect on states' responsibilities? Does NATO also have a responsibility for search and rescue?

Mr Baldwin de VIDTS – I used to be a legal adviser to NATO, although this clearly does not authorise me to speak on its behalf. However, you are right; we can discuss the rules of engagement and the operations of NATO at sea. In the aftermath of 11 September 2011, a number of measures were taken in the context of the “war on terror”. They are set out in Article 5 of the Washington Treaty. During NATO operations, ships remain under the authority and the legal jurisdiction of the state whose flag they are flying, meaning that there is no change in the legal rules that apply to them.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you for this clarification.

I would now like to open the debate, beginning with the questions from our parliamentary panel.

Parliamentary panel and debate

- **Ms Tina ACKETOFT**, Sweden, ALDE

- **Mr Giacomo SANTINI**, Italy, EPP/CD

Ms Tina ACKETOFT (Sweden, ALDE) – This is an extremely complex area, and I would probably have done better to study law instead of marketing...

The escalation of armed conflict undeniably played a part in our present situation. Mr de Vidts, however, has just shown us that the situation has been the same since human beings first set out to sea. We nevertheless have the impression today that preventing people in distress at sea from reaching a safe harbour is more important than saving human lives! Clearly, something has gone wrong.

Until a few minutes ago, I still felt that the problem facing us was primarily a legal one, that there was a clash between different legal instruments, with too many loopholes for the system to function. But after listening to what Mr de Vidts had to say, I now realise that we do have appropriate legal instruments, which could work. So the problem lies elsewhere, and I should like to be sure that it is not the political will to make these instruments work that is lacking. I should therefore like to put to our experts the direct question of where the problem lies in their view.

Mr Hein said that the need to obtain protection was not amongst the very large number of reasons for which a visa could be issued. Can he confirm this? He also spoke of Switzerland's protected entry procedure, and I wonder if he could tell us a little more about this.

Lastly, it was stated that, the more obstacles are created, the more expensive getting to Europe becomes. Have those of you with experience in this area ever found that creating a fortress stopped people coming? Does a fortress not merely have the effect, ultimately, of making the journey both more dangerous and more costly?

Mr Christopher HEIN – Thank you very much for your question, which gives me an opportunity to talk about the activities of my own organisation and other NGOs under a European Commission-financed project intended to find alternative means of access to protection, for it is indeed that access which causes a problem.

A number of countries take the view that, if asylum-seekers arrive irregularly, it needs to be possible to send them back, on the grounds that they can follow another procedure. In co-operation with Mrs Ashton, we are preparing for 2014 a communication on the need to take action to achieve a result different from the one that I have presented to you in the form of these tragic statistics.

Some countries do have a protected entry procedure, whereas others have dropped the idea because it was problematic for them. Discussions on discontinuing it are now under way in the Swiss Government. The situation would be different if a common European approach existed to the subject, enabling the burden to be shared among all the member states of the European Union, or even the Council of Europe.

In my view, it is absurd that an Eritrean in Tripoli has no access to protection of any kind. From where he is standing, he can almost see the island of Lampedusa, but if he wants to reach the island and request protection there, he will have to board a makeshift craft, pay 2,000 euros, and run an 80 % risk of losing his life. Why can he not do this directly in Tripoli? Why can he not simply travel to Italy and apply for protection when he gets there?

It is not, of course, a simple matter to find a procedure for this, but models do exist, and I am convinced that, sooner or later, we will reach a point at which we will be able to discuss all of this and move away from what is, at least in the eyes of the public, a very uncomfortable situation.

The Schengen system has a list of grounds for visa applications, and it is even possible to obtain a visa without a particular reason, but this always depends on the goodwill of the consular official dealing with the application.

Has "fortress Europe" deterred anyone from entering European Union territory? This is an important question deserving more detailed investigation. The agreement between Spain, Mauritania and Senegal and the one previously concluded between Italy and Albania prevented people who were in transit via those countries from leaving them. But these were economic migrants, not refugees. Few made asylum requests in 2006 and 2007. But the people concerned today are precisely those who truly need international protection – and here I am thinking about what has happened in Ivory Coast, the Democratic Republic of Congo and the Horn of Africa. All of these people are now trying to reach a port in the European Union, in Greece or elsewhere, via Sinai, Israel, Egypt or Turkey. There has been a large number of deaths, and many people have found themselves trapped in North Africa. I hope that this answers your question.

Mr Stéphane OJEDA – You asked us, Ms Strik, whether, when a state cannot or will not comply with its obligations, it is possible for another to take over. In the context of international humanitarian law, Article 1 of the Geneva Convention stipulates that a state must respect and ensure respect for its obligations. A state which is unable to do so must therefore ensure that another state does so on its behalf; this leads to the drawing up of a classification of the different kinds of violence, something which is not always easy. This rule had to be applied in the case of Libya.

The question of the implementation of existing law relates to all the legal rules, including those of international humanitarian law. The International Conference of the Red Cross and Red Crescent opened yesterday, in the presence of representatives of the states parties and the various organisations which are members of the movement. We expect this conference to adopt a resolution making possible a strengthening of the law so as to foster effective implementation of humanitarian law, that law currently being the weak spot in the international legal arsenal. Political will is now needed to put into practice and apply the legal rules which already exist.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Mr de Vidts, you said that the different legal systems were complementary, but it is clear to us that account needs to be taken of the problems associated with disembarkation and protection: once rescue operations have been carried out, other problems arise.

Mr Baldwin de VIDTS – I agree with both Mr Hein and Mr Ojeda. The problem with international humanitarian law is not only that of ensuring that it is complied with, but also knowing what to do when it is not. The international community has still not given a definitive answer to this question. The UN Convention on the Law of the Sea entails a number of obligations, as in Article 98, which applies on

the high seas, but how are these to be enforced? How is protection to be ensured for the persons concerned once they have been taken on board, the vessel continues on its way and arrives at a port where its cargo is due to be unloaded? It is not just the conventions on the law of the sea which are concerned, but also other rules of international law, such as the law on refugees and human rights law, for these other bodies of law may provide a starting point in the search for a solution. As Mr Hein said, what we do not know is how to apply international humanitarian law. What is meant by assistance? What is meant by rescue? How can these concepts be defined? Things are far from clear in this context. Of course, existing case-law may be put to good use, but the fact is that the definitions are not sufficiently clear, so while international law provides a framework which is indeed imperfect, it can be a basis for action.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – This is also what people say about the European Convention on Human Rights, so I can understand that the situation is a little similar where the law of the sea is concerned.

Mr Giacomo SANTINI (Italy, EPP/CD) – Thank you very much to all our experts, who have enabled a real step forward to be taken today in terms of our work within the ad hoc sub-committee. The sub-committee has five members, and we need to discuss things with experts. One of our aims is to lay down new rules, over and above those which already exist, especially on rescue at sea, as things have not been very clear recently in this respect. A system which works better in future must therefore be created.

I think that we need to rely on the facts so that a sound conclusion can be reached from today's discussions. Our prime objective is to understand who was responsible for the tragedy of 27 March last, which led to a death that was not sudden, but prolonged and painful, for 63 people between 27 March and 10 April.

Given the period during which these people were suffering and dying, responsibility seems to lie in several quarters. As Mr Hein has shown, everything happened in Libyan waters, some 65 nautical miles from the Libyan coast, 23 miles from Malta's SAR zone and 93 miles from Lampedusa. If we try to establish geographical responsibility, although I regard this as unfair, it is not Italy which was responsible. I am not here today as a member of the Italian Senate to defend my country, but I think that there are things which must be said and that a reminder needs to be given of the truth.

It has nevertheless been pointed out several times that, even when there are no political borders which take physical form, there is a territory of the seas, and it is solidarity amongst seafarers that prevails there, according to the law of rescue at sea, as was stated this morning. It seems to me that there is no justification for any discussion about lines dividing the seas.

In the case of interest to us, the operation was started on the extremely clear basis of solidarity amongst seafarers. A distress call was made by one of the people on the drifting craft, by telephone, to a priest in Italy well-known for giving assistance to migrants. The priest immediately told the Italian coastguards, who applied the usual protocol for distress calls at sea. They used the most up-to-date methods to alert all civilian and navy vessels in the area and the nearest authorities, which were those of Malta.

It is reported that a distress call was made as early as 26 March, but this information needs to be verified. Whatever the case may be, the call made the first time on 27 March was subsequently repeated every four hours until 7 April, and on each occasion to every vessel in the area. It cannot therefore be claimed that the alarm was not sounded.

The area concerned was, of course, in Libyan waters, but, as we know, Libya had other problems to solve at the time, being in a state of civil war. It could not therefore organise rescue efforts, despite the vessel's proximity to its coast. Italy and Malta were therefore asked to deal with the situation, which they did.

The area was also, during the war, a strategic zone under NATO control. According to the information supplied this morning by Ms Strik (although this conflicts with the information available to me), an Italian military official stated that civilian vessels were excluded from it because of the military operations.

Although a number of civilian ships and fishing boats may have sailed into the zone, I doubt whether they would have opted to pass through or drop their nets at a place where the risks were so high. What is more, it is difficult for a fishing boat to engage in such a complex operation as the rescue of people in mortal danger packed onto a makeshift craft. In my view, an operation as specific as this requires the use of dedicated vessels. This was explained to us both in Lampedusa and elsewhere: rescue operations of this kind need properly trained people on two ships, one on each side of the vessel from which the persons in distress need to be rescued; such rescues are carried out in accordance with a strictly defined protocol. What I am trying to say is that, even had a fishing boat been in the area, its captain could not be held responsible for failing to intervene.

We also need to clarify the question of whether or not NATO vessels were present. As I said, the zone was subject to NATO control. According to personal accounts which we obtained from survivors, a military helicopter flew over the boat, and navy ships were also observed. It even seems that the closest vessel to the boat was from the French Navy. I am not a sailor myself, living in the Dolomites in Italy, so I am not sure that it was an aircraft carrier, but it does seem that it was no less a vessel than the Charles de Gaulle, a very large ship, as its name indicates. Some survivors also observed that there were planes as well as helicopters.

Despite my efforts to get an ambassador to be with us today, NATO unfortunately did not agree to attend this hearing to clarify the situation. They may not have wanted to provide us with confidential military information. But it does seem that the Charles de Gaulle was close to the boat in distress, and we should try to obtain more information.

Rather than going along with the effort to attribute responsibility to one party or another at any price, we should concentrate on trying to improve things on the basis of this experience and to set up international instruments which will make it possible to react better and more effectively if another tragedy of this kind ever occurs.

A number of Council of Europe member states, such as Turkey, Greece and some of the Balkan states, have been affected by similar events. A few days ago, a boat carrying 70 people broke up on the coast of Puglia, a region of southern Italy. Their fate is unknown, with some probably drowning and others making off after getting to the shore. What is known is that the boat had come from Turkey and had put in at a Greek port. So other member states are affected by this problem, which is not just one for Malta and Italy.

As Lampedusa is no longer considered to be a safe place to land, traffickers are now looking for other routes to use for people seeking irregular entry to Europe. The system of refoulement and repatriation for economic migrants is working well, especially where Tunisians are concerned, in accordance with the bilateral agreement concluded between Italy and Tunisia. On the other hand, migrants from a war zone have been accommodated in camps on Italian territory. As order has pretty much been restored on Lampedusa, and things are now much better regulated, it is no longer irregular migrants' preferred port.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you. You said that it is very difficult for a fishing vessel to perform a rescue. Mr de Vidts, for his part, said that, while this may be difficult, it is nevertheless an obligation to assist anyone in difficulty at sea. If the operation is too risky for a fishing vessel, the latter has a duty to alert another party, to send out a distress signal so that other ships in turn come to the assistance of the vessel in difficulty.

If NATO is not attending this meeting, it is because the person who was due to come had other commitments. I nevertheless had the opportunity to speak to NATO representatives yesterday, and that was very helpful.

Mr Tadeusz IWÍŃSKI (Poland - SOC) – As not only a politician, but also an academic, there are some things that I wonder about. This afternoon's hearing is about "lives lost in the Mediterranean sea", and we are striving to establish responsibilities. It is certainly not the first time that we have faced a situation of this kind: history repeats itself. Mr Hein referred to the situation in the Horn of Africa, and a few years ago our committee held a hearing in the Canary Islands on the same subject, and of course

we have not forgotten either what has happened in Asia. It would certainly be interesting to raise the question of the similarities and differences between all these situations.

You have also, Ms Strik, had the opportunity to travel to Rome. Nobody knows exactly how many people have died, and this is another tragedy in itself.

In the circumstances, I wonder quite simply how many more times we are going to repeat the same mistakes. This is the main issue for me. We should stop looking back at the past and trying to go all the way back to when Christopher Columbus discovered America, and we should turn resolutely towards the future!

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Our objective in fact is to issue recommendations for the future.

Mr Christopher HEIN – It is useful to remember that this problem does not arise only in the Mediterranean. When Haitian refugees and asylum seekers attempted to get to Florida, the US Supreme Court issued a ruling allowing interception at sea by the armed forces, and many boats with Haitians on board were turned back to Haiti. Furthermore, thousands and thousands of Somalis have attempted to flee by sea, particularly to Yemen, and thousands of human lives have been lost in the Gulf of Aden, about the same number in total as the deaths which have occurred in the Mediterranean. It was in fact in Asia that the term "boat people" was first coined, the same term now used with reference to the Mediterranean. At the time, the UN High Commissioner for Refugees initiated international co-operation to assist Asia's "boat people", and with good results, since such tragic events have not occurred subsequently in that part of the world.

What is needed therefore is an overall action plan enabling international organisations and national governments to pool their forces and resources, including funds, to find solutions for individuals on their own and for groups of people. A plan of this kind needs to be devised in a spirit of generosity, for it is clear that a number of countries' nationals flee for religious, political, economic or other reasons. Once a person has arrived spontaneously, even if irregularly, on a state's territory, there is a national, but also international, duty to do something for him or her.

At what point does international political responsibility begin? That is the crux of the problem. That is where the United Nations, European Union and Council of Europe need to be to the fore: it was impossible to tell Tunisians to stay at home and find their own solutions to this problem, especially as many people who had recently been forced to leave Libya were on Tunisian territory.

Mr Edward LEIGH (United Kingdom, EDG) – People very often refer to "humanitarian disasters", and we cannot forget that children are concerned as well. But we need to take a pragmatic line: nobody in Europe wishes to see an increase in immigration from North Africa. There is no inclination whatsoever to receive such an influx of new migrants. Yet everything that is happening shows us that, if controls are not strict, we shall effectively face such an influx of boat people coming to Europe from that part of the world, from sub-Saharan Africa, to improve their living conditions.

I have already had occasion to express my views on solidarity. The United Kingdom has in recent years taken in a million migrants from the various countries of the Commonwealth. None of the political parties now wishes to take in more people from North Africa. Someone making an application at the French or Italian embassy in Tripoli knows full well that it will not be granted, and that the only hope is therefore to get to the territory of an EU member state by irregular means.

Quite clearly, account has to be taken of the law of the sea and the humanitarian aspect, meaning that a person in danger cannot be left without assistance. But why is international law so little and so poorly used when someone is in distress at sea? When Mexicans are discovered close to the American coast, they are systematically sent back home, and if we are to be realistic, I think that is the only option.

Of course, Tripoli is not a very nice place to live in at the moment. But if the Council of Europe wants to take a sensible and reasonable line, it must move towards a binding convention which avoids placing full responsibility and the whole burden on member states which, like Italy and Malta, have a

maritime border. People must therefore effectively be able to be sent back where they have come from.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – We have nearly come to the end of this session. I shall nevertheless let Ms Fiala put her question, to which a reply might be given later.

Ms Doris FIALA (Switzerland, ALDE) – It is less a question than a statement following our colleague Mr Leigh's brave words, saying out loud what a good number of members of the Assembly are thinking, and what they are experiencing in their countries.

As Mr Hein said, Switzerland has tried to collect applications in those countries where it has embassies. But, as Mr Leigh so rightly said, the answer to the question of whether these people can "be considered refugees" is systematically in the negative. That is the answer given to a large number of asylum seekers, who then risk their lives in the attempt to reach their chosen country.

Democracy and the rule of law are concepts which do not exist in the countries from which refugees flee. Democracy cannot be built in a day. Patience is needed. In my view, what we particularly need to do today is provide assistance to those countries which need to set out along the path to democracy, and which refugees are attempting to flee precisely because they are not democratic. It is on the spot, in those countries, that we need to take action, because doing so in our own countries is extremely difficult.

I can assure you that, with a foreign population of 23%, there is particular tension in Switzerland. Yes, we have a humanitarian tradition, but there is a need for greater coordination of international assistance, so that we can be more successful. I feel that the ideal which prevails here is rather romantic, but if you speak to people in the street, in Switzerland or in many other European countries, you soon realise that nationalism is making a comeback.

I therefore raise the question again: what can we do together to give more assistance to those countries from which many people are attempting to flee?

Of course what is going on in the Mediterranean Sea is tragic, and we need to put a stop to such tragedies. I had a discussion with a Greek colleague who said that, when 30,000 refugees arrive every month in your country, it is quite simply overwhelmed. The Italians too are being swamped. This is why I believe that it is important for the borders of Schengen to be effectively respected.

Ms Tina ACKETOFT (Sweden, ALDE) – I have tried to restrain myself, but I can do so no longer!

The last two speakers, alas, have provided an answer to the question about which I had just been wondering: the problem certainly is more political than legal!

That being so, Ms Strik, we can see how heroic you will need to be to write a report which will not, I hope, divide us, for I hope that it will do the opposite and unite us. We all come from different countries, with different historical backgrounds, but if we wish to be a true "Committee on Migration", it is important for us not to lose sight of the need to provide an answer which is not divisive.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – We are in fact here as members of the Committee on Migration, and it is our aim to ensure that all international conventions are complied with, particularly those relating to human rights.

I should like to thank all the experts who have spoken during this first session, which was a very rich and interesting one for me and for all the members of the Committee. We have all seen the need for answers to a good many very difficult questions. We shall endeavour to start to find these at the second session.

SESSION 2: LEARNING FROM THE TRAGIC EVENTS

Ms Tineke STRIK (Netherlands SOC), Rapporteur – I would like to welcome the experts who have joined us for this second session.

Having obtained a clearer idea of the situation in the Mediterranean region, we now have to see what can be done to prevent such tragedies.

I therefore give the floor first to Ms Anja Klug of the Office of the United Nations High Commissioner for Refugees, and second to Mr Rustamas Liubajevs of Frontex.

Towards more and better international coordination?

Speaker: **Ms Anja KLUG**, Senior Legal Officer, Asylum and Migration Unit, Department of International Protection, UNHCR

Ms Anja KLUG – Thank you for inviting me to this important hearing. I also wish to thank your committee for having taken this initiative. We are very grateful to have the opportunity to participate in this key debate taking place within your Parliamentary Assembly and the Council of Europe as a whole. It usefully complements the efforts being made by the Office of the UN High Commissioner for Refugees, where I am in charge of the Asylum and Migration Unit of the Department of International Protection.

Your discussion concerns maritime issues, and my organisation of course does not deal with such questions, unlike the International Maritime Organization, the branch of the United Nations that handles those matters. However, as has already been pointed out, those involved in the field of refugee and asylum law are naturally concerned by these issues.

As we were so eloquently told during the first session, the legal framework is complex and difficult. For this reason, in cooperation with the International Maritime Organization and the International Chamber of Shipping, we have published a leaflet for shipmasters that is available in English, Spanish, Arabic, Italian and French.

I have been asked to focus my presentation on the solutions, but I nonetheless wish to say a few words about how we analyse the situation in the region, which I think will serve as a good introduction to the proposals I will then go on to present.

First of all, I think there is a need to distinguish between the usual migratory phenomena in the Mediterranean basin and the highly specific situation with which we have been confronted in the wake of the crisis in Libya. That people are crossing the Mediterranean is nothing new; such journeys have been part of life in the region for thousands of years. However, the ever-growing number of irregular migrants arriving in Italy, Malta and Spain in recent years has been highlighted by the media, and a public debate has been launched.

People have various reasons for crossing the Mediterranean, and a word of caution is needed regarding the general tendency to describe these movements as "migration", which we regard as incorrect. A distinction should in fact be drawn between refugees or other persons in need of international protection and those who are merely seeking better living conditions. The rates of recognition in Italy and Malta give an idea of how the migrants break down between these two categories: depending on the period concerned, 30 to 50% of new arrivals are considered to be in need of international protection.

Under the umbrella term "migrants", what we have is in fact a mixed movement with a strong refugee element.

Ships in distress with migrants and refugees on board are again not a recent phenomenon specifically linked to the situation in Libya. Deaths at sea in the Mediterranean are regularly brought to our attention, and it is important to be aware that such deaths are not simply a result of recent events in

North Africa but are unfortunately something we have been confronted with for a number of years now. We have already had to contend with similar situations where we receive distress calls in the middle of the night, for example, and are asked to carry out negotiations to find a place where a ship's passengers can be disembarked and to provide assistance with the reception and administrative processing of the persons concerned.

We consider that two main problems, which have already been mentioned, are states' reluctance to authorise disembarkations on their territory and the insufficient clarity of international maritime law in these matters. The MV Tampa incident, which took place close to the coast of Australia, led the International Maritime Organization and UNHCR to consider how best to reinforce the search and rescue (SAR) rules. Following that incident it became possible to amend the SOLAS Convention, but not without difficulties, as the interests of the coastal states and the flag states differ and they had problems agreeing on definitive criteria governing the disembarkation of assisted persons. However, they did agree on their obligation to cooperate so as jointly to identify a place of disembarkation.

Now these amendments had been adopted, along with a number of guidelines, parts of which are published in the leaflet I presented earlier, all these provisions are subject to interpretation, particularly regarding the place of disembarkation. It is in fact the country responsible for the search and rescue zone which is also required to provide a place where the people rescued can be disembarked. But that is the IMO's interpretation and it is not shared by all the states and not all the issues have been settled. However, I consider that an answer to the question posed earlier lies in the obligation to cooperate: if a country is unable to provide the necessary assistance, there is still a means of action based on international assistance and the obligation to cooperate.

Governments have reacted to these mixed irregular migratory movements by introducing stricter controls at their borders, and also by seeking extraterritorial solutions through reinforced cooperation with North-African states. The border control measures have brought about a decrease in the number of persons arriving, but have not put a stop to the phenomenon and have not prevented an increase in the number of search and rescue operations. We have voiced concerns on many occasions about interception operations that take insufficient account of the need for protection against refoulement or return to a country where the life of the person concerned is at risk.

Before the crisis in Libya, we made it abundantly clear that we considered that country incapable of fulfilling the protection obligations and we criticised the refoulement operations carried out by the Italian authorities. This aspect of seaborne migration in the Mediterranean region must be taken into account when conducting both search and rescue and interception operations. It is also true that legitimate concerns with regard to immigration policy and border controls clash with the humanitarian aspects of the situation.

The changes that took place in North Africa during the first few months of 2011 led a large number of people to seek to leave the countries of this region, especially Libya. No less than 55 000 of the persons concerned arrived in Italy, and slightly fewer in Malta - but a large number in relation to the island's size and population. We estimate that 2 000 people perished or went missing. In addition to the problems we have had to contend with for years, notably concerning states' reluctance to provide ports of disembarkation and the differences in interpretation of maritime law, the Libyan crisis engendered specific difficulties, in particular with the mass influx of refugees in Tunisia and Egypt. Overall, there was a huge loss of human life. Half of those who arrived in Italy were directly fleeing the Libyan conflict. They were forced to leave Libya and "chose" any means of escape, including vessels that were not seaworthy and lacked the necessary equipment, provisions and even a crew.

It should also not be overlooked that, in view of the situation they found themselves in, the North African countries were unable to respond to distress calls. Sources have also reported that the people smugglers attempted to exploit this crisis and the power vacuum so as to turn a profit from the refugees' plight, sending them off on this perilous journey.

Despite the surveillance of the region by coastguards and Frontex vessels, not everything was done to launch rescue operations immediately when necessary. To deal with the situations of distress, a few months ago we called on all the parties present in the Mediterranean region to consider that all craft transporting migrants and refugees fleeing the situation in Libya were in distress simply because they

were overloaded and unsafe. The question that arises is therefore what constitutes a situation of distress. We have information indicating that vessels in distress have been left unassisted.

I also think it very important to highlight the specific case of a ship for which the negotiations to find a port of disembarkation were unsuccessful, even if NATO did its utmost to persuade the states to cooperate. This shows the difficulties facing the coastguards, navy vessels and Frontex when they save people's lives at sea but then cannot find somewhere to disembark those they have rescued.

The number of people attempting to cross the Mediterranean has fortunately decreased with the end of the conflict and the stabilisation of the situation in Niger. But, one should be aware that the difficulties are not solely bound up with the situation in Libya. This is confirmed by a rescue operation that took place on 10 November concerning a vessel with 44 people on board, for whom negotiations to find a place of disembarkation took place with both Italy and Malta, which shows that there are still problems.

The legal framework has already been discussed. I will not go back over what has already been said from the standpoint of the protection of refugees. What is important is that all the provisions mentioned by the earlier speakers are aimed at protecting human lives at sea. As we see things, it is even more important that international humanitarian law should be applied with respect for human dignity. The principles to be borne in mind in particular include not only respect for the right to life, but also those governing the protection owed to refugees, especially the ban on returning individuals to countries where they are at risk of being persecuted, where they may suffer irreparable damage or where their lives are threatened. I would stress that this aspect of the 1951 Convention relating to the Status of Refugees applies not just on the territory and within the territorial waters of states, but also on the high seas. The case-law of the European Court of Human Rights and of other human rights treaty monitoring mechanisms confirms that this legal framework is extraterritorial in scope.

In our view, the difficulties therefore do not lie in a lack of suitable legal provisions, since the body of law is sufficiently sound. It is the application of the provisions and the practical implementation of the legal framework that are problematic.

We need, *inter alia*, to propose responses to all the issues raised by embarkation on unseaworthy boats. What is necessary is that, even before leaving their countries, people should be made aware of the conditions in which the journey will take place.

There also seems to be a shortage of search and surveillance capacities, although surveillance is particularly effective in the Mediterranean and the states have significant, albeit sometimes insufficient, capacities, something that cannot be said of all regions in the world. It would also seem that the responsibilities are not clear enough, in particular regarding disembarkation. We must also concern ourselves with refugees' safety after they have disembarked and with the application of refugee law and compliance with international human rights standards at the time of rescue and subsequently. Monitoring is another area to be considered.

We moreover note some reticence on the part of states to launch search and rescue operations. Apart from the coastguards - and the coastguard forces of Italy and Malta say many lives have been saved - military vessels are sometimes present in a zone, as well as merchant ships of course, who are often the first to arrive on the spot and take action in a situation of distress. However, things can become very complicated for a merchant vessel if it is unable to find somewhere to disembark those it has rescued and the economic and financial consequences can be pretty serious.

In Libya, as on other occasions, people sought to flee the armed conflict directly by crossing the sea. However, the Libyan conflict has further complicated an already difficult situation in the Mediterranean region. The situation there undoubtedly has its particularities and the resources available are no doubt greater than elsewhere, but the key challenges and legal shortcomings identified are in no way specific to this area. This is what makes your work particularly important. We will draw lessons from your conclusions that we can apply to other situations.

In so far as this is a question that arises worldwide, we decided to bring together in 2011 a group of international experts on refugees, asylum seekers and persons in distress at sea. This year we are celebrating the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the

50th anniversary of the 1961 Convention on the Reduction of Statelessness. We therefore wish to mark the occasion by giving further consideration to how to respond to situations of distress. The group of experts held a meeting from 8 to 10 November 2011 and concluded that the solution lay less in further changes to the legal framework than in greater international cooperation that would in particular make it possible to share the burden all this represents for the states.

As has already been said, responsibilities in these matters vary according to the situation of the state concerned: country of origin, coastal state, flag state and so on. Resources are another very important issue. Some countries have to cope with mass arrivals of migrants and may lack the capacities to deal with such a heavy burden. In such cases, the facilities set up to deal with these arrivals may become saturated, and the countries concerned may find themselves without sufficient means of launching rescue operations and fulfilling their obligations under maritime law.

At the meeting we discussed with the experts how this burden could be better shared and cooperation improved, while ensuring respect for international humanitarian law and refugee law. It is unfortunate that the International Maritime Organization could not be represented here today, as it is active on the same front as the UNHCR and we have been working very closely together. At the most recent session of the Maritime Safety Committee, the IMO made a number of proposals for improving the effectiveness of safety and rescue operations at sea. It is also taking a close interest in the question of sharing of responsibilities in fields where, as we are all convinced, more cooperation is needed.

Based on our experience relating to rescue operations at sea and states of emergency in different parts of the world, we are proposing a draft resolution so as to establish a modern cooperation framework. We have discussed this resolution with the experts and it will be published shortly. The objective of this framework is to facilitate negotiations and agreements between the countries concerned, which would make it possible to improve the reception given to migrants in the event of mass arrivals. It is true that we observe a degree of reluctance on the part of states, which is often due to the fact that they have the impression of being left to deal with the problem alone, in particular the administrative procedures once the migrants have disembarked. We are therefore seeking to promote enhanced sharing of responsibilities in these areas, which could but encourage states to be more ready to offer places of disembarkation.

We also propose a number of tangible measures, such as the creation of a task force in the states concerned, and the establishment of procedures for identification of the port of disembarkation, disembarkation, reception of the persons concerned, the registration process, etc, all taking account of refugee law and of the regulations and recommendations that we published in 2006 with the aim of better managing migratory flows. These provisions must be transposed into the maritime context.

In the same spirit of sharing responsibilities, we propose setting up a response team that could be dispatched to countries suddenly confronted with a mass inflow of migrants arriving by sea. This team would consist of experts in refugee law, international humanitarian law, child care, health care and so on. The objective would be to find solutions for the persons concerned and assist states in dealing with the situation.

At the same meeting we also suggested basic standard procedures for shipmasters; a reinforcement of the obligation of assistance; measures to guarantee that everyone understands what the treaties require; and the introduction of a mechanism for monitoring by the country of disembarkation.

All the experts, whether government or academic, welcomed these proposals and considered that they could serve as a starting point for discussions and also for cooperation agreements.

It should of course be said that we are talking about a model, not a universally applicable solution. This will naturally not make it possible to resolve all the problems, but the aim is to facilitate cooperation between states so they can make arrangements enabling them to deal better with these situations.

Our proposals now have to be translated into action, which entails having the political will to act. We will be holding follow-up meetings, at which we will examine how the objectives can be attained. We are currently considering holding further regional discussions so as to take account of the situation at the regional level and thus enable the concrete transposition of this general framework.

We will undoubtedly have to discuss the situation in the Mediterranean region and we are therefore eager to have the recommendations that will result from your work. I nonetheless take the liberty of making a few suggestions here and now.

We consider it essential to ensure that the burden and the responsibility do not fall on a single country. Accordingly, if you envisage specific agreements for the Mediterranean region, all the countries need to participate in the process and agree on their contributions. Each state must contribute, but the contributions can take different forms. For example, one country could provide rescue services, another the port of disembarkation, a third a place where the administrative processing could take place, and yet another the funding. It is really essential that the burden, the roles and the responsibilities should be better shared.

At the same time, a shipmaster who comes to the assistance of persons in danger should be aware that he is under no obligation to disembark them if the rescue took place outside a state's search and rescue zone. Where operations take place within their SAR zones, states must know that other states will also be providing support in dealing with the administrative processing or proposing alternative solutions.

I consider it crucial that one or more countries on the Mediterranean rim offer disembarkation possibilities especially in cases where the responsibilities cannot be clearly determined.

Another suggestion is that the countries parties to this agreement which cannot offer a port of disembarkation should nonetheless supply very tangible forms of support.

Monitoring is also absolutely necessary so as to observe what is happening and ensure that the system functions.

I would point out that cases of emergency involving situations of distress on the high seas are but one of many aspects of migration management. I am convinced that these situations would be easier to deal with if they were not perceived as fringe issues distinct from other migration problems. We must devise a comprehensive, global strategy that takes into account all the aspects of migration and all the dimensions of migratory cycles, including for example the various routes taken by migrants.

It is essential to propose alternatives to irregular migration. We have talked about the issue of receiving persons in need of international protection, but arrangements must also exist for receiving all the other people arriving in a country irrespective of their reasons for going there, for instance those that are economic or employment related.

It is also necessary to reinforce capacities in the countries of transit as this is in point of fact a means of stemming the migratory flows.

We need to adopt a general approach, and we should not solely take account of the humanitarian situation but also bear in mind the key importance of border controls and of certain other issues for the states concerned. The human factor must also be taken into consideration, in particular the fact that it is very often traffickers who endanger people's lives.

We consider that democratic transition in North Africa offers new opportunities to review the reception capacities for migrants and asylum seekers in Europe. The discussions we have had with North African countries show that much will depend on whether Europe is ready to take a share in the burden of managing migratory flows in partnership with these countries. Reports on migratory movements in the Mediterranean basin are being discussed at present, but we consider that if progress is to be made things need to be taken further.

The debate taking place within your committee and the Parliamentary Assembly of the Council of Europe can make a very useful contribution here. We are an international agency. We can make proposals and develop tools, but everything will depend on the political will of all the Mediterranean countries. The Mediterranean area is currently a focus of attention not just because of the rescue operations at sea, but also because of developments in North Africa. It is essential that we seize this opportunity. We must turn it to account so as to create a genuine momentum that will be conducive to

discussion of all these issues. If that is the case, when we see each other again in a few years time we may have some positive results to talk about.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you for this very detailed presentation. I am pleased that we have been able to benefit from the results of the expert meeting you organised at the global level. It is indeed important to be aware that these problems are arising the world over and that it is consequently necessary to devise a global strategy for tackling them. The proposals you have presented are therefore global in nature and need to be transposed to the regional level.

You said that the legal framework exists and simply needs to be better applied so as to ensure greater compliance with it. In this connection, you referred to the need for forms of cooperation to be established in each region. However, when you refer to the Mediterranean region, are you thinking of North Africa and southern Europe or do you consider that the European Union and the Council of Europe are also part of this region? If that is the case, what can be done on that scale to deal with these problems?

Ms Anja KLUG – Determining who the stakeholders are is a tricky matter, and the situation needs to be analysed with care. A number of countries are directly involved, and I consider that it makes little sense to take account solely of North Africa and southern Europe when talking about the Mediterranean region, as the support of other countries can be seen to be absolutely vital. This applies in particular to the European Union as a whole and also the member states of the Council of Europe, along with all the institutions that could provide backing for various initiatives.

What is the role of national authorities, NATO and Frontex?

Speaker: Mr Rustamas LIUBAJEVAS, Head of Joint Operations Unit, Frontex

M. Rustamas LIUBAJEVAS – I wish to thank the Committee on Migration and you, madam Rapporteur, for having invited me to contribute to this discussion.

I think it useful here to describe the role played by Frontex, especially as there are many misunderstandings and some lack of comprehension of our action and the way in which we implement our tasks.

The previous speakers referred to the many challenges that now have to be taken up and that have direct implications for the joint operations we carry out in the zone covered by Frontex, in cooperation with the European Union member states.

Frontex is an EU agency based in Warsaw, Poland, which was set up as an independent body tasked with co-ordinating operations carried out by the member states on the EU's external borders. It is important to clarify that each member state remains responsible for managing its external borders and that Frontex complements their action and provides added value to the border management system. One thing must be clear here: the agency does not replace the member states.

On the basis of risk analyses, Frontex proposes joint operations that may be carried out at any of the external borders, whether at sea or in the air, although the maritime borders naturally represent a large part of our activities. Under the terms of the EU treaties the principal purpose of joint operations is to support the member states so they can better manage their borders. We also take into account the legal obligations, but border protection is the main objective of our joint operations.

A number of speakers have referred to Article 98 of the International Convention on the Law of the Sea, which establishes the obligation to render assistance to those in distress. This convention is applied by the European Union's member states, who are effectively required to provide such assistance to anyone in distress whose life is threatened at sea.

I wish to underline that the rescue operations are implemented by those competent in these matters and by the co-ordination centres in accordance with search and rescue procedures approved by the European Union. Frontex is not responsible for co-ordinating these operations.

Amendments to the SOLAS Convention have emphasised the importance of co-operation and of co-ordination of operations carried out at sea. We are nonetheless aware that there are still deficiencies

and differences of interpretation. Given this situation, the European Union has decided to set up a working group to help clarify matters and propose guidelines concerning the approach to be followed in rescue situations. This is a very interesting initiative, and I think that we still have room for improvement in these areas. On 26 April 2010 it was decided to adopt these guidelines, which are not binding but set out flexible rules for member states participating in operations co-ordinated by Frontex. These guidelines are now an integral part of our activities and a tool we use in connection with joint rescue operations.

As I already mentioned, there is still scope for significant co-ordination and harmonisation at European level. It is not always easy to agree on the rules of engagement with participating states and we need to take account of the fact that each state interprets the international treaties and conventions in its own way.

The fact that some states lack the capacity to fulfil their obligations has already been mentioned. For example, some countries cannot enforce effective supervision to prevent ships from taking to the sea and some lack sufficient resources and risk assessment tools. Mention has also already been made of the current lack of a joint definition of what constitutes a state of distress. Many problems are encountered, if only because we first have to agree on the location of the maritime zones before we can take action.

Concerning responsibility for providing a safe haven for disembarking people, in a number of cases similar to those described here today those in charge of operations have found themselves in a difficult situation because they did not know whether they could disembark the persons rescued at sea.

With regard to the organised criminal groups that exploit migrants, the states are naturally required to respect their international obligations, and Frontex seeks to harmonise their approaches in the context of the joint operations. This year we have also adopted a decision on implementation of a code of conduct for all those participating in joint activities. For the time being this code contains no binding rules, but rather guiding principles, a sort of soft law. This is our contribution to the harmonisation of the ethical standards.

The Mediterranean sea covers 2.5 million square kilometres. There are a fair number of coastal states in the region and many particularly important shipping lanes used by over 200 000 large vessels a year, representing a third of the world's traffic volume. The joint operations co-ordinated by Frontex cover only a tiny operational zone in the Mediterranean. We are currently engaged in four joint operations for the entire Mediterranean: one in the west, two in the central part around Italy and, to some extent, Malta, and the last in the area of the Strait of Sicily. We have only very limited technical resources: two surface vessels and a single aircraft. In view of these resources and the coastal states' capacities, you will understand that Frontex is far from being a leading player. However, even with these very limited resources, we have taken part in no less than 230 operations and over 20 000 people have been saved, of whom most were rescued not far from Lampedusa, about 2 000 in the western part of the Mediterranean, near the Spanish coast, and 2 000 others in the Strait of Sicily.

Frontex will have other opportunities to show how much it respects human dignity and abides by all of its commitments. Since one of the rules makes reinforced co-operation possible with the various countries and players, it is likely that we will engage in even closer co-operation with those operational in the field.

During this brief presentation I have tried to give you an idea of what Frontex is, its role and the way it functions through joint operations. I can but concur with those who have underlined the essential need for greater coordination at an international level if we wish to harmonise the different states' approaches and thereby avoid tragedies that cause lives to be lost.

In conclusion, I would like to quote a young coastguard, aged about twenty, who told me: "Every time I see a body I am shocked, no matter how many I have seen before: you can't get used to these deaths.". This young coastguard works on joint operations with Frontex, as do many others, and I was very moved to hear him say that.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you very much for this contribution, which makes it easier to understand the role played by Frontex. I was particularly touched by the last quotation: on Lampedusa, we too were very moved to see the way the Italians working with the migrants are themselves emotionally affected by these people's situation. We must not forget this.

I have a number of very specific questions for you. Firstly, I would like to know whether Frontex has thought about its role in relation to the tragedy with which we are concerned here.

Mr Rustamas LIUBAJEVAS – Yes, we examined this specific case, and our conclusion is that Frontex could not have been involved, since the operational zone where we are active is too distant from the place where this incident occurred. Furthermore, on account of all the NATO military activities, Frontex was not authorised to enter the area concerned and we moreover modified our operational zones during this period. We therefore could not be on the spot.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – So it was NATO which did not authorise you to be present in this area.

Could you also tell us more about your role in co-ordinating joint operations. If you provide a state with support you clearly play an advisory role, but doesn't co-ordination take place at a higher level? If you are participating in a search and rescue operation that involves two member states, what do you do if one of them is holding back?

M. Rustamas LIUBAJEVAS – That is a good question. Co-ordination goes beyond making recommendations. The importance of the new rules I mentioned earlier lies precisely in the reinforcement of Frontex's co-ordinating role. Our possibilities are pretty limited at present: we can firmly request member states to participate in an operation and fulfil their obligations. Under the new rules, if we have reason to believe that human rights violations occurred during joint operations, we will be able to take things further as we have technical resources and sufficient expertise and can have recourse to a co-ordination mechanism based on the mechanisms in force in the member states themselves. This mechanism concerns several types of operations at sea and includes, inter alia, recommendations for shipmasters and the deployment of technical resources on the spot. There must of course be no forgetting the receiving state's sovereignty or the fact that ships of different flags may be involved. This accordingly involves action on several levels, and in the case of search and rescue operations the responsibilities are now far better determined.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Much has been said about ports of disembarkation. In the context of a joint operation in which several member states participate, do you sometimes witness clashes over the port of disembarkation?

Mr Rustamas LIUBAJEVAS – That has happened. As I already said, before launching a joint operation we need to reach agreement with all the participating member states on the basic principles to be included in the operating plan. We have come up against the difficulty you mention in this context, as the member states' interpretations may differ and there may be differences of opinion. This has sometimes prevented us from launching an operation, in particular operations in the central Mediterranean with the active participation of Malta and Italy.

Yes we have seen that happen, and it is important to note that we do not launch a joint operation until an agreement has been reached on the main rules of engagement.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you. I now open the discussion to questions from the floor, beginning with the members of our parliamentary panel.

Parliamentary panel and debate.

- **Ms Doris FIALA**, Switzerland, ALDE

- **Mr Christopher CHOPE**, Chair of the Committee, United Kingdom, EDG

Ms Doris FIALA (Switzerland, ALDE) – Thank you for these very interesting presentations, from which I have learned a lot.

My first question is for Ms Klug. I am very pleased to hear you talk about a global approach, as I consider that a must if we are to overcome all these difficulties. You mentioned the sharing of responsibilities and of the burden, and I agree with you there as well. To put things plainly, do you consider that the European countries are taking a sufficient share of this burden both financially and in terms of know-how? What improvements do you think are possible practically speaking?

I also agree that people must not be sent back to countries where their lives are at risk. However, the situation is not the same in all of the countries these people come from. Let us not forget that the efforts to combat people trafficking also require greater co-operation between all the parties concerned.

Frontex has responsibility at the borders, but when I talk to fellow parliamentarians from Greece and Italy they tell me that their countries cannot cope. Switzerland too has commitments pursuant to the Dublin Regulations, and we would like to maintain our position and do more to help - we have moreover increased our participation in Frontex - but that is simply impossible. I even have the impression that there is to some extent a risk that things will fall apart. Mr Liubajevs, what are your thoughts on all these points?

Ms Anja KLUG – Are the European countries doing enough? The question is worth asking. I would nonetheless make a distinction between sharing the burden within the European Union and vis-à-vis third countries.

Within the EU there are support schemes for Malta, which is a small island facing huge difficulties, but they are far from adequate. We have also felt from the outset that the Dublin II Regulations, which determine which country is responsible for examining asylum applications, make the countries on the Union's borders carry a very large share of the responsibilities. At a time when 50 000 migrants have arrived in Italy, things cannot work like that. We have therefore suggested that the system be modified so that some countries which do not have the necessary capacities are not submerged. It is true that there is a European Refugee Fund, but that is not enough and there needs to be a far more balanced distribution among the different countries.

Concerning co-operation with third countries, the European Union has taken positive steps, especially with regard to North Africa and other regions. Apart from that, we consider that there is presently a historical opportunity to build a sound asylum system with North Africa. Unfortunately, there is not yet sufficient backing. Financial support is essential in particular. Tunisia constantly reiterates that it refuses to serve as the scrapheap - not to mention the dustbin - of Europe. It must be acknowledged that this is a joint responsibility. Tunisia has taken in 200 000 people fleeing the crisis in Libya; while the Tunisians are themselves facing hard times they have nonetheless generously opened up their borders. We have urged the countries of Europe to help set up camps in Tunisia to house all these refugees. The situation in Tunisia is far from easy because of this influx of Libyans. This is a case where the Office of the High Commissioner for Refugees attaches particular importance to the protection of refugees and the sharing of responsibilities. Protecting refugees is very important, but, very often, states are seeking above all to identify solutions for all those who do not qualify as refugees entitled to protection. Here too, there is a need for more joint action to identify solutions for these other cases, for these people who are not refugees benefiting from protected status.

That brings me to your second question about returns to the country of origin. When a person has been recognised as a "refugee" that is no longer possible, simply because it has thereby been acknowledged that their lives were threatened and it is therefore impossible to send them back to their country of origin. Of course, once the risk is over, things are different and they are able to return home. However, we realise that it is very difficult to send people home, even once the risk no longer exists. How can they be encouraged to return? Initiatives should doubtless be devised and the IOM could be called upon in that connection. Some time ago we tried to draw up a document on how people could be encouraged to return home via return agreements.

Mr Rustamas LIUBAJEVAS – Ms Fiala, I have some good and some bad news for you. The good news is that Switzerland is an active participant in our joint operations. It is true that you could always do more, but let us not forget each state's specific capacities and experience in matters of border control. The bad news is that the other member states are conversely not doing enough.

I will not dwell on the political will, as there is a readiness to share the burden, but I rather wish to focus on the technical capabilities of the member states to support those encountering the greatest difficulties. It needs to be understood that the member states have limited technical facilities at their disposal: at the same time, they are being asked to take on Herculean tasks. It is often hard to strike a balance among the member states that use their technical resources to assist those faced with greater difficulties in the field of border management.

I have mentioned our new rules. One big change that has recently been made is the possibility for Frontex to have its own technical equipment. This should make it possible to fill the gap between the technical resources available and the operational needs. But it must not be forgotten that Frontex is still a small EU agency with a very limited budget, bearing no resemblance to the EU budget in general. Yes, we need the member states to make a greater effort, to increase their contributions and their involvement.

You rightly mentioned the efforts to combat organised crime. This is indeed a crucial matter. Those who make a huge profit from these illegal activities must not go unpunished. Co-operation between member states, between the various police forces and between Frontex and Europol plays a vital role. I again refer you to our new rules, which will give us additional means and possibilities of taking an active role in combating organised crime, particularly the organisers of people trafficking operations. In the longer term we need to establish a comprehensive system, and I can see no other solution than a pooling of efforts among the member states and the various organisations, so as to tackle organised crime together.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Frontex's budget may bear no resemblance to that of the EU, but it is perhaps more on a par with that of the Council of Europe...

Mr Burhan KAYATÜRK (Turkey, EPP/CD) – I wish to draw your attention to the issue of visas, with which Turkey has to contend in particular. As a project manager I myself spent ten years in Pakistan and India and I saw how difficult the situation was and still is. For example, I observed that people already living in Europe could not return home to visit their families for fear of losing their residence permits and being refused a visa to return to Europe. Their parents and friends want to visit them, and possibly to join them in Europe to seek work, and they queue up outside the consulates 24 hours a day, sometimes for several months running, in the hope of obtaining a visa. Can something not be done to make it easier to obtain visas or, at the very least, to make the situation clearer and more comprehensible for visa applicants?

Ms Anja KLUG – That is a very serious problem, but I cannot talk about visas in general here.

We consider that one of the most important aspects is ensuring that persons in need of international protection have access to a country where they will be protected, that is one that fulfils its protection obligations.

We have already mentioned the protected entry procedures: we regard this as a way of giving visas to people who cannot remain in their country of origin.

Another matter of great concern for us is family reunification for refugees who are recognised as such and therefore have refugee status. We intend to bring pressure to bear on states to ensure that members of a refugee's family can join him or her.

We adopt a general approach to mixed migratory flows, and I think that all these discussions should also constitute an opportunity to consider migration for employment purposes, as we know far well that many people will try to use asylum applications whereas that is not the right approach in their case.

Mr Rustamas LIUBAJEVAS – I am sorry but I do not have a great deal to say on this subject. Frontex deals with operational activities and is not involved in any political debate, whether concerning visas or any other subject. It would be better to put this question to the competent European institutions, in this case the Commission, which will be better able to answer it.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Thank you for this diplomatic reply...

Mr Christopher CHOPE (United Kingdom, EDG), Chair of the Committee – Thank you for your contributions.

I was very interested by the discussion on organised crime. This is a question we have often raised and to which we have no real answer. Some reports refer to the threat posed by criminal organisations that establish themselves in Europe by means of illegal immigration or to the risks of terrorism. Mention has been made of the fact that economic migrants pay criminal organisations so as to gain entry to the European Union. What is more, the unlawful migration flows antagonise the populations of the EU member states and make them less amenable to taking in refugees.

In 2010 the number of migrants entering the United Kingdom grew by 250 000, or 5 000 people per week! Under these conditions, my dear Kayatürk, it would be political suicide for us to suggest facilitating visa procedures! We are rather seeking to reduce the number of applications.

Returning to the subject of organised crime, the question is what more can we do? There is no question that it is illegal to embark on a makeshift vessel that is unseaworthy. There are international rules in this matter. Why is it not possible to make the states whose coasts are being used by these vessels responsible for ensuring that the rules are followed?

Mr Santini referred to a number of criminal convictions in Italy, but as long as we are unable to get to grips with organised crime, things will not change to any significant extent. It is true that Frontex has participated in saving 20 000 lives in the Mediterranean, but all those people paid at least 1 000 pounds to make the journey, and this traffic therefore earns hundreds of thousands of pounds for organised crime. And if they cannot ultimately reach Europe, why were they loaded on to the boats? What more do you think we should be doing to combat organised crime?

We have seen that there are already many conventions. But what happens if they are not complied with? There seems to be a vacuum between the writing of the rules and their application in practice. Why have rules if they are not followed?

Mr Rustamas LIUBAJEVAS – I completely agree. We must doubtless ensure that all the conventions, and all the laws, all the legal frameworks are applied and complied with. We said that this was the greatest challenge facing us. Nonetheless, looking at this aspect from a purely operational standpoint, it can be seen that, when we attempt to set up a system for exchanging intelligence that we regard as essential in order to fight organised crime, we still come up against many impediments linked to the exchange of confidential data. There are many legal restrictions on such exchanges, particularly where personal data are concerned. The legal framework in which we operate is therefore more complex than criminal law itself.

Our objective is to enhance mutual confidence between member states participating in our joint operations. We of course have a number of legal constraints to abide by in accordance with the legal framework under which we are required to operate, but our objective is nonetheless to encourage states to use the joint operations platform to exchange information. Sometimes information is available in a given port and all it would take to investigate things further is for us simply to make a telephone call. This shows that even minor actions can be of importance.

We still have a long way to go, but recent developments in the application of the relevant law are encouraging and measures to fight organised crime are becoming more widespread.

Europol takes the lead within the European Union in such matters, but Frontex, and other players, should also be able to make a contribution. You will nonetheless understand that, in these circumstances, I am unable to give you a full picture. However, the goal we are striving for is clear, and I assure you that we are doing everything possible to achieve it.

Ms Anja KLUG – Organised crime clearly falls outside our remit. I nonetheless wish to draw your attention to the fact that, although we are confronted with international mafia-style operations, very often a single trafficker is exploiting other people. The key thing for us is to distinguish between the criminals, whether or not they are operating in organised gangs, and the victims of such trafficking. In the case of the latter those who go through this traumatic experience are not solely economic migrants and it is hard for them to find safe means of making the journey. In the context of the Libyan crisis, we came up against trafficking attempts in our own camps and we tried to take concrete measures to stamp them out. I do not think it possible to deduce whether organised crime is involved simply on the

basis of the means of transport utilised. One must first ask oneself why the people are making the journey.

Today we have had a discussion on the right not to be punished for illegally entering a country. If you are a trafficking victim, you cannot be punished because you arrived somewhere you were not supposed to arrive. If you have to escape from a situation of extreme danger, you have to leave very quickly and you may not have time to gather together the documents that would have permitted you to enter a country legally. This was moreover recognised when the Convention on the Status of Refugees was drawn up; one of the drafters pointed out that, before finding a safe haven in another country, he had had to rely on traffickers to get out of Germany.

It is also important that we seek to identify alternatives so that people are not obliged to utilise these unsafe solutions. We therefore have to afford them protection and possibilities wherever they are located. Reinforcing the possibilities of protection is a long-term objective that cannot be attained overnight. It is nonetheless the goal we have set ourselves in close co-operation with the International Maritime Organization. We are trying to combat the traffickers, those who organise the unsafe crossings. We have moreover produced a comic strip in French entitled "From West Africa to Europe", which aims to draw attention to the risks run by clandestines.

The information provided often addresses only part of the problem. The people concerned are not stupid, they know they are leaving behind an unbearable, unliveable situation: no one is happy to leave their home country! This comic strip gives a balanced view of the opportunities that exist in other countries and the difficulties that will be encountered in the country of arrival. The more difficulties you face in obtaining protection, the greater the risk that you will fall into the traffickers' clutches.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Ms Klug, you mentioned an amendment of the Dublin Regulations, which would perhaps be a good thing. Can you tell us more about the UNHCR's position on amending these regulations?

Mr Liubajevs, you said that Frontex does not initiate a joint operation until an agreement has been reached on the rules of engagement, for example on the place of disembarkation. Can it be inferred that this may sometimes prevent search and rescue operations from taking place, which would constitute a cause for concern?

You also said that, in future, with the new rules you will be able to withdraw your co-operation if an operation involves human rights violations? Will this merely be a possibility or will you be obliged not to co-operate in such cases?

Ms Anja KLUG – An amendment of the Dublin Regulations is currently under discussion, as are all the instruments, including those of the European Union. The question is whether they need amending or not. We consider that there should, at least, be provision for a number of exceptions in emergency situations, as at present. Exceptions should also be introduced in respect of the responsibilities, so that they can be more fairly shared.

In general - but we cannot see a great deal of leeway for moving in this direction - what should happen is, as we have already suggested in the past, that the responsibilities be assigned to the country where the first asylum application is lodged. This means that the responsibility for dealing with a migrant's case would lie not with the country of arrival but with the country where he/she files the asylum request.

Things are progressing quite slowly at present, but the idea is gaining ground that a change of the rules is needed, especially in emergency situations. This is a first step forward.

Mr Rustamas LIUBAJEVAS – It is true that without agreement on the rules of engagement the operation does not take place.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – Does that include search and rescue operations?

Mr Rustamas LIUBAJEVAS – It applies to all kinds of border control activities: if there is no agreement on the rules of engagement, there will be no operation. This is because the member states' positions can differ, for example regarding sovereignty issues.

In answer to your second question on withdrawal of co-operation, I will send you the precise wording of the new rules later.

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – I thank our two experts for their excellent contributions, which have given us full information on the different aspects of this problem.

Concluding remarks by **Ms Tineke STRIK**, Rapporteur

Ms Tineke STRIK (Netherlands, SOC), Rapporteur – As we come to the end of these two sessions, I wish to say that I think we have had a very fruitful day. We have been able to make progress with a view to drawing up a report and also in understanding many other key issues for our committee. I therefore reiterate my warmest thanks to all of the speakers.

It is clear to see that the issue we are concerned with here today extends well beyond Europe's borders. As Ms Klug told us, the Mediterranean is under very good surveillance, much better than that to be found in other regions, and we have more equipment there. However, this is also an area where we have some serious difficulties to contend with, in particular the question of how to prevent deaths at sea. We are accordingly confronted with a great challenge. We will try to make as many recommendations as possible and we hope that they will be useful for other parts of the world, and that it will be possible to apply them there.

As concerns my own work, I am naturally going to continue my efforts; I will use all the information we have been given today in my report. We have also asked many authorities to provide us with the data we need, particularly concerning vessels' locations in the zone where the ship concerned was in distress. I truly hope that we will be given this information within the next couple of months, so that we can take a further step forward in this inquiry in the spring. I indeed consider it essential that we keep up the momentum and avoid running out of steam. We are aware that this is an urgent matter, and we are therefore careful not to fall behind schedule.

Mr Christopher CHOPE (United Kingdom, EDG), Chair of the Committee – Thank you, Ms Strik for having chaired and organised this hearing, which I am sure will be very fruitful. I wish you every success with your report.