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## **Mass arrival of irregular migrants on Europe's Southern shores**

Report  
Committee on Migration, Refugees and Population  
Rapporteur: Mr Christopher Chope, United Kingdom, European Democratic Group

### *Summary*

The number of arrivals of irregular migrants on Europe's Southern shores has reached critical levels in 2006. Spain has seen the number of arrivals on the Canary Islands leap from 4,700 in 2005 to around 25,000 in the first 9 months of 2006. Italy has counted 16,833 arrivals already this year, Malta has registered 1,445 in the first 8 months of this year and Greece has intercepted 900 arrivals by sea and arrested 28,700 irregular migrants on land during the period January to June 2006.

These countries are having to shoulder the burden of these arrivals and measures are needed to support all European countries of destination of these irregular migration flows.

On the one hand, it is essential to meet the humanitarian needs of the persons arriving and to respect and guarantee their human rights.

On the other hand, there is a clear requirement to take action to manage these migration flows. This entails a range of measures affecting not just countries of destination, but also countries of transit and countries of origin. While more effective frontier controls may slow the tide of migration, a coherent regional and global approach to managed migration is essential to tackle the underlying causes of irregular migration.

Tentative steps at a European level in 2006 to deal with the flow of irregular migrants towards European shores (naval patrols, aerial supervision, expert officers) have been characterised as being "too slow" and "too little" to have any major impact. While these steps offer a precedent for building up co-operation in the future, they also have to be accompanied by practical safeguards to ensure that the right to life is safeguarded and that measures to control borders do not lead to *refoulement* of persons with international protection needs.

It is not just European states that must co-operate further on the issue of mass arrivals. The Council of Europe, the European Union, UNHCR, IOM, ICRC and other international and national organisations also have an important role to play in supporting countries facing these large-scale influxes of irregular migrants.

## **A. Draft Resolution**

1. There is ever growing concern across Europe at the number of irregular migrants and asylum seekers arriving on its Southern shores. Spain, for example has seen the number of arrivals on the Canary Islands leap from 4,700 in 2005 to around 25,000 in the first 9 months of 2006. In total Spain has already received over 27,000 arrivals by sea this year, Italy over 14,500 arrivals and Malta over 1,600 arrivals. Greece, Cyprus and Turkey are also having to share the brunt of arrivals, indicating a trend for desperate people taking even more desperate and dangerous routes to enter Europe.

2. These attempts to reach Europe's shores are accompanied by a significant loss of life, with there being regular reports of persons drowning, dying of exposure and dehydration, and even reports of deaths from violence by boat operators.

3. There exists an immediate challenge to meet the humanitarian needs of the arrivals and to respect and protect their human rights. In this it is important to recognise that there are mixed flows of migrants and asylum seekers and refugees amongst those arriving and that it is essential to identify those requiring international protection and to ensure that they have access to a fair and efficient asylum procedure.

4. It is important however to recall that it is the right of each Council of Europe member state to regulate the entry of foreign nationals and to return irregular migrants to their country of origin while respecting international human rights law.

5. It is also important to recall that those persons arriving also have a responsibility to assist and not hinder the authorities in the processing of their individual cases. This responsibility includes providing information on their origins and reasons for entering Europe.

6. The mass arrivals on Europe's Southern shores represent an urgent migration management challenge, requiring new border management strategies, more effective voluntary and forcible return policies and greater efforts to tackle the root causes of migration. These actions are needed not only to tackle the highly visible arrivals on Europe's Southern shores but also to deal with the large number of irregular migrants who enter Europe by different routes and means.

7. While countries such as Spain, Italy, Malta, Greece, Cyprus and Turkey are at the front and bear the brunt of these visible arrivals, the problem remains a European one. It involves all European countries, in particular due to secondary movements of these arrivals. It also involves the Council of Europe, the European Union and other international and national organisations.

8. A range of initiatives have been taken during the summer of 2006 supported by member states of the Council of Europe and by the European Union and its external border management agency FRONTEX. An expert mission (Hera 1) assisted the Spanish authorities with the identification of migrants arriving on the Canary Islands. A second mission (Hera II), comprising sea patrols and spotter airplanes, was set up to operate along the coast of Senegal, Mauritania and Cape Verde and an operation (Jason) is being mounted to control the sea south of Malta and Lampedusa stretching towards Libya.

9. A number of high level dialogues have been taking place in which the issue of mass arrivals and irregular migration flows have been prominent. These include the Euro African Ministerial Conference on Migration and Development in Rabat on 10 and 11 July 2006, the informal Justice and Home Affairs Ministerial Meeting under the European Union Presidency in Tampere from 20-22 September 2006, as well as the shuttle diplomacy being carried out by countries such as Spain, Malta and Italy.

10. The Parliamentary Assembly itself has a long history of concerns linked to irregular migration flows and relevant migration management and protection issues. Most recently the Assembly has adopted Recommendation 1645 (2004) on access to assistance and protection for asylum-seekers at European seaports and coastal areas and Recommendation 1755 (2006) on rights of irregular migrants.

11. Other sectors of the Council of Europe have also been involved in the issue. The European Committee for the Prevention of Torture (CPT) has been active in visiting detention centres where migrants are held, and has for example visited in 2006 various detention centres for migrants in Italy, including on the island of Lampedusa. The Council of Europe Commissioner for Human Rights has also taken a particular interest in the rights of irregular migrants in his country visit reports and has issued a recommendation in 2001 on the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders.

12. The Parliamentary Assembly considers that, in the light of the mass arrivals on Europe's Southern shores, a range of issues need to be tackled, both to manage these migration flows and to deal with the humanitarian and human rights problems posed.

13. From a migration management context, the Assembly urges member states to:

13.1. examine the root causes of migration ;

13.2. provide financial and other support for countries of origin of migrants in order to tackle many of these root causes of migration;

13.3. collect and exchange data on migration movements (country of origin information, transport routes, smuggling and trafficking networks, etc.);

13.4. provide greater transparency on the number and origin of persons arriving as irregular migrants or asylum seekers and also provide statistics on the number that are repatriated, detained or released;

13.5. establish adequate identification mechanisms to determine the nationality of arrivals;

13.6. address secondary movements of migrants and asylum seekers and refugees within member states, taking into account the rights of the persons concerned ;

13.7. conclude re-admission agreements with countries of origin and countries of transit of irregular migrants;

13.8. promote information strategies for countries of origin, transit and destination, highlighting the dangers involved in irregular migration and explaining the options and possibilities for legal migration.

14. The Assembly also encourages member states to share the burden of these mass arrivals by:

14.1. contributing to the different air and sea patrols being put into place by the European Agency FRONTEX;

14.2. contributing to rapid reaction forces being set up to deal with mass arrivals (frontier officers, interpreters, medical officers, etc.) and include in these teams, experts on asylum and human rights issues to ensure that persons with international protection needs are identified;

14.3. contributing to the humanitarian and material needs of arrivals (including through providing portable accommodation, food, medicine, etc.);

- 14.4. contributing to the cost of processing and where appropriate returning irregular migrants;
- 14.5. accepting to take arrivals or settle those with international protection needs, in particular to alleviate the pressure on countries such as Malta with proportionately high numbers of arrivals.
15. The Assembly considers, however, that the issue can not only be looked at from a migration management angle as there are significant humanitarian and human rights concerns in relation to the arrival, stay and possible return of irregular migrants and asylum seekers.
16. The Assembly therefore considers it necessary to remind member states of their human rights and humanitarian obligations and calls on member states to:
- 16.1. protect the right to life, refrain from using unreasonable force on those seeking to enter Europe and to rescue those whose life may be in danger;
- 16.2. respect the right to human dignity by providing adequate reception conditions covering accommodation, health-care and other basic needs;
- 16.3. provide a hearing, with an interpreter, to anyone whose right of entry is disputed in order to allow them to explain the reasons for entering the country and to lodge an application for asylum if appropriate;
- 16.4. use detention only as a last resort and not for an excessive period. Irregular migrants should be held in special detention facilities and not with convicted prisoners. Children should not be detained, unless this is unavoidable. In such cases it must be for the shortest possible time. The same applies for other vulnerable persons, including victims of torture, pregnant women, the elderly, etc.;
- 16.5. provide detainees with the right to contact anyone of their choice (lawyer, family members, NGO, UNHCR, consular services, etc.);
- 16.6. ensure that detention is judicially authorised and that there is an independent judicial scrutiny of the legality and need for continued detention. Detainees should be expressly informed, without delay and in a language they understand of their rights and procedures applicable to them;
- 16.7. guarantee freedom from torture, inhuman or degrading treatment or punishment, including in the return process ;
- 16.8. guarantee *non-refoulement* and the right to asylum;
- 16.9. prohibit the collective expulsion of aliens;
- 16.10. provide an effective remedy before an independent and impartial authority, with a suspensive effect when a returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights if returned;
- 16.11. pay particular attention to the needs of unaccompanied and separated minors, pregnant women, the aged, the disabled, victims of torture, victims of trafficking and others in a vulnerable situation;
- 16.12. ensure that unaccompanied minors have effective access to available protection mechanisms, including asylum procedures.

17. In order to allow arrivals to enjoy these rights in practice, the Assembly calls on member states to:

17.1. provide all persons arriving with information on their rights and responsibilities;

17.2. register the new arrivals and provide them with temporary documentation;

17.3. establish transparent mechanisms of nationality determination;

17.4. allow access by UNHCR, IOM, humanitarian and other non-governmental organisations, to all places where persons arriving may be detained;

17.5. support voluntary return programmes for irregular migrants and carry out forcible returns only in accordance with the 20 guidelines on Forced Return adopted by the Council of Europe's Committee of Ministers in May 2005.

18. The Assembly also encourages the European Parliament's Committee on Civil Liberties, Justice and Home Affairs to continue its programme of visits to places where mass arrivals are taking place in order to provide greater visibility on the plight of arrivals and the challenges faced by the authorities concerned.

19. The Assembly invites the Council of Europe Human Rights Commissioner to pay particular attention in the preparation of his country reports to human rights issues posed by the arrival, stay and return of irregular migrants and asylum seekers arriving on Europe's shores.

20. The Assembly considers that closer and prompt co-operation is required between all key actors, governmental, non-governmental and intergovernmental, when mass arrivals take place, and recommends that structures for co-operation urgently be put into place in preparation for the arrivals which will certainly take place in 2007.

21. The Assembly encourages its Committee on Migration, Refugees and Population to step up its work on mass arrivals, making full use of its *ad hoc* sub-Committee on unexpected large scale arrival of migrants and asylum seekers.

22. The Assembly also encourages its Committee on Migration, Refugees and Population to examine, in the context of its work, the problems in negotiating and implementing readmission agreements, as well as the steps which have to be taken to tackle the illegal criminal networks responsible for the trafficking and smuggling of irregular migrants.

23. The Assembly proposes returning to the issue of mass arrival of irregular migrants on Europe's Southern shores following a more in-depth analysis of the problems faced and solutions available.

**B. Draft Recommendation**

1. The Parliamentary Assembly refers to its Resolution ....(2006) on mass arrival of irregular migrants on Europe's Southern shores.

2. The Assembly considers that the Council of Europe has an important contribution to make in terms of ensuring that the rights and humanitarian needs of all persons arriving on Europe's Southern shore are met. At the same time it considers it important that the Council of Europe responds to the need for a managed European migration policy taking full account, as noted in the Heads of State and Government's Third Summit Action Plan, that "Management of this migration is a major challenge to 21<sup>st</sup>-century Europe".

3. Therefore, the Assembly recommends that the Committee of Ministers:

3.1. instructs the European Committee on Migration (CDMG) and the Steering Committee for Human Rights (CDDH) to hold an exchange of views on a European response to the mass arrival of irregular migrants on Europe's Southern shores with a view to proposing further bi-lateral and multilateral co-operation in this area, both from a human rights and migration management viewpoint;

3.2. invites the European Committee for the Prevention of Torture (CPT) to give priority to the issue of mass arrivals and detention conditions for these arrivals in its future visits and work programmes;

3.3. takes the necessary steps to tackle the illegal criminal networks responsible for the trafficking and smuggling of irregular migrants.

## **C. Explanatory memorandum by Mr Chope, Rapporteur**

### **I. Introduction**

1. The 2006 sailing season is not yet over and already there are a record number of irregular migrants and asylum seekers arriving on the shores of certain European countries.

2. The absence of official data in general on mass arrivals means that statistics need to be taken as indicative. It can nonetheless be indicated that Spain has seen the number of arrivals in the Canary Islands leap from 4,700 in 2005 to around 25,000 in the first 9 months of 2006. From January to September 2006, Italy has counted 16,883 arrivals. Of which 14,723 are to Lampedusa. Malta in the same period has registered 1,474 arrivals. Greece has intercepted 900 arrivals by sea and 28,700 by land in the period January to June 2006.

3. Countries such as Spain, Italy, Malta and Greece have been overwhelmed by these arrivals, but nonetheless face the challenge of meeting the humanitarian needs of the persons arriving and respecting their human rights. This is particularly important as amongst the arrivals are refugees and other persons requiring international protection.

4. These countries have also been faced with the enormous challenge of managing their sea borders and dealing with these migration flows. They have repeatedly called for assistance from their European partners in tackling these migration management issues. They have also struggled to negotiate return agreements with the countries of origin and transit of these arrivals.

5. Spain has over the summer of 2006 undertaken an urgent round of diplomacy in order to convince European leaders that much more must be done to tackle these flows of irregular migrants and asylum seekers. As an example at the end of August the Deputy Prime Minister Maria Teresa Fernández de la Vega had talks with the European Union's Presidency, meeting the President and Prime Minister of Finland before moving on to Brussels for talks with European officials.

6. Italy, through Interior Minister Giuliano Amato has also addressed the European Union for assistance to tackle irregular migration from North Africa<sup>1</sup> and the Maltese Minister of Interior Tony Borg, before his homologues in Brussels raised the crisis facing his country stating that the arrival of 1,200 irregular migrants in the first six months of the year was proportionately equivalent to Germany receiving 120,000 persons in the same period.

7. Greece has also complained that its plight has been overlooked with Security Minister Byron Polydoros<sup>2</sup> highlighting that 500 migrants were attempting to reach Greece every week.

8. 8 heads of state and government (Italy, Spain, Greece, Portugal, France, Cyprus, Malta and Slovenia) have recently written to the Finnish Presidency of the European Union calling for the problem of irregular migration in Southern Europe to be dealt with at a European level. While countries such as Spain, Italy, Malta and Greece are at the front and bear the brunt of these arrivals, the problem is a European one, implicating all European countries as well as the EU and the Council of Europe.

9. The European Union and a number of member states have responded to the calls from these countries for assistance by providing a limited number of experts and boats, planes and helicopters. This assistance has however been heavily criticised for being "too little" and "too late". Furthermore not all states have shared the view that burden sharing is required. A number

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<sup>1</sup> Naval patrols to thwart illegal migrants: EU commissioner. Agence France-Presse English Wire Date July 28 2006

<sup>2</sup> EU countries at odds on illegal sea migration, Ingrid Melander, 7/24/2006, Europe Newsclips

of States have criticised Spain and Italy saying that the problems they face are of their own making, referring in this respect to the past regularisations programmes of irregular migrants and the alleged “pull effect” that these have on migrants.

## **II. Approach to the report**

10. Your Rapporteur has chosen to approach this report starting with statistics and a perspective on the number of arrivals on Europe’s Southern shores. He has then chosen to recall some of the Assembly’s work and concerns relevant to the issue of mass arrivals. The bulk of the report however is in two parts. The first looks at the human rights and humanitarian issues arising from the arrival, stay and return of these irregular migrants and asylum seekers. The second looks at the migration management challenges posed, not just for Southern European countries, but for the whole of Europe and surrounding region.

## **III. Recalling the concerns of the Parliamentary Assembly**

11. The Parliamentary Assembly of the Council of Europe has in the past examined a host of issues relevant to the mass arrival of irregular migrants. In this respect reference can be made, *inter alia*, to its Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants, Recommendation 1449 (2000) on clandestine migration from the south of the Mediterranean into Europe, Recommendation 1467 (2000) on clandestine immigration and the fight against traffickers, Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, Recommendation 1577 (2002) on creation of a charter of intent on clandestine migration, Recommendation 1645 (2004) on access to assistance and protection for asylum-seekers at European seaports and Recommendation 1755 (2006) on rights of irregular migrants.

## **IV. A perspective on the number of arrivals**

12. While there are no official comparative statistics across Europe on arrivals, it is possible to give some estimates of the number of arrivals. In Spain, up to the 19 September 2006, there have been 27,321<sup>3</sup> arrivals. Against this backdrop there have been around 25,000 arrivals taking place in the Canary Islands alone. This compares with a figure of 4,700 arrivals in the Canary Islands in 2005. In Malta, up to September this year there have been 1,635<sup>4</sup> arrivals registered. Italy received 22,590 arrivals in 2005, including 14,500 to Lampedusa. Up to September this year there have been 14,589 arrivals of which 12,863 have been to Lampedusa<sup>5</sup>.

13. In Greece according to unofficial information some 900 persons were arrested by the Coast Guard from January to June 2006, and during the same period some 28,700 were detected and arrested by the police on land. This compares with corresponding figures for 2005 of 3,350 arrivals by sea and some 63,000 arrests on land by the police<sup>6</sup>.

14. While one can be relatively accurate on the statistics on arrivals, it is much more difficult to put a number on the loss of life through drowning, dehydration and even violence by boat operators. The NGO UNITED for Intercultural Action provides a web site where, over recent years, it has logged 7,182 reported deaths of persons attempting to enter Europe<sup>7</sup>. As a further indication of the problematic, some estimates for those who have died trying to reach the Canary Islands this year alone range from 590 persons to 3,000 persons.

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<sup>3</sup> This excludes the “northern border” which is Schengen territory and the over-stayers that count for most of irregular migrants in Spain.

<sup>4</sup> UNHCR estimate

<sup>5</sup> UNHCR estimate

<sup>6</sup> Statistics provided by UNHCR from unofficial government channels.

<sup>7</sup> [http://www.united.non-profit.nl/pdfs/DEATHLIST\\_7182.pdf](http://www.united.non-profit.nl/pdfs/DEATHLIST_7182.pdf)



15. It should however be pointed out that the statistics of mass arrivals on Europe's Southern shores represents only the highly visible tip of the irregular migration iceberg and that the vast majority of irregular migrants are entering by other means and routes. The Economist reported recently<sup>8</sup> that "numerically, illegal migration across the Mediterranean is inconsequential. A study by a top Italian police officer in February concluded that only 4% of migrants who arrived illegally in Italy in 2004 came by sea (though the figure has since risen)".

16. While your Rapporteur does not agree with the Economist's choice of the word "inconsequential", in particular for small countries like Malta or small islands like the Canary Islands or Lampedusa, it is true that the number is small when one considers there may be between 3 and 5 million irregular migrants or more across Europe. As a further comparison, albeit dating back a few years, the IOM has put forward a number of statistics in its World Migration 2003 report<sup>9</sup> including that some 100,000 irregular migrants are smuggled into Germany each year.

17. Against the backdrop of the number of irregular migrants entering Europe, one also needs to take into account the number of persons waiting to enter Europe. Recently in the press, figures of 100,000 people were cited as the number waiting to make the journey to the Canary Islands from West Africa<sup>10</sup>, with transport readily available from the fleet of idle fishing boats along the African coast. Other sources talk of a million people waiting to travel, but there are no accurate statistics that can be relied on to gauge the number of those waiting to travel from West Africa or North Africa, and further research on this is required.

18. In order to understand the implications of the statistics on arrivals, one needs to also have an overview of the statistics on return as well as the statistics on detention and on release. To give at least one example, by the 25 August 2006 only 1,700 returns took place out of the first 19,000 arrivals on the Canary Islands<sup>11</sup>. This figure has however since risen but returns remain low.

19. Statistics of this nature are however very difficult to obtain and your Rapporteur considers that states must make a greater effort to make this type of information available and accessible on a regular basis.

## **V. Humanitarian needs and human rights obligations**

20. Your Rapporteur, while understanding the pressure on European countries of destination, is concerned about some of the reports concerning the treatment of arrivals, not only in relation to their rescue, but also during their stay and during the return process. Your Rapporteur is particularly concerned that such assistance or protection not be compromised as a result of the situation being "critical" or because of "patience running out".

21. Your Rapporteur does not intend to catalogue all the human rights concerns raised in relation to the arrivals, but nonetheless considers it important to mention a few of these concerns.

22. In relation to rescue at sea, your Rapporteur notes the incident in July earlier this year when a Spanish trawler which had rescued 51 persons, mostly from Eritrea, was refused permission to dock in Malta until a number of countries including Spain, Italy and Andorra also agreed to accept some of the boat-people. Your Rapporteur is concerned that such incidents may in future affect the willingness of ships' captains to rescue persons in distress, in particular if there are lengthy delays or problems over disembarkation. Your Rapporteur reminds states of their

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<sup>8</sup> August 26, 2006

<sup>9</sup> World Migration 2003. Managing Migration, Challenges and responses for people on the move Page 253.

<sup>10</sup> Spain to turn back tide of migrants, by Fiona Govan in Madrid, 6 September 2006, The Daily Telegraph

<sup>11</sup> Migration News Sheet, September 2006, page 11.

obligations under Maritime Law and their duty under Article 2 of the European Convention on Human Rights to respect the right to life, which includes the responsibility to save lives.

23. Concerning the conditions of stay, there are no doubts that a number of States are overwhelmed by the large-scale arrivals and that the facilities available are overcrowded and often unsuitable. There have been many criticisms, for example, of the reception conditions in Lampedusa, visited by a member of the Parliamentary Assembly, Mrs de Zulueta (Italy, Socialist) in 2005<sup>12</sup>. There have been alarming press reports<sup>13</sup> alleging violence and abuse, overcrowding and unsanitary conditions. There have also been repeated calls for the closure of the reception centre. The Italian authorities have tried to respond to some of the criticisms and have for example in 2006 allowed UNHCR and IOM to have access to the reception centre and to open offices in the vicinity of the Centre.

24. The reception conditions in Malta have also been strongly criticised, for example by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs following its visit in March 2006<sup>14</sup>. The use of lengthy detention was a point of particular criticism, along with the "appalling" living conditions. Greece has also received strong criticism<sup>15</sup> of the conditions in which it holds irregular migrants and the lack of access granted to detainees by NGOs and lawyers.

25. Spain's drama has moved from Ceuta and Melilla in 2005 to the Canary Islands in 2006. The four-fold (and continuing) increase in arrivals in 2006 is stretching the facilities available to accommodate the arrivals. A recent report of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, adopted on 5 September following a visit to the Canary Islands, however concluded that the situation was largely under control and that centres were managed with in general a "humanitarian approach". Concerns however remain about migrant's access to legal advice upon arrival. Separate from this, there are also concerns about the detention of migrants on the mainland, with one particular problem arising in July 2006 involving allegations of abuse against female migrant detainees in Los Capuchinos detention centre in Malaga.

26. The issue of returns, is particularly problematic from a human rights standpoint. Returns require that a full panoply of rights and safeguards come into action in order to ensure that persons are returned in a dignified manner and that the principle of *non-refoulement* is respected and that refugees and others in need of international protection are identified and given protection.

27. Italy was heavily criticised in 2005 for the large scale returns to Libya, and accused by NGOs of violating the right to asylum, the *non-refoulement* principle and the prohibition on the collective expulsion of aliens<sup>16</sup>. Spain in June this year had to suspend the repatriation of hundreds of Senegalese migrants from the Canary Islands to Dakar after a first batch of 99 returnees claimed they had been mistreated<sup>17</sup>. Returns have once again started.

28. Your Rapporteur is particularly concerned about what may happen to returnees in some of the return countries. Morocco's treatment of Sub-Saharan Africans last year reached the headlines when there were allegations that many of those who had been seeking to enter Ceuta

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<sup>12</sup> See Written Declaration No 368 , 23 June 2005 (Doc. 10615) on Unexpected large scale arrivals of migrants and potential refugees in Lampedusa (Italy) in June 2005.

<sup>13</sup> For example, in 2005, an Italian journalist Fabrizio Gatti disguised himself as a clandestine and managed to remain inside the Centre for eight days before reporting in the "l'Espresso" of the conditions in the Centre.

<sup>14</sup> Report by the LIBE Committee delegation on its visit to the administrative detention centres in Malta, 30 March 2006, Rapporteur: Giusto Catania

<sup>15</sup> See Amnesty International Greece Out of the Spotlight, 5, October 2005,

<sup>16</sup> See How to Balance Rights and Responsibilities on Asylum at the EU's Southern Border of Italy and Libya, Rutvica Andrijasevic, Centre on Migration, Policy and Society, Working Paper No. 27, University of Oxford, 2006

<sup>17</sup> allAfrica.com 7 June 2006 Pan Africa: African, European Nations Draft Plan to Battle Illegal Migration

and Melilla had been deposited in the desert without food and water. Libya continues to be a country where there are major human rights concerns, including in terms of detention and treatment afforded to irregular migrants who have been returned. As one report has recently highlighted “once migrants and asylum seekers are detained in Libya there is virtually no way for NGOs to assist them or verify their conditions of detention and the relative expulsion procedure”<sup>18</sup>. It is also a country which has not ratified the 1951 Convention on Refugees.

29. Your Rapporteur considers that a great deal of work still needs to be done on return agreements with third countries, not only to facilitate the return of irregular migrants, but also to ensure transparency and to ensure that returnees’ rights are respected following their return.

30. Your Rapporteur hopes that these few examples are indicative of some of the human rights concerns and humanitarian issues that have to be taken into account when dealing with the arrival, stay and return of irregular migrants.

31. Your Rapporteur therefore considers that it is important to highlight the following minimum human rights obligations of States towards these persons arriving in Europe, including on Europe’s Southern shores. These include the obligation to:

- protect the right to life, refrain from using unreasonable force on those seeking to enter Europe and to rescue those whose life may be in danger
- respect the right to human dignity by providing adequate reception conditions covering accommodation, health-care and other basic needs
- provide a hearing, with an interpreter, to anyone whose right of entry is disputed in order to allow them to explain the reasons for entering the country and to lodge an application for asylum if appropriate
- use detention only as a last resort and not for an excessive period. Irregular migrants should be held in special detention facilities and not with convicted prisoners. Children should not be detained, unless this is unavoidable. In such cases it must be for the shortest possible time. The same applies for other vulnerable persons, including victims of torture, pregnant women, the elderly, etc.
- provide detainees with the right to contact anyone of their choice (lawyer, family members, NGO, UNHCR, consular services, etc.)
- ensure that detention is judicially authorised and that there is an independent judicial scrutiny of the legality and need for continued detention. Detainees should be expressly informed, without delay and in a language they understand of their rights and procedures applicable to them
- guarantee freedom from torture, inhuman or degrading treatment or punishment, including in the return process
- guarantee *non-refoulement* and the right to asylum
- prohibit the collective expulsion of aliens
- provide an effective remedy before an independent and impartial authority, with a suspensive effect when a returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights if returned
- pay particular attention to the needs of unaccompanied and separated minors, pregnant women, the aged, the disabled, victims of torture, victims of trafficking and others in a vulnerable situation
- ensure that unaccompanied minors have effective access to available protection mechanisms, including asylum procedures

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<sup>18</sup> See How to Balance Rights and Responsibilities on Asylum at the EU’s Southern Border of Italy and Libya, Rutvica Andrijasevic, Centre on Migration, Policy and Society, Working Paper No. 27, University of Oxford, 2006, p. 13

32. In order to allow arrivals to enjoy these rights in practice, your Rapporteur considers that states should:

- provide all persons arriving with information on their rights
- register the new arrivals and provide them with temporary documentation
- establish transparent mechanisms of nationality determination
- allow access by UNHCR, IOM, humanitarian and other non-governmental organisations, to all places where persons arriving may be detained
- support voluntary return programmes for irregular migrants and carry out forcible returns only as a last resort and in accordance with the 20 guidelines on Forced Return adopted by the Council of Europe's Committee of Ministers in May 2005

## **VI. Migration management challenges**

33. Your Rapporteur wishes to reiterate that the arrival of migrants and asylum seekers on Europe's Southern shores is not just a national but a European and also a wider regional and global issue. Of those arriving in Spain, Italy, Malta, Greece or other European countries, many can not be returned because of lack of return agreements or simply because irregular migrants increasingly hide their identity. In Spain if an irregular migrant has not been deported within 40 days, he or she must be released, and once released an irregular migrant may find his or her way to other parts of Europe. In Italy there is a similar situation, whereby after a maximum period of 60 days detention, irregular migrants or asylum seekers must be released.

### *i. Long-term strategies*

34. There is no quick fix for dealing with these mass arrivals on Europe's Southern shores. What is needed is a long term approach to migration management. It is however outside the scope of this report to provide an overview of all the steps that must be taken to devise such a long term strategy. These steps are to a great extent outlined in the Report of the Global Commission on International Migration "Migration in an interconnected world: New directions for action", and will require unprecedented co-operation between countries of origin, transit and destination. At the Euro African Ministerial Conference on Migration and Development in Rabat from 10 to 11 July 2006 an Action Plan was adopted which highlighted some of these measures including the importance of promoting development and co-development, the need for setting up legal migration channels and the need for co-operating in fighting illegal migration, including through reinforcement of border control capacities. The Council of Europe should define its response to the Report of the Global Commission as well its response to the Action Plan put forward in Rabat taking into account at the same time the debate in the UN General Assembly on 14 and 15 September 2006 on Migration and Development.

### *ii. Immediate steps being taken to alleviate the problem of mass arrivals on Europe's Southern shores*

35. Hardly a day passes without there being a call by Spain, Italy, Malta, Greece or other European country calling for assistance in dealing with the burden of the arrival of irregular migrants and asylum seekers.

36. Malta has, for example, pleaded with other states to physically take a number of the arrivals. Spain by contrast has been calling for assistance in patrolling the waters around which many of the boats are leaving, particularly along the West African coast. All countries are desperately looking for assistance from the countries of origin or transit of these irregular migrants. They are asking for stricter controls on departures and they are looking to negotiate return agreements so that irregular migrants can be sent back. To give one example of the problem, of the first 9,500 arrivals on Lampedusa this year, 3,500 persons were of Moroccan nationality. Italy however does not have a return agreement with Morocco which greatly hinders Italy in the steps it can take.

37. Malta's plea for other countries to take some of the arrivals has largely fallen on deaf ears. That said, in 2005, the Netherlands and the United States agreed to re-settle a total of about 60 refugees from Malta. A more recent example of burden sharing took place in July earlier this year when UNHCR brokered a deal whereby Malta, Spain, Italy and Andorra all accepted some of the 51 persons, mostly from Eritrea, who had been picked up by a Spanish trawler.

38. These examples however pale into insignificance when one looks at the numbers involved. One only needs to compare the international response to the plight of the Vietnamese Boat People, in the years following the fall of Saigon, where the numbers re-settled were not in the tens, hundreds or thousands, but reached to over a million persons.

39. Spain has not been alone in calling for assistance in patrolling the waters around its frontiers and for assistance in processing and identifying irregular migrants. Italy and Malta have also been vocal for example in calling for patrols off their coastal waters. A number of steps have been taken, including by FRONTEX (The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), a recently established Agency of the European Union based in Warsaw.

40. One of the first steps taken was the establishment of a European Union expert mission in the Canary Islands (code-named Hera I) which started on 17 July 2006 and which came to an end on 17 August 2006. This mission had the mandate of assisting the Spanish authorities with the identification of irregular migrants. It was comprised of 9 experts from Spain, Portugal, Italy, France and Germany. It was considered useful and a second group was put in place. In the future it is the aim of FRONTEX to have 250-350 specialists able to respond and assist states within 10 days of a crisis.

41. A second operation has been put into place (code-named Hera 2) which involves sea patrols and airplanes around the waters of Senegal, Mauritania and Cape Verde. This started in August, also under the authority of FRONTEX, and is due to last 7 weeks. It comprises of two Italian and Portuguese boats, two Italian and Finnish surveillance aircraft as well as Spain's two helicopters and boats. It has however been criticised for not having sufficient boats, planes and personnel and for taking too long to set up. As a result Spanish Deputy Prime Minister Maria Teresa Fernández de la Vega has recently been critical of the "slowness and ineffectiveness" of FRONTEX<sup>19</sup>. One recent media report would tend to support this analysis, indicating that one Portuguese ship had joined the Spanish effort, an Italian ship had broken down en route and a Finnish aircraft had yet to arrive<sup>20</sup>.

42. Another initiative that is in preparation (code-named Operation Jason) and initially scheduled to start in September 2006 involves two Italian and Greek Naval ships under the responsibility of FRONTEX with a mandate to operate south of Malta and Lampedusa across towards Libya and Greece. Doubts have however been raised as to what can be achieved by this operation without the support and co-operation of Libya.

43. Other initiatives underway include the Atlantis (patrolling migration routes) and Sea Horse (training border guards in third countries) operations involving the Spanish Guardia Civil in cooperation with Mauritanian authorities<sup>21</sup>.

44. Notwithstanding the various criticisms raised in relation to the speed, magnitude and effectiveness of the co-operation outlined, your Rapporteur recognises that they represent at least a basis for building up co-operation and sharing the burden of arrivals in the future. The European Union and its specialised agency FRONTEX are increasingly active and one can hope

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<sup>19</sup> EU/JHA/Immigration – Bulletin Europe of 31/08/06.

<sup>20</sup> EU promises help with migrants, 31/8/2006 BBC/UK

<sup>21</sup> Statewatch. EU/Africa : Carnage continues as EU border moves south, Yasha Maccanico, September 2006

that states will increase their support for initiatives in this area of migration management. These steps however also need to be accompanied by practical safeguards to ensure that the right to life is safeguarded and that steps taken aimed at border containment do not lead to *refoulement* of persons with international protection needs.

45. The European Commission has also recently taken a number of other steps to strengthen its response to the migration management challenge. Mr Franco Frattini, European Commissioner for Justice, Freedom and Security, over the summer, decided to put in place a new working group on immigration made up of six Commissioners<sup>22</sup>. This Task Force met for the first time on 19 September 2006. In addition to this there have been rumours of a European Union Commissioner being appointed to deal with Migration policy.

46. The European Commission pledged 3.28 million Euros to Spain, Italy and Malta in September 2006 to help these countries in their efforts to stop the flow of irregular migrants<sup>23</sup>. Support has also been announced over the summer for countries of origin and transit. The Commission for example stated that it would finance a 2.45 million Euro Programme in response to influxes of irregular migrants from Mauritania. This support would be for building border patrol capacity, for resources for detention and return of migrants to their home countries as well as for support for Mauritania's newly created Immigration Unit<sup>24</sup>. In September the Commission earmarked around 45 million Euros to support third countries in the field of migration and asylum as part of its Aeneas 2006 Work Programme. This programme covers, *inter alia*, readmission and reintegration of returnees, stemming illegal migration and developing legal migration. The European Parliament on 28 September 2006, called for an emergency aid fund to resolve the humanitarian difficulties faced in accommodating the inflow of irregular migrants and asylum seekers.

47. Illegal immigration is firmly on the political agenda of European Union. The issue was on the agenda of the Informal Justice and Home Affairs Ministerial meeting in Tampere, 20-22 September 2006, it was debated in the European Parliament on 27 September 2006, it will be on the agenda of the informal summit in October (in Lahti in Finland) and also on the agenda of the European Council in December<sup>25</sup>.

## VII. Conclusions

48. Countries such as Spain, Italy, Malta and Greece, because of their geographical locality, are having to bear the brunt of mass arrivals or irregular migrants on Europe's Southern shores. They are not however alone in having to deal with the issue of large scale arrivals of irregular migrants as many other states face similar but not so visible problems.

49. The issues that arise are a combination of humanitarian and human rights as well as migration management issues. The flow of people is mixed in the sense that it comprises persons who are simply looking for a better life and also persons, such as refugees and asylum seekers, who are in need of international protection.

50. In practice there are significant human rights and humanitarian concerns in relation to the arrival, stay and return of these persons arriving on Europe's Southern shores, and member states of the Council of Europe need to be reminded of their obligations under the European Convention on Human Rights and other human rights instruments.

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<sup>22</sup> EU/JHA/Immigration - Bulletin Europe 31/08/06

<sup>23</sup> Euobserver.com Brussels pledges money for immigrant-hit countries – 20.09.2006

<sup>24</sup> <http://europa.eu>

<sup>25</sup> EU/JHA/Immigration – Bulletin Europe, 13/9/6. Spain, Italy and France want illegal immigration to be on agenda of European summits

51. The challenge of dealing with these irregular migration flows is one of devising and operating a managed migration policy where European countries work not only together but also with countries of origin and transit. Some of the immediate steps that have been taken over the summer of 2006, such as the setting up of naval aerial controls, the establishment of rapid reaction teams, have been characterised as being “too little and too late”. They nonetheless provide, along with some of the political discussions at the highest level, an indication that Europe is beginning to work together more closely on the problem of mass arrivals.

52. Your Rapporteur however recognises that the battle is far from being won and European agreement on burden sharing is a long way from realisation. The few ships, aircrafts and personnel put at the disposal of FRONTEX provides a telling example of the lukewarm reaction to burden sharing by States. Furthermore, the recent meeting in Tampere highlighted some of the divisions between states. Germany, Austria, France and the Netherlands have been outspoken against Spain, blaming it for its current predicament citing the large scale regularisation programme of some 600,000 irregular migrants in 2005 as a pull factor for the mass arrivals on the Canary Islands. Many states have their own not so visible problems of irregular migration to contend with and they may continue to balk at the ideas of sharing the burden of other countries' problems.

53. The Assembly should therefore examine further, not only the problem of these mass arrivals on Europe's Southern shores, but also the other channels of irregular migration. This should be done with a view to recommending further action by European states, the Council of Europe and other international and national actors. In this, full account should be taken of the humanitarian and human rights challenges and also the migration management challenges in dealing with mass arrivals of irregular migrants in Europe in general and on Europe's Southern shores in particular.

*Reporting committee* : Committee on Migration, Refugees and Population

*Reference to committee*: Reference 3276, 2.10.2006

*Draft Resolution and draft Recommendation* unanimously adopted by the Committee, on 3 October 2006

*Members of the Committee*: Mr Mevlüt **Çavuşoğlu** (Chairperson), Mr Jean-Guy **Branger** (1<sup>st</sup> Vice-Chairperson), ZZ ..... (2<sup>nd</sup> Vice-Chairperson), ZZ ..... (3<sup>rd</sup> Vice-Chairperson), Mr Pedro Agramunt, Mr Küllö Arjakas, Mr Hüseyin-Kenan Aydin, Mr Ryszard **Bender**, Mr Akhmed Bilalov, Mrs Olena **Bondarenko**, Mrs Mimount Bousakla, Mr Márton **Braun**, Lord **Burlison**, Mr Sergej **Chelemendik**, Mr Christopher **Chope**, Mr Boriss Cilevičs, Mrs Minodora Cliveti, Mr Ivica **Dačić**, Mr Joseph Debono Grech, Mr Taulant Dedja, Mr Nikolaos **Dendias**, Mr Abilio Dias Fernandes, Mr Karl Donabauer, Mr Mats Einarsson, Mrs Lydie Err, Mr Valeriy **Fedorov**, Mr Oleksandr Feldman, Mrs Daniela Filipiová, Mrs Margrét Frimannsdóttir, Mrs Gunn Karin Gjøl, Mrs Angelika Graf, Mr John **Greenway**, Mr Andrzej **Grzyb**, Mr Ali Riza **Gülçiçek**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajiyeva, Mr Doug **Henderson**, Mr Jürgen Herrmann, Mr Ilie **Ilaşcu**, Mr Tadeusz **Iwiński**, Mr Mustafa Jemilev, Mrs Corien W.A. Jonker (alternate: Mr Ed **van Thijn**), Mrs Eleonora Katseli, Mr Dimitrij Kovačič, Mr Andros Kyprianou (alternate: Fidas **Sarikas**), Mr Petr Lachnit, Mr Geert Lambert, Mr Jean-Marie Le Guen, Mr Younal Loutfi, Mr Jean-Pierre Masseret, Mrs Ana Catarina **Mendonça**, Mr Morten Messerschmidt, Mr Paschal **Mooney**, Mr Gebhard Negele, Mr Pasquale Nessa, Mrs Annette Nijs, Mr Kalevi **Olin**, Mr İbrahim **Özal**, Mrs Maria Josefa **Porteiro Garcia**, Mr Cezar Florin **Preda**, Mr Dušan **Proroković**, Mr Gabino Puche (alternate: Mr Adolfo **Fernández Aguilar**), Mr Milorad Pupovac, Mr Martin Raguž, Mr Marc Reymann, Mr Alessandro **Rossi**, Mr Samad Seyidov, Mr Luzi Stamm, Mr Sergiu Stati, Mrs Terezija Stoisits (alternate: Mr Ewald **Lindinger**), Mr Vilmos Szabó, Mrs Elene **Tevdoradze**, Mr Tigran Torosyan, Mrs Ruth-Gaby Vermot-Mangold, Mrs Iliana Yotova, Mr Akhmar Zavgayev, Mr Andrej Zernovski, Mr Vladimir Zhirinovskiy, Mr Emanuelis Zingeris.

N.B. The names of the members who took part in the meeting are printed in bold.

Secretaries of the Committee: Mr Halvor Lervik, Mr Mark Neville, Ms Dana Karanjac