Mediterranean migration: the need for a comprehensive response

Ensuring an effective, coherent and humane response to mixed migratory movements remains a major challenge.

Growing numbers of people, primarily from sub-Saharan Africa, are making their way across the Mediterranean and Atlantic oceans in the hope of entering European Union countries such as Spain and Italy. We do not know exact numbers but we do know that the people concerned are placing themselves at great risk. Rarely a week passes without news of an unseaworthy boat that has sunk with all its passengers on board, of dead bodies washed ashore on holiday beaches and of people who have paid huge sums of money to unscrupulous human smugglers whose last concern is the welfare of their clients. We also know that some of the people in transit across the Mediterranean are the victims of human traffickers – women and children who, even if they reach land safely, will be condemned to a life of exploitation and abuse.

In addition to the threat that it poses to human life and human rights, the movement of people across the Mediterranean has a number of other important consequences. Because such movements are irregular in nature, they can give the impression that the countries of destination are no longer in control of their borders and can thereby contribute to the xenophobic sentiments that are to be found in many parts of the EU.

Countries of transit in North Africa are confronted by growing numbers of people who congregate in coastal cities, waiting for the opportunity to leave. When ships’ captains discover stowaways or encounter people in distress on the high seas, it is often unclear where and when those people can be disembarked.


Promoting social inclusion and tolerance can maximise the development impact of migration.

Refugees and migrants are confronted with racism and xenophobia in many parts of the world, and are often at risk of becoming marginalised in society and the economy. UNHCR wishes to draw the HLD’s attention to the dangers of this situation, both for the rights and well-being of refugees and migrants themselves, and for the cohesion of the societies in which they live. UNHCR urges states participating in the HLD to counter all forms of intolerance and to take active measures to promote the inclusion and economic participation of non-nationals, especially refugees and migrants.

UNHCR relates to the mixed nature of the movement of people across the
Mediterranean. From the evidence collected by UNHCR, it would appear that most have left their country of origin for the EU in order to find a job, earn some money, gain new skills and generally improve their prospects in life. But we also know that a proportion of these people come from countries where they are at serious risk of persecution and human rights violations. Such people are refugees and, as such, they have a right to international protection.

**Challenges**

The presence of refugees among a larger group of migrants, some of whom may also intend to use the asylum channel as a means of entering and remaining in Europe, presents UNHCR and other members of the international community with some important challenges. First, and in addition to the immediate task of saving lives, systems and procedures have to be established in order to identify those people who are in need of asylum. Second, we must ensure that any measures taken by states to curb irregular maritime migration do not prevent refugees from gaining the protection to which they are entitled. Third, we need a clearer understanding of the roles and responsibilities of the different actors involved (countries of origin and transit, international organisations and shipping companies) when people are intercepted or rescued at sea. And, finally, we have to ensure that all of those people who have travelled – or who hope to travel – to Europe by sea find a lasting solution to their situation, whether or not they are recognised as refugees.

These are complex and difficult issues. A number of different fora have already been established for consultation and cooperation on migration issues in the Mediterranean region. But securing an effective and coherent response to mixed migratory movements – that includes the protection of refugees and asylum seekers – remains a major challenge.

Our first objective is to identify those people who are in need of asylum and international protection. In this respect, we need to think in terms of a channelling mechanism to differentiate individual cases, register claims to refugee status and provide counselling to the people concerned. In UNHCR’s experience, this is essential both to assess the validity of each case and to correct false expectations.

We also need to consider the accommodation arrangements provided for people who are waiting for their cases to be assessed. The limited facilities on board ships are clearly inadequate. We may therefore have to consider the possibility of establishing reception centres that provide temporary accommodation in coastal areas, where individuals and families can be provided with shelter, food, health care and other basic needs.

Our second objective – and one that is closely linked to the first – is to ensure that border control measures do not prevent refugees from gaining access to asylum procedures. States have, of course, legitimate right to control and secure their borders. However, interception at sea and other measures that are taken to curb irregular maritime migration should not result in violations of the *non-refoulement* principle which prevents people from being returned to countries where their life and liberty would be at risk. The establishment of an effective channelling mechanism that differentiates between individual cases after disembarkation might prove to be an important means of preserving this important principle.

Our third objective is to arrive at a clearer understanding of respective roles and responsibilities in the case of interception or rescue at sea. There are no definitive rules on the allocation of responsibility for the disembarkation of rescued persons and long delays can unfortunately sometimes occur. It is nevertheless a strong maritime tradition to come to the rescue of those who are in distress at sea, and this tradition has been codified to some extent in instruments such as the 1974 Convention on Safety of Life at Sea and the 1979 Maritime Search and Rescue Convention.

Recent amendments to these Conventions seek to clarify responsibilities, especially when it comes to the issue of disembarkation. Guidelines on this matter have also been developed by the International Maritime Organization (IMO). Effective implementation of these guidelines is essential if the international community is to address this issue in a coherent and effective manner.

Our fourth and final objective concerns the need for lasting solutions for all those people engaged in irregular maritime migration, whether or not they are recognised as refugees. What, for example, should happen to those individuals deemed to be in need of international protection? Once they have been granted refugee status, can they be offered residence rights and integration opportunities locally, or does resettlement in a third country offer a more viable solution? With respect to those not in need of international protection, how can they be assisted to return home in humane conditions or, when this is in everyone’s interest, to regularise their status in the country where they are to be found?

There is also a need to find longer-term solutions to the problem of irregular maritime migration. To what extent, for example, can
The false panacea of offshore deterrence

Governments take often shockingly blunt action to deter refugees and other migrants found on the high seas, in their island territories and in overseas enclaves. There is a pervasive belief that when deterrence is conducted at arms-length from the homeland it is either legitimate or, at the very least, immune from legal accountability.

For example, the US maintains that it has no legal obligation to intercepted refugees, even if they manage to reach its territorial sea. Indeed, the US recently argued that a Cuban asylum seeker – traditionally a highly favoured group under its domestic law – could not assert a right to protection because the bridge where her tiny boat landed had been disconnected by storms from the American mainland.

When some 10,000 persons managed to reach the Italian island of Lampedusa this year, Italy responded by discontinuing its traditional practice of sending them to Sicily for processing of protection claims. Instead, the BBC reports that the “migrants were despatched back handcuffed in military planes from Lampedusa direct to Libya. No questions asked.” Spain erected dual razor-wire fences around its North African enclaves of Ceuta and Melilla to deter groups of largely sub-Saharan migrants anxious to enter the European Union. Even those who successfully scaled the barriers were often summarily sent back to Morocco, which is reported simply to have dumped them in desert border zones. The ‘success’ of this deterrent programme put renewed pressure on the Spanish Canary Islands, a favoured destination until 2002 when radar and sea patrols were instituted to deter travel from Morocco to the Canarian islands of Fuerteventura and Lanzarote, some 100 kilometres away. The most recent flows have thus been forced to take a much longer and more perilous route from northern Mauritania to Tenerife. The Spanish government has responded to the upsurge in arrivals by offering Mauritania patrol boats to stop departures and to set up refugee camps in Mauritania.

Are such practices legal?

The 1951 Refugee Convention and its 1967 Protocol do not allow states to refuse protection to refugees just because they have not yet entered the core of its territory. Simply put, the most basic duties – including the critical duty of non-refoulement, requiring states not directly or indirectly to return refugees to the risk of persecution – apply wherever a state exercises jurisdiction. Whether protection is sought on Lampedusa or in Rome, the refugee law implications are identical. It makes no difference whatever if asylum is claimed by a refugee clinging to the outermost razor-wire fence at Ceuta or at a police station in Madrid. Nor may there be any peremptory refoulement of refugees encountered by vessels patrolling a state’s territorial waters, or even of those intercepted on the high seas. Because jurisdiction is the lynchpin to responsibility, state parties to the Refugee Convention must provisionally honour the rights