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COVER NOTE

From: Mr William Lacy Swing, Director-General of the International Organization for Migration and
Mr Filippo Grandi, UN High Commissioner for Refugees

To: Mr Donald Tusk, President of the European Council
Mr Jean-Claude Juncker, President of the European Commission
Ms Federica Mogherini, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission

Subject: Letter from the Director-General of the International Organization for Migration and the UN High Commissioner for Refugees to the President of the European Council, the President of the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy.

Delegations will find attached a letter from the Director-General of the International Organization for Migration and the UN High Commissioner for Refugees to the President of the European Council, the President of the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy.



International Organization for Migration (IOM)



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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Excellencies,

We have the honour to write to you ahead of the European Council meeting on 28 and 29 June, regarding the management of refugees and migrants crossing the Mediterranean Sea.

We are encouraged by the ongoing commitment of the European Union institutions to advancing the reform package for the Common European Asylum System and hope that further progress can be achieved at the Council meeting later this week. As a complement to the reform package, there is widespread recognition that further measures are needed to improve arrangements for life-saving search and rescue operations in the Mediterranean. To contribute to ongoing discussions on such measures, UNHCR and IOM are pleased to share the attached joint concept note outlining a regional cooperative arrangement for ensuring predictable disembarkation and subsequent processing of persons rescued at sea, including through support to those States where disembarkation takes place.

The concept note aims to advance discussions on the development of a mechanism to ensure that people rescued at sea in international waters are quickly disembarked in a predictable manner and in line with international law, in conditions that uphold their rights, including the principle of non-refoulement, and preventing serious harm and other risks. The note sets out a number of recommendations that will require further discussion with States and other stakeholders on operationalization. UNHCR and IOM are committed to taking these discussions forward, with a view to addressing current challenges and proposing constructive solutions, in line with our respective mandates.

Strong leadership from European Union Member States on upholding the right to asylum and the rights of migrants, as well as a commitment to securing solutions for refugees and migrants, will be key to the success of these efforts. Progress on solidarity within the European Union and enhanced support from EU Member States on resettlement, other pathways to protection, legal migration and tackling push factors are also needed to develop a more coherent response to today's global displacement crises and the challenges brought about by human mobility, together with other regional partners.

His Excellency
Mr. Jean-Claude Juncker
President of the European Commission

Her Excellency
Ms. Federica Mogherini
High Representative of the European Union
for Foreign Affairs and Security Policy
and Vice-President of the European Commission

His Excellency
Mr. Donald Tusk
President of the European Council



International Organization for Migration (IOM)



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

We encourage all concerned to seek agreement on the proposal for a European Union Resettlement Framework in the run up to the European Council meeting. This would be a major achievement. Coupled with progress on intra-EU solidarity at the European Council meeting, this would send a powerful message of commitment by the European Union to the protection of refugees and the right to asylum. We stand ready to support the European Union and its Member States in all of these important efforts.

A copy of this letter will be shared with the Chairperson of the African Union Commission, His Excellency Mr. Moussa Faki Mahamat.

Please accept, Excellencies, the assurances of our highest consideration.

William Lacy Swing
Director-General
International Organization for Migration

Filippo Grandi
United Nations High Commissioner for Refugees



Proposal for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea

Approximately 40,000 refugees and migrants have arrived in Europe via maritime routes in 2018 to date. This is almost six times less than over the same period in 2016, following a peak in arrivals by sea in 2015. According to EUROSTAT, approximately 30 per cent of those arriving on the European shores were in need of international protection; moreover, some have faced extreme hardship and abuse at the hands of unscrupulous traffickers during the journey.

Despite the reduced arrival rates, new challenges resulting from divergent EU Member State views have revealed a need to revisit regional arrangements to relieve front line states from having the sole responsibility for the disembarkation and further processing of people rescued at sea.

IOM and UNHCR stand ready to support a common approach, and call on all countries in the Mediterranean region to come together to implement a predictable and responsible disembarkation mechanism in a manner that prioritizes human rights and safety first, delinked from the subsequent processing of status and related follow-up responsibilities, post-disembarkation, for those rescued in international waters.

It is increasingly recognized that disembarkation cannot be the sole responsibility of one country or regional grouping. It should be a shared responsibility across the Mediterranean Basin, with due respect for the safety and dignity of all people on the move. A comprehensive approach is required to realize effective and sustainable responses.

People on the move to and through the Mediterranean have different migratory status, with the majority of them not qualifying for international or subsidiary protection. Addressing the drivers of forced displacement and irregular migration needs to be given renewed attention through effective conflict-prevention and crisis settlement processes, strengthening good governance, rule of law, and respect for human rights efforts, stabilization and recovery, as well as poverty reduction.

Priority efforts need to focus on strengthening protection capacities in regions of origin, including through developing sustainable asylum systems; providing sufficient needs-based support for humanitarian operations and adopting a development-oriented approach to assistance; as well as expanding opportunities for resettlement, family reunification and safe pathways for refugees which are currently well below existing needs and pledges being made. Efforts toward opening safe and regular pathways for migrants need also to be undertaken (family reunification, labour and education opportunities, humanitarian visas for vulnerable migrants).

Against this background, with a focus on the immediate disembarkation concerns at hand, the current proposal for a regional disembarkation mechanism aims to ensure that:



- People rescued-at-sea in international waters are quickly disembarked in a predictable manner in line with international maritime law, in conditions that uphold respect for their rights including non-refoulement, and avoid serious harm or other risks;
- Responsible post-disembarkation processing, supported – as appropriate- by IOM and UNHCR, leads to rapid and effective differentiated solutions and reduces onward movement through an effective cooperative arrangement.

Functioning of the mechanism is premised on a set of principles and common objectives:

- The effective functioning of maritime commerce requires ships' masters to have full confidence in prompt and predictable disembarkation;
- Efforts to reduce loss of life at sea are maximized, in line with existing international obligations and frameworks, and saving lives remains the international community's priority;
- Strengthened efforts to build the capacity of Coast Guards in Mediterranean countries (not just in Libya) to perform effective rescue operations in their respective SAR;
- National Maritime Rescue Coordination Centres (MRCC) are able to carry out their work effectively for the purposes of search and rescue operations based on long-standing and effective practices to save lives;
- People rescued at sea in the Mediterranean are quickly disembarked in safe ports in a predictable manner in line with established rescue at sea arrangements and international maritime law, coordinated through the responsible MRCCs;
- Measures for cooperative arrangements to support States providing for disembarkation are well-established;
- The right to seek asylum is safeguarded, and the human rights of all individuals such as non-refoulement are respected, including the right not to be disembarked in or transferred to a place where there is a risk of persecution, torture, or other serious harm;
- Efforts to address human smuggling and trafficking are reinvigorated, including measures to ensure protection and/or referrals for victims of trafficking and ensuring the effective prosecution of those involved in / or facilitating human trafficking or smuggling;
- Rescue at sea capacity coordinated by effective MRCCs that operate in accordance with international law is reinforced.

As such, the proposal does not affect existing legal norms and responsibilities applicable under international law.¹ Rather it seeks to facilitate their application in accordance with a regional collaborative approach and the principle of international cooperation. This proposal

¹ Including the United Nations Convention on the Law of the Sea (including without prejudice to flag state duties), International Convention for the Safety of Life at Sea, International Convention on Maritime Search and Rescue, as well as applicable international refugee law or international human rights instruments



relies on functional arrangements for intra-EU solidarity in managing all consequences of rescue, disembarkation and processing. It also relies on operational arrangements which would need to be sought and formalised through a set of understandings among all concerned States.

STEP 1 | DISEMBARKATION

The coordination of responses to SAR events is the legal obligation of States with responsibility for designated SAR areas, through the functioning of their corresponding Maritime Rescue Coordination Centres (MRCC). In all cases, including where a SAR area is not clearly established or falls short of fully effective functioning, speedy and equitable cooperation among State-managed MRCCs is required to ensure that lives are saved and not put at risk through delayed disembarkation or disembarkation in a location that is not safe.

The determination of places of disembarkation at presently utilized and additional pre-identified disembarkation centres in EU territory and potentially elsewhere should be based on a geographic distribution with due consideration for available capacities in such identified centres, and in a manner that ensures respect for human rights, including respect for the safety and dignity of all people on the move, and the principle of non-refoulement. Achieving this outcome is subject to operational arrangements which would need to be sought and formalised through a set of understandings among concerned States.²

STEP 2 | RECEPTION ARRANGEMENTS

Those rescued-at-sea would be disembarked promptly and transported to State-operated reception centres providing adequate, safe and dignified reception conditions. A range of services would be provided by qualified staff in order to address the basic material and psychosocial needs of all arrivals, including by providing access to adequate safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and immediate health care, with a particular emphasis on persons with specific needs, including children and their best interest assessment.

All will undergo immediate **biometric registration**, in compliance with applicable international standards – for which UNHCR and IOM could provide support - and **security screening** would be carried out by the competent national authorities with adequate monitoring and protection safeguards.

²Model Framework, Para III, Annex I, [UNHCR Summary conclusions](#), Djibouti roundtable on rescue at sea.



STEP 3 | PROFILING, CASE PROCESSING AND ASSESSING INTERNATIONAL PROTECTION NEEDS AND OTHER SPECIFIC NEEDS

States would, with appropriate support from IOM and UNHCR in line with their respective roles and mandates, distinguish between various categories of persons, including persons seeking international protection, and those whose specific needs may require some form of temporary protection and assistance. Options for voluntary return and reintegration should at any stage of post-embarkation processing be available to all those willing to return.

Processing for international protection will occur in line with international, and as applicable, existing national and/or regional standards, and depending on the place of disembarkation, could be carried out by the concerned State alone or supported by UNHCR as need be, including through the deployment of Rapid Response Teams. Appropriate differentiated and accelerated procedures with applicable safeguards could be used for more expedited proceedings, for both manifestly well-founded and unfounded cases.

Specialized support from UNHCR and IOM could also be at hand to help identify persons with specific needs, for appropriate referrals.

Throughout this process, persons seeking international protection, or temporary stay should be supported, including through the provision of appropriate reception conditions and respect for their rights under international, European and national laws, while the human rights of all persons regardless of their status should be upheld and protected.

STEP 4 | SOLUTIONS FOR REFUGEES

For persons disembarked within the EU, following registration and immediate humanitarian assistance, there would be eligibility assessment for possible transfer to another EU Member State, including in accordance with applicable EU law and frameworks, in particular to facilitate reunion with family members located in other EU Member States, and a flexible and swift collaborative arrangement for solutions.

For persons disembarked outside the EU, solutions would include third country resettlement and humanitarian admission, in addition to family reunification, local solutions where possible as well as voluntary repatriation and reintegration in their home country, as appropriate. Support by the international community, led by UNHCR, would be strengthened to build national asylum systems, inclusive of laws and operational protection responses.

In all cases, a solution must be achieved within a reasonable time frame.



STEP 5 | SOLUTIONS FOR PERSONS WITH SPECIFIC NEEDS

People not in need of international protection, but who nonetheless find themselves in a vulnerable situation justifying permission to remain on a temporary basis are a category in need of tailored responses. For example, permission to remain has been accorded to separated and unaccompanied children; victims of trafficking; migrants with serious health conditions; and survivors of abuse or trauma, for the duration of treatment, pending recovery. Equally and as appropriate, support to relevant authorities and civil society organizations in countries of origin to provide protection and rehabilitation services, including in the framework of post-return reintegration, notably medical and socio-psychological counselling and assistance, will be considered.

STEP 6 | PEOPLE IN NEED OF ASSISTANCE TO RETURN TO THEIR COUNTRIES OF ORIGIN.

People with no claim to international protection or specific needs and who are not otherwise eligible to stay in the country of disembarkation would be returned to their country of origin, with a preference for voluntary return and reintegration. Those expressing a desire to return to their country of origin would benefit from safe and dignified voluntary return assistance and support for sustainable reintegration with IOM's support.

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