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*Plenary sitting*

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**B9-0154/2019**

21.10.2019

## **MOTION FOR A RESOLUTION**

further to Questions for Oral Answer B9-0052/2019 and B9-0053/2019

pursuant to Rule 136(5) of the Rules of Procedure

on search and rescue in the Mediterranean  
(2019/2755(RSP))

**Juan Fernando López Aguilar**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

**B9-0000/2019**

**European Parliament resolution on search and rescue in the Mediterranean  
(2019/2755(RSP))**

*The European Parliament,*

- having regard to the Geneva Convention of 1951, in particular Article 33 thereof, the Protocol of 1967 relating to the Status of Refugees, the UN Convention on the Law of the Sea of 1982 (UNCLOS), the International Convention for the Safety of Life at Sea of 1974 (SOLAS) and the International Convention on Maritime Search and Rescue of 1979 (SAR) as amended, and related resolutions of the International Maritime Organisation (IMO), notably Resolution MSC.167(78) of 20 May 2004 entitled ‘Guidelines on the Treatment of Persons Rescued At Sea’,
- having regard to the report of the UN Special Rapporteur on the human rights of migrants of 24 April 2013 entitled ‘Regional Study: management of the external borders of the European Union and its impact on the human rights of migrants’,
- having regard to the joint communication by the UN Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the UN Special Rapporteur on the human rights of migrants; the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on trafficking in persons, especially women and children of 15 May 2019 (AL ITA 4/2019),
- having regard to the position on returns to Libya of the UN High Commissioner for Refugees (UNHCR) of September 2018,
- having regard to the report of the United Nations Support Mission in Libya and Office of the High Commissioner for Human Rights on the human rights situation of migrants and refugees in Libya of 20 December 2018,
- having regard to the report of the Secretary-General of the UN on the United Nations Support Mission in Libya of 26 August 2019,
- having regard to the recommendation of the Council of Europe Commissioner for Human Rights of June 2019 entitled ‘Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean’,
- having regard to the call by the Council of Europe Commissioner for Human Rights on 7 October 2019 for bolder measures to protect the human rights and dignity of all migrants in the Mediterranean,
- having regard to Article 18 of the EU Charter of Fundamental Rights,
- having regard to the Joint Declaration of Intent on a controlled emergency procedure – voluntary commitments by Member States for a predictable temporary solidarity

- mechanism, of 23 September 2019 (by Germany, France, Italy, Malta and XXX in the presence of the Finnish Presidency of the Council of the EU and the Commission),
- having regard to the Commission communication of 27 May 2015 establishing an EU Action Plan against migrant smuggling (2015-2020) (COM(2015)0285),
  - having regard to the 2019 Fundamental Rights Report by the European Union Agency for Fundamental Rights and the update thereto of June 2019 entitled ‘NGO ships involved in search and rescue in the Mediterranean and criminal investigations’,
  - having regard to its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration<sup>1</sup>,
  - having regard to its resolution of 18 May 2017 on making relocation happen<sup>2</sup>,
  - having regard to its resolution of 18 April 2018 on progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees<sup>3</sup>,
  - having regard to its resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised<sup>4</sup>,
  - having regard to its resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017<sup>5</sup>,
  - having regard to the 2018 update to its study of 2016 entitled ‘Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants ‘,
  - having regard to the hearing on search and rescue in the Mediterranean held by the Committee on Civil Liberties, Justice and Home Affairs on 3 October 2019,
  - having regard to the questions to the Council (O-000024/19 – B9-0052/2019) and the Commission (O-000025/19 – B9-0053/2019) on search and rescue,
  - having regard to Rules 136(5) and 132(2) of its Rules of Procedure,
  - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
- A. whereas according to International Organisation for Migration (IOM) figures, in 2019 so far some 933 people are believed to have died or have gone missing in the Mediterranean Sea on their way to Europe; whereas the death toll in the Mediterranean has been on the decline since 2015 (3 771 in 2015, 2 277 in 2018); whereas according to the UNHCR, despite the significant drop in arrivals (141 472 in 2018 as opposed to 1 032 408 in 2015), the route from Libya to Europe is still the migration route with the

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<sup>1</sup> OJ C 58, 15.2.2018, p. 9.

<sup>2</sup> OJ C 307, 30.8.2018, p. 137.

<sup>3</sup> Texts adopted, P8\_TA(2018)0118.

<sup>4</sup> Texts adopted, P8\_TA(2018)0314.

<sup>5</sup> Texts adopted, P8\_TA(2019)0032.

highest death toll in the world (646 deaths so far in 2019) and was five times deadlier in 2018 than in 2015 notably due to a reduction in search and rescue (SAR) activities off the Libyan coast;

- B. whereas many vulnerable people such as women and unaccompanied minors are among those trying to reach Europe by crossing the Mediterranean; whereas many of these are at risk of trafficking and exploitation and are therefore in need of immediate protection (the percentage of unaccompanied minors arriving via the central Mediterranean route in the last 5 years has remained unchanged at 15 %, while more than 1 100 unaccompanied minors reached the Italian coast this year);
- C. whereas saving lives is an act of solidarity with those at risk, but first and foremost a legal obligation under both international law, as Article 98 of the United Nations Convention of the Law of the Sea (UNCLOS) – ratified by all Member States and the Union itself – requires States to render assistance to any person in distress at sea<sup>6</sup>, and Union law;
- D. whereas Article 19(2)(g) of UNCLOS, read in combination with Article 17 thereof, provides that a foreign ship has the right of innocent passage through the territorial sea of State parties to the Convention and that the passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
- E. whereas the international law of the sea and maritime law require States to take preventive, early warning and response measures to reduce the risk of fatalities at sea, including by operating adequate and effective search and rescue services; whereas European human rights law requires States to fulfil positive duties with regard to safeguarding the lives of those within their jurisdiction and to take preventive measures to forestall real and immediate risks to human life;
- F. whereas in the event that the Maritime Rescue Coordination Centre (MRCC) in charge of the SAR region does not assume responsibility for an operation, including cases where a failure to do so is systemic, the 2004 IMO MSC Guidelines on the treatment of persons rescued at sea consider the first Rescue Coordination Centre alerted responsible;
- G. whereas international maritime<sup>7</sup> and human rights law as well as Union law require to disembark persons rescued to a place of safety<sup>8</sup>; whereas Union law defines ‘place of safety’ as a location where rescue operations are considered to terminate and where the survivors’ safety of life is not threatened, where their basic human needs can be met and

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<sup>6</sup> See also the obligations laid down in the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1979 International Convention on Maritime Search and Rescue (SAR) and the 1989 International Convention on Salvage.

<sup>7</sup> Annex to the 1979 SAR Convention (as amended in 1998), paragraph 1.3.2.

<sup>8</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

from which transportation arrangements can be made for the survivors' next destination or final destination, taking into account the protection of their fundamental rights in compliance with the principle of *non-refoulement*<sup>9</sup>;

- H. whereas all vessels operating in the Mediterranean, including when engaged in rescue operations, have the obligation to respect the relevant international conventions and other applicable rules;
- I. whereas no predictable mechanism for disembarkation and relocation is currently under consideration by the Council despite announcements in July 2019, following a high-level meeting in Paris, that 14 Member States had agreed to a new 'solidarity mechanism' proposed by Germany and France, and in relation to which a high-level meeting subsequently took place on 23 September in Malta; whereas, the joint declaration issued after that meeting highlights the subscribing Member States' commitment to a more predictable and efficient temporary solidarity mechanism in order to ensure the dignified disembarkation in a place of safety of migrants taken aboard vessels on the high seas; whereas the mechanism would be valid for 6 months, renewable upon further agreement; whereas the declaration does not set up a system of cooperation on SAR among participating Member States; whereas Parliament has not been involved in those discussions;
- J. whereas Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence lays down minimum rules regarding criminal penalties for facilitating irregular entry as defined in Council Directive 2002/90/EC even if said facilitation is not arranged for financial gain and extends the rules to irregular transit, instigators and accomplices; whereas shipmasters and crews should not face criminal penalties for the sole reason of having rescued persons in distress at sea and brought them to a place of safety<sup>10</sup>;
- K. whereas in its resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised, Parliament noted that the humanitarian assistance exemption should be implemented as a bar to prosecution, to ensure that prosecution is not pursued against individuals and civil society organisations assisting migrants for humanitarian reasons and urged the Commission to adopt guidelines for Member States specifying which forms of facilitation should not be criminalised; whereas criminalisation might discourage private shipmasters from providing assistance; whereas 10 NGOs/vessels/individuals are under criminal investigation for saving lives; whereas NGOs saving the lives of migrants in the Mediterranean were nominated for the European Parliament's Sakharov Prize in 2018 ;
- L. whereas since the end of the operation Mare Nostrum on 31 October 2014, there has been no proactive state-operated SAR in the Central Mediterranean;
- M. whereas, on 26 September 2019, the Council extended the mandate of EUNAVFOR MED (Operation Sophia) until 31 March 2020, but continued, as was the case with the previous mandate extension, to limit it to air operations while suspending any maritime

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<sup>9</sup> Article 2(12) of Regulation (EU) No 656/2014.

<sup>10</sup> Recital 14 of Regulation (EU) No 656/2014 (OJ L 189, 27.6.2014, p. 93).

operations (vessels);

- N. whereas Frontex currently has operations Themis (which supports Italy in the Central Mediterranean), Poseidon (which supports Greece at the Greek sea borders with Turkey) and Indalo (which supports Spain in the Western Mediterranean) deployed at sea in the Mediterranean; whereas 37 439 people were saved with direct involvement of Frontex assets in SAR cases in 2018; whereas 25 982 migrants have been saved to date in 2019 in all joint SAR operations carried out by Frontex, of whom 1 582 were saved in the Central Mediterranean; whereas Frontex acknowledges that most of the SAR incidents occur outside the operational area of Joint Operation Themis;
- O. whereas migrants have been a profitable business for smugglers and traffickers; whereas the latter's business models have been very reactive to the evolution of the situation on the ground and at sea; whereas it is important that the EU steps up the fight against smuggling;
- P. whereas migrant smuggling and trafficking are distinct phenomena addressed by distinct legal frameworks at Union and international level; whereas human trafficking involves the recruitment, transportation or reception of a person through the use of violent, deceptive or abusive means for the purpose of exploitation, while the smuggling of migrants, according to the UN Anti-Smuggling Protocol<sup>11</sup> means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- Q. whereas the Libyan authorities notified the International Maritime Organisation of a Libyan SAR area in June 2018; whereas, according to the Commission<sup>12</sup>, the Libyan coast guard continues to intercept or rescue a large number of persons at sea – around 15 000 in 2018; whereas on several occasions the Joint Rescue Coordination Centre in Libya has failed to fully meet its obligations under international maritime law to coordinate rescue operations, is often unresponsive to distress calls, has hindered NGO vessels from saving lives and has put lives at risk when rescuing or intercepting persons at sea<sup>13</sup>; whereas Frontex assets have been transmitting information to the Libyan Maritime Rescue Coordination Centre about people in distress at sea;
- R. whereas people intercepted by the Libyan coast guard are transferred to detention centres where they are systematically exposed to arbitrary detention in inhumane conditions, and where torture and other ill-treatment, including rape, as well as arbitrary killings and exploitation are endemic; whereas the UNHCR takes the view that Libya does not meet the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea;
- S. whereas following the closure of some Mediterranean ports, the Commission has been

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<sup>11</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime (2000).

<sup>12</sup> Commission Communication of 6 March 2019 entitled 'Progress report on the Implementation of the European Agenda on Migration' (COM(2019)0126).

<sup>13</sup> Recommendation of the Council of Europe Commissioner for Human Rights, 'Lives saved. Rights protected – Bridging the protection gap for refugees and migrants in the Mediterranean', p. 21.

coordinating an ad hoc disembarkation and voluntary relocation model; whereas since the beginning of 2019, 620 people have been disembarked in Malta, and 718 in Italy; whereas European Asylum Support Office (EASO) has supported 12 disembarkation and subsequent relocation operations in Italy and Malta; whereas the great majority of those disembarked apply for international protection and many of them are vulnerable people such as women and unaccompanied minors in need of immediate protection;

- T. whereas around 100 cities and municipalities across Europe have expressed their willingness to receive refugees beyond the established national relocation quotas;
- U. whereas, under the recently adopted Regulation (EU) No 2018/2000<sup>14</sup>, Member States should recommit or transfer at least 20 % of amounts committed to support the implementation of the relocation decisions to actions in their national programmes, for the transfer of applicants for international protection or of beneficiaries of international protection, for resettlement or other ad hoc humanitarian admissions, as well as for preparatory measures for the transfer of applicants for international protection following their arrival in the Union, including by sea, or for the transfer of beneficiaries of international protection;
- V. whereas in its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, Parliament took the view that a permanent, robust and effective Union response in search and rescue operations at sea is crucial to preventing an escalating death toll of migrants attempting to cross the Mediterranean Sea; whereas legal and safe pathways should be created in order to reduce irregular migration and the death toll in the Mediterranean;
- W. whereas in its resolution of 18 April 2018 on progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees, Parliament called for greater search and rescue capacities for people in distress, for greater capacities to be deployed by all states, and for the support provided by private actors and NGOs in carrying out rescue operations at sea and on land to be acknowledged;
1. Reiterates the obligation under the international law of the sea to assist persons in distress and calls on all Member States, individually and when acting as Member States of the EU or in relevant international fora, to fully abide by the standards of relevant international law and Union law; calls on all vessels conducting search and rescue operations to comply with instructions given in compliance with relevant international and Union law by the competent Rescue Coordination Centre and to cooperate with the Member State authorities and Frontex in order to safeguard the safety of migrants;
  2. Calls on the EU Member States to enhance proactive search and rescue operations by providing sufficient vessels and equipment specifically dedicated to search and rescue operations and personnel, along the routes where they can make an effective contribution to the preservation of lives, whether under the umbrella of a Frontex-

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<sup>14</sup> Regulation (EU) No 2018/2000 of the European Parliament and of the Council of 12 December 2018 amending Regulation (EU) No 516/2014 of the European Parliament and of the Council, as regards the recommitment of the remaining amounts committed to support the implementation of Council Decisions (EU) No 2015/1523 and (EU) No 2015/1601 or the allocation of those amounts to other actions under the national programmes, OJ L 328, 21.12.2018, p. 78.

coordinated operation, or under international or separate national or regional operations, preferably civil operations; calls on the Commission to support such initiatives politically and financially; calls on Member States to make full use of all vessels able to assist in search and rescue operations, including vessels operated by NGOs; believes that NGO vessels and merchant shipping should not be a substitute for the due fulfilment by the Member States and the Union of their search and rescue obligations as part of a more long-term, structural and coordinated approach;

3. Calls on Member States and Frontex to step up their efforts in support of search and rescue operations in the Mediterranean and expresses its satisfaction at the large number of people that Frontex rescued in 2018 and 2019; regrets that this positive contribution to search and rescue activities was not enough to considerably lower the death toll in the Mediterranean;
4. Calls on all actors in the Mediterranean to proactively transmit information related to persons in distress at sea to the competent authorities for search and rescue operations and to, where appropriate, any potential vessels in the vicinity that could imminently engage in search and rescue;
5. Calls on Frontex to significantly enhance the information available about its operational activities at sea and to make accurate and comprehensive information publicly available as regards its activities at sea, while acknowledging its legal obligation not to reveal operational information which ‘would jeopardise attainment of the objective of operations’<sup>15</sup>; calls on Frontex to fulfil its specific reporting duties under the European Border and Coast Guard Regulation, including to regularly brief the Members of the Parliament to which it is accountable with detailed information, where necessary in a non-public setting; therefore stresses, in particular, the need for more detailed post-operation information; calls on Frontex to publish information on its cooperation with the Maritime Rescue Coordination Centre in Tripoli and the Libyan coast guard; believes that a more proactive information policy about its sea operations is required to allow for public scrutiny and thereby protection of the Agency from unfounded accusations; in this context, takes note of the action brought in front of the Court of Justice of the European Union in Case T-31/18<sup>16</sup>; deplores, in particular, that the report that Frontex is required to produce under Regulation (EU) No 656/2014 ‘on the practical application of this Regulation’ and that is so far available for only 2014, 2015, 2016 and 2017 on its website provides hardly any tangible information which would enable a proper assessment of the Agency’s activities at sea;
6. Recalls that Member States shall take the measures necessary to ensure that the infringements defined in Articles 1 and 2 of Directive 2002/90/EC are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition;
7. Reiterates its urge to the Commission to adopt guidelines for Member States by the end

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<sup>15</sup> Article 8(3) of Regulation (EU) No 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) No 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

<sup>16</sup> [Action brought on 20 January 2018 – Izuzquiza and Semsrott v Frontex, in Case T-31/18.](#)



of this year specifying which forms of assistance should not be criminalised, in order to ensure greater consistency in the criminal regulation of facilitation across Member States and limit unwarranted criminalisation;

8. Calls on the Commission to examine whether actions taken by some Member States in accordance with their national law to prevent rescue boats from entering its territorial waters without prior authorisation are in line with EU asylum law and Article 18 of the Charter of Fundamental Rights, read in the light of the European Convention on Human Rights and the Geneva Convention;
9. Calls on Member States to maintain their ports open to NGO vessels;
10. Calls on the Commission to share comprehensive information and data on the level of support provided through funding from the EU and the Member States to border and coast guards in third countries, including Libya, Turkey, Egypt, Tunisia and Morocco, not only through direct transfers but also material, technical and training assistance, including as part of the EU agencies' activities; calls on the Commission and the Member States to assess the allegations of serious fundamental rights violations by the Libyan coast guard and to end the cooperation in the event of serious fundamental rights violations faced by people intercepted at sea following transmission of information by EU assets to the Libyan coast guard; supports, in that regard, the recommendations of the Council of Europe Commissioner for Human Rights to 'urgently review all co-operation activities and practices with the Libyan Coast Guard, identify which of these impact, directly or indirectly, on the return of persons intercepted at sea to serious human rights violations, and suspend these until clear guarantees of human rights-compliance are in place';
11. Calls on the Commission, Member States and Frontex to ensure that disembarkation takes place only in a place of safety that is safe under relevant international and Union law and to refrain from issuing instructions to shipmasters that may, directly or indirectly, lead to the disembarkation of rescued persons in an unsafe place;
12. Calls on Member States to evacuate swiftly detention centres in Libya and move migrants, including to the EU;
13. Reiterates that safe and legal pathways are the best way of avoiding loss of life and urges Member States to fully support the UNHCR's evacuation operations from Libya and to intensify resettlement measures and put in place humanitarian corridors to the European Union;
14. Calls on the Commission to start work immediately on a new, more sustainable, reliable and permanent approach to search and rescue, replacing existing ad hoc solutions, to develop a specific operational action plan to assess and respond to SAR needs and capacities and to provide material and financial support to Member States in order to enhance their capacity for saving lives at sea and coordinating search and rescue operations;
15. Calls on the Council to put forward promptly a position on a fair and sustainable distribution mechanism for those people who have been rescued at sea or have arrived independently in the EU and to enter into negotiations with Parliament as co-legislator;

welcomes the outcome of the Ministerial Meeting in Malta regarding the development of a more predictable and efficient temporary solidarity mechanism;

16. Calls on the Commission to include a sustainable and fair relocation mechanism for persons arriving by sea in its planned relaunch of the reform of asylum rules;
17. Calls on the future Commissioner(s) responsible for the matters dealt with herein to report back on the relevant developments to the Committee on Civil Liberties, Justice and Home Affairs by early 2020;
18. Instructs its President to forward this resolution to the Commission, the Council, the Member States and their national parliaments, Frontex, the European Asylum Support Office (EASO), Europol, the UN High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM) and NGOs undertaking SAR activities.