UNHCR contributions

Report of the Secretary-General on Oceans and the Law of the Sea, Part II

June 2021

1. In the context of COVID-19 pandemic, states have taken measures for the protection of public health including restrictions of access to territory. In this context, refugees, and other persons under UNHCR's mandate continued to seek international protection by undertaking irregular dangerous journeys by sea in many parts of the world including the Mediterranean Sea, the Bay of Bengal and in the Andaman Sea. Refugees moved with migrants using the services of smugglers and continued to expose themselves to various risks including trafficking, kidnapping for ransom purposes, sexual gender-based violence and inhumane and degrading treatments. The phenomenon continued to be of great concern to UNHCR. During the period under review, UNHCR continued to pursue and support protection at sea, through advocacy in support of effective, cooperative and protection-sensitive approaches to search and rescue and disembarkation arrangements; through operational activities at places of disembarkation or arrival by sea; and through supporting access to asylum and other longer-term action on addressing the drivers of dangerous journeys.

Mediterranean Sea

2. Between 01 September 2020 and 30 April 2021, some 68,600 refugees and migrants crossed the Sea to Europe via the Mediterranean and Canary Islands routes. Over 1,700 people were believed to have died or gone missing at sea in this period. Enhanced search and rescue operations remain critically important. Some European States were particularly active in conducting rescues. For instance, Italian authorities rescued more than 13,500 refugees and migrants, most of whom from Libya and Tunisia, between September 2020 and April 2021 (57% of all arrivals to Italy). The Spanish authorities also rescued the majority of some 23,700 refugees and migrants who arrived at the Canary Islands in the same period.

3. Between September 2020 and March 2021, some 8,650 refugees and migrants were disembarked in Libya, usually following interventions by the Libyan Coast Guard. Many refugees, migrants and shipwreck survivors rescued or intercepted in this region and disembarked in Libya are subsequently transferred to detention. In September 2020, UNHCR reiterated that Libya is not a safe place for disembarkation[1] following rescue at sea due to the security situation and the particular protection risks facing foreign nationals.

4. UNHCR is concerned that disembarkation procedures after rescue in the Mediterranean, including registration systems for the identification and verification of persons with protection needs, and victims of trafficking, and to provide appropriate protection and assistance, do not respect human rights standards. It is also noted that UNHCR and other humanitarian agencies and NGOs have limited or no access to points of disembarkation as well as to reception and detention centers in Mediterranean coastal states.

[1] https://www.refworld.org/docid/5f1edee24.html

5. Some NGOs vessels operating in the Central Mediterranean were found not to comply with administrative or technical requirements and as a consequence faced restrictions that prevented them from operating. As in previous year, some merchant vessels were involved in search and rescue operations in accordance with the requirements of the law of the sea. The most significant delay in the disembarkation of persons rescued at sea was resolved when those rescued in the Maltese Search and Rescue Region by the merchant vessel Maersk Etienne in early August were granted permission to disembark in Italy in mid-September after their transferred rescued people to the Mare Jonio, an Italian NGO vessel.

6. UNHCR has been calling on the international community, including EU states, to take urgent steps to end avoidable loss of life at sea. This includes re-activating state-led search and rescue operations beyond their Search and Rescue Regions, ensuring enhanced coordination with all rescue actors, and establishing a safe and predictable disembarkation mechanism with agreement on where people rescued at sea can safely disembark and how they are fairly distributed to mitigate the challenge of some States receiving a disproportionate number of arrivals.

7. The New Pact on Migration and Asylum as proposed by the EU Commission in September 2020 and currently under negotiations offers opportunities toward more streamlined arrival and border procedures and more predictable solidarity for Mediterranean States of first entry.

8. Elsewhere in North Africa, higher departure numbers were recorded from Algeria and Tunisia in the first three months of 2021 than in the same period last year. Greater coordination at disembarkation sites in the region is needed to strengthen the identification of persons with international protection needs, along with victims of trafficking, unaccompanied and separated children, and others with specific protection needs.

9. In the eastern Mediterranean, more than 200 Syrian and Lebanese nationals attempting to cross to Cyprus from Lebanon were returned from Cypriot territory or territorial waters to Lebanon without the opportunity to seek asylum or without individual examination of their circumstances in September 2020. Higher number of departures and attempted departures (about 80% Syrian nationals) were recorded from Lebanon between September 2020 and March 2021 than in the same period in the previous year. There is a need to strengthen search and rescue responses, including by Lebanese authorities formally establishing a Search and Rescue Region.

10. Elsewhere in the eastern Mediterranean, UNHCR continued to receive consistent reports of high numbers of refugees and migrants being pushed back at sea from Greece, including people being transferred to life rafts and abandoned at sea to await rescue by Turkish authorities.

Americas and the Caribbean

11. By the end of 2020, 5.4 million Venezuelan refugees and migrants had left their country. Latin America and the Caribbean host 85% of this population. This includes nearly 200,000[2]

[2] As reported by the R4V Coordination Platform for Venezuelan Refugees and Migrants, available here: https://r4v.info/en/situations/platform/location/7493

Venezuelans who have been displaced to nearby Caribbean countries, many of whom have arrived by boat.

12. States and Territories in the Caribbean continue to witness the arrival of refugees and migrants mostly from Venezuela, in spite of movement restrictions in place due to the COVID-19 pandemic. In 2019-2020, visa requirements and border closures considerably reduced the availability of regular routes from Venezuela to the Caribbean. In 2020, travel restrictions and the suspension of flights during the COVID-19 pandemic made irregular and unsafe routes by sea the only means for refugees and migrants from Venezuela to access Caribbean countries. People forced to flee their homes are particularly vulnerable to being trafficked or to falling victim to serious crimes and human rights violations.

13. Most Caribbean governments continue to make considerable efforts to keep regular channels of entry open for Venezuelans. Nevertheless, COVID-19 prevention measures have resulted in the stricter enforcement of movement restrictions, such as temporary border closures and the suspension of flights, affecting the arrival and entry of Venezuelans in need of international protection.

14. Notwithstanding ongoing search and rescue efforts by coastal guards and authorities in the Caribbean, there were multiple incidents in 2020 and 2021 of shipwrecks and boats reported missing off of Venezuela that led to drownings and missing persons, highlighting the extreme risks of these sea journeys undertaken by Venezuelan refugees and migrants.

15. UNHCR stands ready to support national authorities in the region with the establishment of regular and safe pathways to ensure access to territory, the implementation of protection-sensitive entry systems, alternatives to detention and adequate reception and identification and referral mechanisms upon disembarkation, all of which can contribute to prevent situations of refoulement, the use of irregular routes at sea, in addition to deter human smuggling and trafficking an associated risk and human rights violations in the Caribbean. UNHCR reiterates its willingness to work with all Governments and partners to ensure that programmes to prevent trafficking in person and to assist victims of trafficking are available and accessible to those in need.

16. UNHCR works together with partners and in the framework of the Inter-agency Coordination Platform (R4V) for refugees and migrants from Venezuela to respond to the needs of refugees and migrants, particularly those with specific and heightened risks. Sufficient and regular support for these actions saves lives, and UNHCR strongly encourages further engagement by the international community.

South-East Asia

17. States' compliance with search and rescue obligations vis a vis boats of refugees travelling irregularly through the Bay of Bengal and Andaman Sea was partial. . In some instances, boats carrying vulnerable refugees were pushed back into international waters. For example, in April 2020, Malaysian authorities admitted pushing back a boat carrying approximately 200 Rohingya refugees. In February 2021, a boat in distress carrying Rohingya refugees was located near the Indian Andaman Islands. Nine people, five of them children, died or went missing before the Indian navy provided humanitarian assistance to the survivors.

Unfortunately, they were not allowed to disembark, and from mid-March 2021, the contact with the boat was lost. AS

18. In other instances, States have rescued refugees in distress at sea and allowed them to disembark, but subsequently detained them indefinitely without granting UNHCR access to detention facilities, or forcibly relocated them to separate accommodation, isolating them from their families. Disembarkation to a place where refugees are indefinitely detained would not meet the criteria to define it a "place of safety" in accordance with the International Maritime Organization Guidelines on the treatment of persons rescued at sea.

19. On the positive note, some States allowed the disembarkation of refugees on their territory and collaborated with UNHCR and its partners to provide protection and assistance . In September 2020, Indonesian authorities permitted the disembarkation of 296 Rohingya refugees in Aceh and led the protection response in close coordination with UNHCR's partners - UN, international and national NGOs. The rescued refugees had endured for nearly seven months at sea the time during which, supplies were exhausted. While stranded at sea, approximately 30 people died and 3 people died shortly after disembarkation due to health conditions sustained at sea. The surviving refugees were accommodated at a site generously provided by local authorities and referred to specific services. In April 2021, 30 Rohingya refugees sailing from Bangladesh to Malaysia were rescued by the coast guard of Bangladesh after their boat was left adrift following an alleged pirate attack. The rescued persons were allowed to disembark but were taken to Bhasan Char.

20. Compliance with search and rescue obligations, occurs in an ad-hoc manner in the region. There are no regional mechanisms to ensure equitable and predictable disembarkation of refugees and migrants in distress at sea, despite the political commitments made by all Bali Process member states in March 2016. The Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime was also reaffirmed at the August 2018 Bali Process Ministerial Conference. The Indonesian Presidential Regulation remains the sole commitment in South-East Asia to rescue and disembark refugees in distress at sea. A predictable and equitable regional mechanism for disembarkation is urgently needed to prevent further deaths of children, women and men at sea.

21. UNHCR continues to advocate for comprehensive responses to mixed maritime movements, including search and rescue and disembarkation, through the Bali Process, despite reluctance by States in the region to commit themselves to predictable and equitable disembarkation arrangements. UNHCR made a joint recommendation with IOM and UNODC at the 15th Ad Hoc Group Senior Officials Meeting of the Bali Process in October 2020 that a regional conference on safety of life at sea be convened under the Bali Process. The proposal is under consideration by Member States. UNHCR also continues to advocate with States that measures to manage public health risks during the COVID-19 pandemic, should not result in closure of avenues to asylum for individuals, including those fleeing by sea.

22. In 2020, 2,400 Rohingya refugees have attempted the journey across the Bay of Bengal and Andaman Sea to reach Malaysia. Some 200 people (8%) lost their lives. Refugees at sea face life-threatening situations due to unseaworthy vessels, unpredictable sea weather, shortages of food and water, and physical and sexual abuse by smugglers. Almost one third of Rohingya refugees attempting the journey were children and one quarter were women. Available information suggests that maritime movements are ongoing along this route in 2021, though the full scale of such movements is not yet apparent. Until education and livelihoods

opportunities are expanded for Rohingya refugees, they will continue to seek them by undertaking risky journeys across the Bay of Bengal and Andaman Sea toward Malaysia.

Gulf of Aden

23. Refugees and migrants, mainly from the Horn of Africa (Somalia and Ethiopia) continued to make dangerous journeys across the Gulf of Aden to Yemen. Due to the increasingly difficult economic situation and reduced protection space in Yemen, asylum-seekers and refugees are also seeking smugglers' support to return to their countries of origin, mainly in the Horn of Africa. At least 90 people are believed to have drowned in four separate incidents since September 2020, one of which involved people being thrown overboard by smugglers. Two shipwreck incidents were recorded in March and April 2021, the latter including refugees registered with UNHCR.

South-East Africa

24. Anjouan and Mayotte are separated by less than 100 kms slim stretch. For this reason, Comoros has been increasingly connected to Mayotte's migratory route for onward destination to Europe. This route is preferred as perceived less risky for refugees and migrants that have Europe as destination, as compared to moving along the central the Mediterranean route. Looking at the socio-political situation in the countries located in the Mozambique channel, few countries present attractive legal and socio-economic conditions for refugee and migrants. For instance, Mozambique has been struggling with an internal conflict raging in the north of the country and, alike other States in the region, including Island States, has been severely and repeatedly affected by natural disaster and the effects of climate change. In addition, countries situated along the Mozambique channel generally lack appropriate or effective legal asylum frameworks and refugee status determination procedures.

25. The number of asylum seekers entering Mayotte has in fact tripled between 2016 and 2019. In 2019, there has been an increase of 152% asylum requests in Mayotte. Among those, around 60 % come from the Great Lacs Region (DRC, Rwanda, and Burundi). This number is reportedly to be in constantly increase since 2014[i]. Refugees and migrants often travel to Tanzania from where they travel by boat to Comoros. Once in Comoros they cross the small stretch of sea to Mayotte using small boats[ii3]

26. Refugees and migrants including a high number of Comorians cross the thin strip of the Mozambique Channel to reach Mayotte usually using small and very poor condition fishing boats called *kwassa kwassa*. These boats are frequently overloaded[iii] As reported, French border patrols apprehend several *kwassa kwassa* each night, mostly leaving from Comoros to enter irregularly Mayotte. In most cases, people on board are deported the very next day. Refugees and migrants arrive illegally to Mayotte from Madagascar using bigger *kwassa kwassa*. They travel over 350 Kilometer crossing the Indian Ocean before arriving in Mayotte.

27. The Comorians authorities reported that it is estimated that in the last 20 years, more than 12,000 persons died in the Mozambique Channel when trying to reach Mayotte. About 7,000-10,000 Comorians, more than one percent of the islands' population, died on the crossing between 1995 and 2012, according to a report from the French Senate. Many local observers

cite higher figures, and the Comorian authorities claim it is “the world’s largest marine cemetery.

28. In a report last year, France’s human rights commission condemned the quick deportations in Mayotte, where most migrants don’t even see a lawyer or a judge before expulsion. The commission wrote that seeking asylum in Mayotte was “mission impossible” and that this “worrying phenomenon” was unique in France. As a concrete example, On 14 September 2020, the UN Resident Coordinator in the Comoros requested UNHCR to intervene, alongside IOM and UNICEF, in the situation of 14 Burundian, 2 Rwandan and 1 Congolese national who were deported from Mayotte to Comoros on 4 September 2020. Given the sensitivity of the situation and the pressure from the Comorian authorities to find quick solutions for the group, UNHCR, in consultation with UNICEF and IOM, explored multiple pathways simultaneously such as re-admission to Mayotte, re-admission to the first country of asylum, Voluntary Repatriation and conducting Refugee Status Determination (RSD) under UNHCR’s mandate. A real break-through was achieved through strategic interventions by UNHCR with the French authorities in Paris. This resulted in the re-admission of 13 persons to Mayotte.

29. On 30 January, the World Health Organization (WHO) declared a global health emergency of due to the COVID-19 pandemic. In order to contain the spread of this virus, a range of extra-ordinary and emergency conditions were imposed as public health measures and nearly all of the countries in the Southern region, including states of the Mozambican channel, that closed their borders to regular activities, banned the entry of tourists and non-citizens, and severely limited international travel, migration and curtailing asylum. Some of these restrictions on cross-border mobility are still active in a number of countries in the region.

West and Central Africa

30. Irregular migration through makeshift boats, commonly known as "*Barca or Barsakh*" (reach Barcelona or perish), resumed along the West African coasts. The resumption of this route to the Canary Islands is due to the strong police presence in the north of Morocco, and to the tightened controls and dangers along the Central the Mediterranean route .

31. This phenomenon is of substantial magnitude as all young people want to leave due to unemployment, under-employment, poverty and lack of professional prospects. Most of them are ready to take any risk to join the so called "European Eldorado". The rudimentary nature of the boats used often leads to tragedy. On 23 October 2020, a boat carrying 200 people bound for the Canary Islands, capsized near Mbour city about one hundred kilometers from Dakar. According to the Senegalese army, only 51 people have been rescued and the traffickers were arrested. The same day, another boat with 111 people on board including minors was intercepted near Dakar. Between October 7 and 25, 2020, the Senegalese navy supported by the Spanish "Guardia civil" rescued 388 people travelling in five canoes bound for Europe. According to IOM, in September of the same year, 14 boats carrying 663 migrants left Senegal for the Canary Islands and in 2020414 people died along this migratory route.

32. In its fight against irregular migration, Senegal has set a mechanism to control its coastal borders with the support of FRONTEX, the European Border and Coast Guard Agency. Surveillance and patrol missions along the beaches and at sea, are regularly conducted. Senegal is committed to apply its law against trafficking in persons and the protection of its victims. Senegal respects the principle of non-refoulement, however, UNHCR could not access disembarked migrants to determine if amongst them there were refugees and other

people under its mandate. Meetings are being planned with the government partner, the CNRRPD (national committee responsible for the management of refugees, returnees and internally displaced persons) and the general directorate of Senegalese abroad (DGSE) in order to facilitate UNHCR's access to refugees and migrants that have been disembarked following rescue at sea.

33. Gabon has a strong oil industry and has always attracted a large number of irregular migrants who constitute cheap labor. However, over the past decade, what was once purely economic migration has gradually grown into a mixed movement of refugees and migrants, with a marked increase in human trafficking, especially of women and children arriving in Gabon mainly through the sea.

34. On 23 and 24 October, a network of smugglers was dismantled and 55 people mostly Nigerians, Togolese, Beninese, Chadians, Ghanaians and Cameroonians, were arrested. They had all traveled from the Nigerian port of Calabar, aboard the Cameroonian-flagged Chimba Express, whose crew was arrested and brought to prosecution. During September, the services of the National Gendarmerie and those of the National Parks Agency had arrested more than 150 people, mainly women and girls, on the island of Ndendé, in the north of Libreville. Arrivals are organized by networks of smugglers for 400,000 francs per migrant. These migrants arrived after grueling journeys on the high seas, with loss of life and evidence of abuse and coercion. Many of them arrived undocumented because their documents were forcibly taken by traffickers and smugglers to guarantee their total dependence.

35. Gabon is party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Refugee matters are regulated by Law 5/98 of 5 March 1998. Gabon generally respects the principle of non-refoulement and has expressed its continued commitment to ensure respect for the rights of persons in need of international protection within its territory. However, the amendment to article 57 of the Gabon refugee law n°5/86 provides for a fine and or imprisonment of up to six months for illegal entry and presence in the country. This amendment reduces substantially the protection space and underlines the importance of extending to people arriving by sea, access to information on their rights, including the right to seek asylum. Despite the presence of an asylum and statelessness unit within the Ministry of Foreign Affairs and the Directorate General for Documentation and Immigration (DGDI), arrivals by sea are mainly treated as cases of irregular migration.

36. UNHCR is providing support to the Gabonese authorities in the management of this issue, through a working group composed of UNHCR, IOM, UNICEF and UNODC. This working group was set up by the Office of the Resident Coordinator of the United Nations system at the request of the Gabonese government to deal with the arrival in September 2020, of a canoe carrying around 145 people of different nationalities of West Africa, mainly women and children. In December 2020, this working group organized a first joint workshop on the prevention, protection and prosecution of human trafficking and migrant smuggling with the participation of different ministries. It resulted in the adoption of two roadmaps to guide legislative and regulatory changes to lay the groundwork for a more coherent and holistic approach to mixed migration and arrivals by sea.

UNHCR, June 2021