



Brussels,

June, 2009

Statement of Save the Children Europe Group to the European Commission and the EU Member States on the situation of boats carrying migrants in the Mediterranean seas in advance of

the EU JHA Council on June 4 and 5, 2009

We understand that the EU Justice and Home Affairs Council Meeting of June 4 and 5 will discuss the situation of boats carrying migrants in the Mediterranean seas, in part prompted by the Italian government's recent decision to return migrant persons rescued within international waters directly to Libya without any prior assessment of their protection needs. The Italian government is advocating for its actions to inspire an EU model, with more resources for FRONTEX and agreements with Libya. Italy and Malta both suggest that the EU work towards the creation of external asylum processing centres in Libya.

Clearly the EU cannot adopt any measures, endorse any interpretation of EU law or condone any national strategy which would effectively permit border control measures to be conducted in international waters, whilst simultaneously claiming that human rights are displaced in the high seas. Respect for the principle of non refoulement is an integral element of both migration control and rescue operations, whether in territorial or international waters, as is recognized by the European Commission Study on *the international law instruments in relation to illegal immigration by sea* (2007). Nor can the EU or its Member States look simply to outsource to third countries their human rights obligations, whilst preventing access to the EU.

Save the Children Europe Group recognizes the pressures confronted by Italy and Malta in relation to Mediterranean sea crossings of persons to their countries. Evidently, Italy and Malta should not be left to address the situation on their own, simply because they are geographical gateways into the EU. Instead, the EU must as a matter of urgency continue to explore a range of regional actions, particularly in light of the upcoming Stockholm Programme at the end of the year. These actions must include a clear recognition that Member States shall respect human rights whenever they exercise their jurisdiction over persons during operations at sea. Responsibility sharing mechanisms between Member States and harmonized protection entry procedures should be further explored. Clearly, the EU may also engage in building respect and recognition of protection needs in third countries outside the EU, but *only* when this is done in a robust and proper way, and indeed only when there is a simultaneous commitment on the part of EU States to engage fully and fairly in resettlement schemes of refugees from these countries in line with the EU's preeminent economic position.

In relation to children specifically, the EU and Member States must carefully consider how to ensure that the children making these dangerous journeys receive the protection and assistance that they require. In this regard, we draw the EU and Member States' attention to the UN Convention on the Rights of the Child ("UN CRC"), which all Member States have signed and ratified and of which the European Court of Justice has taken due account in its interpretation of EU law. The UN CRC provides that "*State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination*" (Article 2). In its General Comment No 6, the UN Committee on the Rights of the Child has also expressly stated that the UN CRC applies to children "*who come under the State's jurisdiction while attempting to enter the country's territory*". Under the UN CRC, Member States must respect the right of a child to life, survival and development. Article 20 of the UN CRC obliges Member States to provide special protection and assistance to separated and unaccompanied children.

In summary, we urge the EU, when reflecting on regional responses, to keep in mind that there is no *single and simple solution* for the complicated and difficult reality of mixed migration flows. Indeed, EU actions must be properly balanced to ensure that they achieve *all* of the EU's obligations implicated by the situation, including border control obligations but also asylum and human rights obligations, including through its promotion and respect for the values and rights set forth in the EU Charter of Fundamental Rights.

Finally, we also note that, whilst recognising the burden currently borne by Italy, this burden can never be used as an excuse for ignoring its own human rights obligations. We are gravely concerned that Italian actions are currently putting at risk the safety and lives of migrants, including children, who are frequently making these perilous journeys on their own. We urge the EU and its Member States to call on Italy to put an immediate end to these kinds of actions.

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