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Solidarity and its practical application

The difficult migration situation in the Mediterranean demands a pragmatic, rules-based response. A Maltese perspective

In June 2018, the MV Lifeline disembarked 234 men, women and children in Malta. The NGO vessel had rescued the group of migrants in the Libyan Search and Rescue Region (SAR) and proceeded to navigate towards Malta, kickstarting a long and difficult summer of political negotiations and compromises in an attempt to deal with an unprecedented situation.

Throughout the summer of 2018 and up until recent months, Malta and other EU Member States have dealt with a number of situations where NGO vessels conducted organised search and rescue operations in the Libyan SAR, with no clear understanding on where the rescued persons could disembark. Up until that point, NGO vessels brought persons rescued in the Libyan SAR to Sicily, according to Frontex' operational rules. But with changes in Frontex operations and Italy's novice government, a new and more intricate problem emerged – the disembarkation of persons rescued in Libyan SAR by NGO vessels.

The NGOs conducting organised search and rescue operations, basing their argument on the principle of *non-refoulement* and the human rights situation in Libya, refuse to return rescued persons to the North African country, even though in many cases, it's the *de facto* closest place of safety. And while there were alternative options to disembarkation in Libya, with Italy's categorical refusal to admit NGO vessels into its territory (Lampedusa) and allow disembarkation in the same manner as in previous years, everybody looked towards Malta to resolve the problem, the smallest member state with the highest population density and migration challenges of its own. This situation led to several instances where rescued persons waited for days onboard these vessels whilst political negotiations took place determining how the rescued persons will be distributed amongst a handful of willing member states.

Malta has now dealt with a number of such situations involving NGOs vessels. The learning curve from this unprecedented situation has been

steep, at times very difficult, as the Maltese reception system was not prepared to handle a relocation process which, basically, had no rules. These experiences have helped Malta, and the few member states who mustered enough interest, to shape a way forward on how to deal with the elephant in the Brussels meeting rooms – solidarity and its practical application.

The Maltese perspective

During 2018, I was responsible for coordinating Malta's field response to these so-called ad hoc relocation initiatives. The following are a few of my reflections on the experience, and on how we can move forward on this issue.

First, the principle of *non-refoulement* is one of the most important rules in asylum and refugee law. It applies in the EU and it has to be safeguarded, but so do international conventions and treaties on maritime search and rescue. While NGO rescue vessels conducting organised search and rescue operations (many of them flying flags of northern EU/EEA countries) serve a noble purpose, they cannot pretend to operate in a vacuum without taking into account the complex political and migration context of the central Mediterranean and in southern Europe.

Arguably, while their actions have in some way helped forge a way forward in terms of solidarity by forcing member states and other stakeholders to deal with the situation, their actions have also contributed to the creation of obstacles and intensified extreme positions regarding the solidarity discussion. We cannot have a situation where the captain of a rescue vessel unilaterally decides on the place of disembarkation, flouting all other SAR rules and regulations in the process and leading to political brinkmanship. Yes, the protection of the principle of *non-refoulement* remains paramount, but existing search and rescue rules should continue to be respected rather than exploited.

Second, the discussion on solidarity has always been a thorny one. We cannot say that there's widespread agreement within the EU that solidarity on migration is the way forward. The failure to reach an agreement on the revised Dublin Regulation provides enough evidence, not to mention the fact that several member states that had pledged to relocate persons from Italy and Greece during the 2015-2016 crisis have not lived up to their commitments. But should we be waiting for the entire EU to be on board with this, before we can start working towards concrete and practical solutions? Our experience from 2018 and recent months has shown us that even though we might not have many

participants in these ad hoc initiatives, we are still managing to find practical solutions. Of course, this new, ad hoc system is far from perfect. But it's what we have, and we should continue to nurture it by agreeing on a few ground rules which have already been implemented in some form or another.

It's pragmatic to consider that given the resistance we have seen in discussions so far, we may never be able to reach a point where we can say that the EU has an effective and functioning solidarity mechanism on migration.

Third, it's time to organise ourselves and put down what we have been doing on paper. We need a basic structure to be able to operate in a more sustainable manner when conducting these ad hoc relocation initiatives. We need standard operating procedures focusing on registration and security screening of all disembarked migrants, the identification of relevant family links in EU member states, and measures for the preliminary identification of special needs and the particular circumstances of individuals, as well as defined timeframes for a quick process. These standard operating procedures need to also take into consideration any action to address refusal by migrants to cooperate with ad hoc relocation processes. It goes without saying that we also need to pool in our ideas, resources, and capacities to effect swift returns of those persons who do not qualify for international protection after their cases are examined in the country of relocation.

Last but not least, we should avoid solidarity *à la carte* where participating member states pick and choose the migrant profiles they like, leaving those considered undesirable to the member state that allowed disembarkation, many times not because it was legally bound to, but because of humanitarian considerations. This sends the wrong message to migrants and to outside observers. If we want this new ad hoc initiative to work well we need to look at the entire group of rescued persons, consider their profiles and their needs, and proceed to distribute these people among the participating states in a manner which is balanced, fair to both the migrant and the receiving state.

Moving forward

The difficult migration situation and the loss of life in the Mediterranean has been going on for years, long before any rescue NGOs decided to take matters in their own hands. This is not a recent phenomenon, and it's not a recent problem. And yet, we as Europeans have been largely

incapable of addressing the challenge adequately. Instead, we spend our time drawing lines, creating rules that very often simply do not work, and endlessly discussing scenarios, quotas, and reference keys. We have been successful only in showing the world how inept we are at managing irregular migration and at providing practical and effective solutions to chronic issues.

It's pragmatic to consider that given the resistance we have seen in discussions so far, we may never be able to reach a point where we can say that the EU has an effective and functioning solidarity mechanism on migration. And maybe we shouldn't. It's clear by now that for some member states, the migration problems of the southern states on the periphery of our continent are not a cause for much concern. Then, so be it. Other ways to encourage participation and disincentivise lack of interest could, and should, be explored. The fact that the member states willing to participate in these initiatives are few in number should not stop us from moving forward, especially now that we have the beginnings of a new formula which seems to work well in practice.

Opinions expressed in this article are solely the opinions of the author and are not necessarily a reflection of the position of the Government of Malta.



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