



CSDM
Centre Suisse pour la Défense
des Droits des Migrants



ALARM PHONE



OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

BY EMAIL TO: urgent-action@ohchr.org

4th September 2020

For the attention of:

- (i) Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and
- (ii) Mr. Felipe González Morales, Special Rapporteur on the human rights of migrants

**URGENT COMMUNICATION
SPECIAL PROCEDURES MECHANISM**

Dear UN Special Rapporteurs,

RE: Request for your urgent intervention on behalf of 27 migrants on board Maersk Tanker 'Etienne'

This is a joint letter from the following organisations:

- Centre Suisse pour la Défense des Droits des Migrants ('CSDM'), an NGO concerned with the protection of migrants' rights based at 14 rue du Village-Suisse, C.P. 171, 1211 Genève, +41 022 807 07 14
- Watch The Med - Alarm Phone, a voluntary telephone hotline for people in distress at sea (% Forschungsgesellschaft Flucht und Migration e.V., Mehringhof, Gneisenaustr. 2a, 10961 Berlin, Email: wtm-alarm-phone01@antira.info)
- Sea-Watch e.V., a civil sea rescue NGO based at Moosdorfstraße 7-9, 12435 Berlin, Email: advocacy@sea-watch.org, +33 6 79 79 39 27)
- Mediterranea - Saving Humans (a platform of different initiatives of civil society operating at sea with the ship Mare Jonio, via Casarini 17/4 - 40131 Bologna (Italy), segreteria.mediterraneash@gmail.com)

We write to you seeking your urgent intervention with the Government of Malta concerning its continued refusal to permit safe disembarkation for the commercial Maersk Tanker 'Etienne' (the '*Etienne*') resulting in the cruel, inhuman and degrading treatment of 27 rescued migrants on board. It has now been 30 days of refusal by the Government of Malta to permit the Etienne to disembark, resulting in the need for immediate intervention to prevent further deterioration of humanitarian conditions. The owners of the tanker have stated that the ship's supplies are rapidly depleting that they cannot offer the "humanitarian and medical care" needed by the rescued migrants.¹ We request that your mandate under the UN Special Procedures Mechanism is exercised on an urgent basis by writing to the Government of Malta to request permission for the Etienne to disembark.

Our organisations are not in direct contact with the individuals on board the Etienne and we are unable to provide their specific biographic details. However, the relevant factual background has been ascertained by Alarm Phone, Sea-Watch and Mediterranea through direct involvement in the migrant rescue operation. It is clear that refusal to provide humanitarian assistance or permit their safe disembarkation by the Government of Malta is in contravention of established international human rights norms and standards and in violation of maritime law. This letter sets out the factual background relating to the migrants on board the Etienne and a summary of the legal framework relevant to the situation.

¹ Source, Times of Malta, 2 September 2020, Maersk Tankers warns supplies are running out for migrants, crew on board.", available at <https://timesofmalta.com/articles/view/maersk-tankers-warns-supplies-running-out-for-migrants-crew-on-board.815700>

Factual Background

On the evening of 3rd August 2020 Alarm Phone was called by a boat in distress in the Maltese Search and Rescue ('SAR') zone. Alarm Phone was informed that 27 individuals (26 males, amongst which at least one minor and 1 pregnant woman) had fled from Libya on 2nd August 2020 on a blue wooden boat.

Alarm Phone informed Malta Rescue Coordination Centre ('RCC') at 22:37 CEST about the distress case and asked for an immediate launch of a SAR operation.

As there was no rescue in sight by the Armed Forces of Malta (AFM), Alarm Phone contacted merchant vessels in the vicinity for rescue. Since the morning of 4th August 2020 the engine of the wooden boat stopped working and the boat began drifting with the individuals on board in significant distress and panic.

On 4th August 2020 the airplane "Moonbird" operated by Sea-Watch and Humanitarian Pilots Initiative spotted the drifting boat and informed relevant authorities accordingly. Finally the Maersk Tanker Etienne (IMO: 9274642 / 219577000, sailing under Danish flag) stopped and monitored the people on board the wooden boat, but still no SAR vessel by the Maltese AFM arrived.

In the early morning of 5th August 2020, when the people in distress were about to sink, the Maersk Etienne took the people on board, which they confirmed to Alarm Phone as having been done **under the instructions of RCC Malta**.

Afterwards the Maersk Etienne headed in the direction of Malta, waiting for a port to disembark the 27 migrants on board. However, a positive answer regarding the possibility of disembarking people in Malta was never received, and no Place of Safety (POS) was indicated.

On 2nd September 2020, the newspaper Times of Malta² reported that the Captain of the Etienne had requested "urgent humanitarian assistance and a safe disembarkation" for the migrants on board the vessel. It was declared that "Our crew continue to provide as much support and assistance as they can to this vulnerable

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<https://timesofmalta.com/articles/view/maersk-tankers-warns-supplies-running-out-for-migrants-crew-on-board.815700>

group, but they lack the resources to offer sustained humanitarian and medical care”

Through the communication with relatives of migrants onboard, Alarm Phone has learned that during the whole period they spent on board the Maersk Etienne, the migrants never had the possibility to communicate with their families.

Chronology

2nd August 2020: 27 people left Libya in a blue wooden boat

3rd August 2020

- 21:47 27 people in a wooden boat in distress reach out to AlarmPhone from the Maltese SAR zone (34°24, 012°19). They stated that the "engine is bad", but they are still slowly moving. They reported high waves and rough wind.
- 22:28 AlarmPhone alerts RCC Malta and Rome, by phone and then email

4th August 2020

- 7:16. The people in the wooden boat tell AlarmPhone that the engine of the boat broke down and they cannot navigate, the boat is drifting
- 7:46. AlarmPhone tries to call RCC Malta: Just after introducing as AlarmPhone, the person on phone hangs up the phone.
- 7:47. AlarmPhone updates authorities about the situation and again demanded an immediate rescue.
- 8:55. The people in distress call RCC Malta, but nobody picks the phone.
- 10:11. AlarmPhone speaks with the people in distress, they are panicking and desperate and they report that they have been at sea for three days, that nobody answers their calls, that they are dying and that they are losing hope.
- 11:01. AlarmPhone informs RCC MALta and other authorities via mail about worsening conditions
- 12:59. The airplane Moonbird spots the people in distress in position 34°22, 011°51.
- 13:30. Moonbird contacts the vessel Maersk Etienne, indicating that it is 11NM away from the boat in distress.
- 13:33. Moonbird calls RCC Malta, who hang up after Moonbird introduces themselves.

- 14:09. The Maersk Etienne changes course and heads to the position of the boat.
- 15:08. The people in distress tell Alarm Phone that they can see the Maersk Etienne
- 15:31. The Maersk Etienne gets contacted via mail by Moonbird with all relevant info.
- 15:58. Maersk Etienne arrives on scene. They secure the wooden boat on the starboard side and provide assistance.
- 16:44. Moonbird updates RCC Malta and other authorities about the assistance by Maersk Etienne and reminds that RCC Malta is obliged to coordinate rescue and to ensure a place of safety (POS).
- 18:00. The Maersk Etienne and the people in the wooden boat drifted 4nm back south into the Libyan Search and Rescue region in the meantime.

5th August 2020

- 9:00. Maersk Etienne started heading towards Valletta/Malta. Maersk Etienne confirmed that they rescued the 27 people. According to the info that they shared with AlarmPhone, Maersk Etienne is still waiting for the assignment of a Place of Safety where the 27 people can be disembarked. So far, RCC Malta did not provide any response concerning this request, despite RCC Malta being responsible for the rescue coordination.

19th August 2020

- In a report published in Reuters it was stated that the migrants have slept on blankets on the deck of the oil tanker. Tommy Thomassen, chief technical officer at Maersk Tankers stated that “the merchant fleet is neither designed nor equipped to care for additional people, and we are quickly depleting the supplies onboard”³

³ 17th August 2020, ‘Maersk oil tanker caught at sea off Malta after rescuing 27 migrants’, Reuters: <https://www.reuters.com/article/us-europe-migrants-shipping/maersk-oil-tanker-caught-at-sea-off-malta-after-rescuing-27-migrants-idUSKCN25F2AT>

Legal Framework

The Government of Malta has a legal obligation to permit the migrants on board the Etienne to disembark in Malta and to process any claims for humanitarian or refugee protection.

a) Non-refoulement and right to request asylum.

Malta's non-refoulement obligations under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT') and the 1951 Refugee Convention arise in respect of the migrants on board the vessel. Article 3. CAT prohibits refoulement, providing that:

- 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*
- 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

The principle of non-refoulement is also set out at Article 33 of the 1951 Refugee Convention, Article 7 of the ICCPR, Article 3 (1) of the UN Declaration on Territorial Asylum and Article 19 of the EU Charter of Fundamental Rights, all of which Malta is party to. The principle of non-refoulement has been crystallised in customary international law, and binds all states regardless of whether or not they are signatory to the relevant conventions.⁴

The Refugee Convention specifies under Article 31(1), that unlawful entry by those seeking asylum does not preclude them from the application of the principle of non-refoulement. Importantly, non-refoulement applies to persons who 'have not had their status formally declared', and includes direct and indirect removal.⁵

⁴ UNHCR Advisory Opinion, 27 January 2007, op. cit., [15]; Trevisanut, 2008, op. cit., p215; E. Lauterpacht and D. Bethlehem, "The scope and content of the principle of non- refoulement: opinion", in E. Feller, V. Trk and F. Nicholson (eds.), *Refugee protection in international law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003), 87-177, at 149; [Also in Hathaway]

⁵ UNHCR Executive Committee, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol', 26 January 2007; <https://www.unhcr.org/4d9486929.pdf> ('UNHCR Advisory Opinion'), [6]-[8].

The non-refoulement obligation of states is inherently tied to the right to claim asylum, and the obligation of states to process claims for asylum. This includes the prohibition of rejection at a frontier. The right to seek asylum is set out in Article 14 of the Universal Declaration of Human Rights and under the 1967 UN Declaration on Territorial Asylum.

Malta's prevention of migrants on board the *Maersk Etienne* - which is currently located in Maltese waters - from disembarking in Malta is a clear denial of their right to claim asylum and Malta's obligation to provide channels for asylum claims to be made.

b) Prohibition of cruel, inhuman and degrading treatment

Cruel, inhuman and degrading treatment is categorically prohibited in international law, specifically under Article 16 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Article 3 of the European Convention on Human Rights. Malta is a signatory to both treaties.

The persons concerned are 27 migrants who have already endured a life-threatening ordeal on the high seas before being rescued by the *Maersk Etienne*. To the best of our knowledge, there is at least one child and one pregnant woman in this group. Many of the migrants, if not all, have endured torture and other brutalities in Libya which is what motivated their inherently desperate flight across the Mediterranean Sea. It can safely be assumed that the 27 rescued migrants constitute highly vulnerable group of individuals in need of assistance, both medical and psychological, many of them being victims of various forms of trauma.

Under these circumstances, the fact of keeping them indefinitely on the *Etienne*, an oil-tanker which is not equipped to hold civilian passengers, and which does not have the facilities to care appropriately or provide for the medical needs of the persons in need of humanitarian assistance, amounts to a serious breach of the prohibition of cruel, inhuman and degrading treatment under international law. To be sure, the Captain of the *Etienne* himself has confirmed that **the migrants are a vulnerable group and the vessel lacks the resources to offer sustained humanitarian and medical care** (source Times of Malta, 2 September 2020, *Maersk Tankers warns supplies running out for migrants, crew on board*).

c) Obligation to permit disembarkation in a place of safety.

In addition to non-refoulement obligations, Malta has an obligation to permit safe disembarkation in accordance with maritime law under the International Convention on Maritime Search and Rescue ('SAR'). The duty to deliver assistance to those in peril at sea is a long-standing principle of international maritime law which provides that disembarkation must happen in a place of safety, which is a place where survivors' safety of life is no longer threatened, where their basic needs can be met, and from where transportation arrangements can be made for survivors' next or final destination.

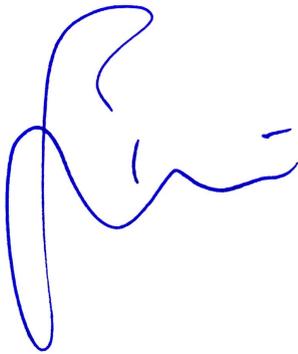
The concepts of 'Place of Safety' and the 'Right to Disembark' were introduced in the legal framework governing maritime search and rescue in the aftermath of the Tampa affair in 2001 by the adoption of amendments to the International Convention on Maritime Search and Rescue (SAR Convention) and the International Convention for the Safety of Life at Sea (SOLAS Convention). Although not ratified by Malta, the 'Right to Disembark' states that the duty to rescue at sea is not exhausted by the mere act of rescue but involves the accessory and consequent obligation to disembark them in a 'Safe Place' (see 3.1.9. of the SAR Convention Annex)

Conclusion

As stated by the Captain of the *Etienne*, the 27 migrants on board are a vulnerable group and the vessel lacks the resources to offer sustained humanitarian and medical care. It has now been 30 days since the initial request was made to the Government of Malta to allow safe disembarkation of migrants on board the vessel at a Maltese port, the conditions continue to deteriorate, and the situation is now critical.

It is clear that Malta is in breach of international human rights norms and standards as well as international maritime law by continuing to refuse to permit the vessel to disembark. All attempts made so far to secure permission from Maltese ports have failed. It is therefore vital that the UN Special Rapporteurs exercise their mandate under the Special Procedures Mechanism to intervene with the Maltese Government and help ensure that the migrants on board the *Maersk Etienne* are provided with humanitarian assistance and safe disembarkation in Malta.

Yours Sincerely,



Boris Wijkström, Director
CSDM



Ousman Noor, Lawyer
CSDM



Chiara Denaro, Representative
Watch The Med - Alarm Phone



Johannes Bayer, Chairman
Sea-Watch e.V.

A handwritten signature in black ink on a light blue background. The signature reads "Alessandra Sciurba" in a cursive, flowing script.

Alessandra Sciurba, Legal Representative

Mediterranea Saving Humans