The Arab Spring recently highlighted the issue of migrants at sea and the shortcomings of the international legal framework. Due to the social uprisings in Tunisia and Libya, thousands of people tried to reach Europe by sea. This is a dangerous journey, as these asylum seekers often travel in unseaworthy vessels. Already at this moment, 2011 is considered the deadliest year in almost two decades in the Mediterranean Sea.

Towards a tailor-made solution for migrants at sea in the Mediterranean

A boat in distress, 45 miles from the Italian island of Lampedusa. As Maltese patrol boats were temporarily unavailable, Italian search and rescue assets were shipped to the area. The boat - which had departed from the Libyan port of Zuara - carried some 300 persons who had been fleeing the north coast of Africa. Normally, the type of vessel was only capable of holding a maximum of 40 people. Moreover, the engine was severely damaged, which made it impossible to manoeuvre the boat. Over 250 migrants were lost after their vessel capsized due to flooding. Eventually, only 52 persons could be saved by the Italian Coast Guard.

The international community is aware that this problem has to be tackled as soon as possible in order to prevent further loss of life. Nevertheless, national governments are also showing increased reluctance to allow migrants and asylum seekers to set foot on their territories. A State can refuse disembarkation onto its own territory or make this dependent on certain conditions. This often leads to problems and responsibility shifting.

For example, on 11 July 2011, the ‘Almirante Juan de Borbón’ - a Spanish frigate participating in NATO ‘Operation Unified Protector’ - rescued 114 migrants from drowning in the Mediterranean. After their vessel had left Libya, the engine broke down and the persons on board drifted around for two days without food or water. When the warship was informed about their condition, they provided immediate assistance. On 13 July 2011, a man and his pregnant wife were brought to Malta for medical treatment. Spain agreed to receive a 10-month-old baby. However, neither Spain, Italy nor Malta wanted to accept disembarkation onto their territory. Malta stated that NATO was responsible for the problem. Eventually, the migrants were transferred to Tunisia on 16 July 2011. As some of the asylum-seekers were of Tunisian origin and due to the political situation in the country, this could be regarded as a violation of the non-refoulement principle in the 1951 Refugee Convention, which states that disembarkation of asylum seekers recovered at sea, in territories where their lives and freedom would be threatened, must be avoided.

As a result of the States’ attitude towards rescued migrants, seafarers are being severely compromised in their efforts to continue the honourable and vital tradition of rescue at sea. In March 2011, a boat carrying 72 migrants spent 16 days drifting in the Mediterranean after it had left Tripoli to reach Italy. Migrants stated that several ships ignored pleas for help. The out-of-fuel ship eventually washed up on western Libyan beach. Only 11 people survived while the others had died of thirst and starvation at sea.

IMO initiative

Although some States fear that clarifying obligations and solving the problem through an agreement would produce an enormous pull factor - thus encouraging migrants to come to Europe by sea - the IMO wants to prevent incidents which cause loss of life at sea from recurring. Indeed, one of the primary concerns of the IMO is the integrity of the search and rescue and, consequently, the safety of life at sea regime. Already in 2010, the idea was launched of developing a pilot project for a regional solution in the Mediterranean. On the one hand, the system of rescuing mi-
The Arab Spring highlighted the lack of political stability in the region and the fragility of the situation in the Mediterranean. This has led to an increase in the number of people seeking refuge in Europe, with many choosing to cross the Mediterranean by sea towards Europe. In March 2011, NATO warships as well as aircraft started patrolling the approaches to Libyan territorial waters as part of ‘Operation Unified Protector’. There were growing signs that Gaddafi’s regime was trying to avert a migration crisis as a weapon against his NATO enemies.

The international community is aware that the problem has to be tackled as soon as possible in order to prevent further loss of life. But national governments showed increased reluctance to allow migrants to set foot on their territories.

The actual aim of the regional agreement is (1) strengthen co-operation among all parties involved, (2) establish a system of communication between the countries in the region, (3) ensure the safety of persons rescued at sea, (4) arrange that delivery of persons takes place without undue delays to the rescuing ships and (5) promote co-operation for the disembarkation of persons rescued at sea.

Despite these efforts, following meetings were postponed. In 2011 States however realized that the situation in the Mediterranean region had deteriorated over the following months after the first meeting. The urgency of progressing the issue was stressed, as a consequence of a wave of survivors’ near-coastal uprising affecting the northern part of the African continent, thus resulting in a massive migration.

Regional agreement

The MoU could certainly have some positive effects on the current problem. Basically, the world’s oceans are divided into 13 search and rescue areas, in each of which the countries concerned have to establish search and rescue regions (SRR) for which they are responsible. States must ensure that sufficient search and rescue regions are established within each sea area. These regions should be contiguous and as far as practicable - not overlapping. Parties are required to ensure that the closest practicable coordination between maritime and aeronautical services. The International Aeronautical and Maritime Search and Rescue Manual (IAM-SAR Manual) - which was jointly published by IMO and the International Civil Aviation Organization (ICAO) - provides guidelines for a common aviation and maritime approach to organizing and providing search and rescue services.

When the first meeting was held under the auspices of and chaired by the IMO Secretary-General on 28 July 2010. It consisted of a consultation group, attended by representatives of Malta. Spain, and the IMO Secretariat. This consultation group drafted the terms of reference, stating the goals of the agreement.

The actual aim of the regional agreement is (1) strengthen co-operation among all parties involved, (2) establish a system of communication between the countries in the region, (3) ensure the safety of persons rescued at sea, (4) arrange that delivery of persons takes place without undue delays to the rescuing ships and (5) promote co-operation for the disembarkation of persons rescued at sea.

Despite these efforts, following meetings were postponed. In 2011 States however realized that the situation in the Mediterranean region had deteriorated over the following months after the first meeting. The urgency of progressing the issue was stressed, as a consequence of a wave of survivors’ near-coastal uprising affecting the northern part of the African continent, thus resulting in a massive migration.