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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs and International Movement of Catholic Students), a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 June 2019]

* Issued as received, in the language(s) of submission only.



Sea rescue is not a crime

The increasing rejection of immigrants and xenophobia is a trend throughout Mediterranean Europe, which receives migrants due to circumstances that are at least humanitarian, and it is being articulated as a political movement and turning towards the drafting and approval of laws that violate treaties for the protection of human rights: Spain and Italy, with their policy of criminalising humanitarian aid in this area, are clear examples of this.

According to data from the Spanish Refugee Aid Commission (CEAR), in the first five months of this year more than 500 people died in the Mediterranean, i.e. more than 100 people a month.

In his report of May 2015,¹ the Special Rapporteur on the rights of migrants provided data on the increase in the number of migrants attempting to cross the Mediterranean since 2013, and warned of the humanitarian crisis that was (and continues to) claiming thousands of victims who died on the central route of the Mediterranean, particularly.

Last September, the Minister of Foreign Affairs of the Kingdom of Spain, Mr. Josep Borrell, mentioned that among the great existing challenges, there was a need to start thinking about a new class of refugees: climate refugees, since this phenomenon that was going to happen and we had to be prepared for it.²

We wonder why the Spanish government does not prioritise the situation of immigrants who are already arriving regularly on the Spanish coasts instead of talking about future intentions in future situations in what seems, once again, to be a way to close its eyes and refuse to face with courage, intelligence and, above all, putting ahead of domestic or European policies the respect for human rights that are primary rights before any other, the issue of the thousands of migrants who every year try to reach Spain, among others, in small unstable and overloaded boats, many of which die drowned in their attempt.

The Spanish government held Proa Foundation (Proactiva Open Arms)'s vessel blocked in the port of Barcelona for more than four months, preventing it from going out to sea. Open Arms complied with all the regulations, had carried out all the required procedures and passed all the necessary inspections. Even so, they were denied permission to set sail without giving them any specific reason but simply "for administrative reasons". Quite obviously, Spain intended, with this measure, to prevent Open Arms from rescuing any person they found at risk at sea – as would have been their obligation, according to Sea Law conventions- to any person who was at risk for his life at sea.

In this respect, Article 98 of the United Nations Convention on the Law of the Sea establishes the obligation to help any person in danger at sea and is applicable to all maritime areas and to all persons in that situation, without discrimination, as well as to all ships.

The vessel was finally able to sail when Mr. Sánchez's government lifted the ban (in the middle of the electoral campaign), but made it clear that they could not go out to sea in search of people who found themselves in the Mediterranean in a situation of danger to their lives.

Even Pope Francesco pronounced on the situation and has expressed on several occasions his sadness and concern about what is happening in the Mediterranean, and the need for Europe not to forget its history and fully respect human rights, including those of migrants, without discrimination.

Another of the Mediterranean countries of the European Union, Italy, has already approved, contrary to human rights, Directives prohibiting NGO vessels dedicated to rescuing migrants coming from the coasts of Libya from accessing Italian ports. Italy forces their

¹ A/HRC/29/36.

² Speech before the Council of Human Rights: <http://webtv.un.org/search/spain-high-level-segment-4th-meeting-40th-regular-session-human-rights-council-/6007128695001/?term=&lan=Spanish&cat=Meetings%2FEvents&sort=date&page=2>.

return to Libyan ports where it is obvious that their basic needs and human rights will not be respected.

It is also worrying the draft decree by the Minister of the Interior of the Government of Italy, Mr Salvini, whereby any NGO helping to rescue immigrants or refugees at sea would be fined for every life saved. What is this but the most ferocious violation of the right to life? A decree-law (which, therefore, would not have parliamentary guarantees in its approval) that puts a price on the lives of people at risk of dying not only lacks the minimum moral authority but is also contrary to legality and to International Human Rights Law and International Humanitarian Law.

A government that passed such a law would deserve international condemnation. Such a thing must be prevented. In this sense, the note presented last May 20th, by several UN experts condemning this draft decree is clear and forceful.³

Europe transfers responsibility for immigration control to third countries such as Turkey, Morocco or Libya, while continues to sell arms to Mediterranean and African countries from which people who try to reach Europe flee and who, if they do, are returned to those same countries or to refugee camps where they find themselves in deplorable conditions regarding health, nutrition, education, living space and so on. It is to be outlined that migrants who are taken to the so-called Foreigners Internment Centres⁴ in Spain do not enjoy the basic guarantees and until March 2014 they were under the penitentiary regime due to the lack of a specific operating rule for this type of centres.

Europe invokes reasons of protection against terrorism to justify the restrictive immigration policies it develops. However, it is well known that terrorists do not arrive to Europe in small dangerous boats. Most of perpetrators of recent terrorist attacks in Europe had European nationality and were either settled in Europe or had already been born there.

Therefore, the problem of terrorism is a very different one and it is not going to be combated with the prohibition of people fleeing their countries for more than justified reasons (both political and economic, or for violations of their human rights in their own countries), nor is it going to be combated by allowing the Mediterranean to become a cemetery for people drowned in their desperate flight to Europe. The excuse of terrorism to "close European borders" serves instead to:

- a) exacerbate hatred towards migrants, towards different cultures, as well as racist attitudes;
- b) to help the rise of extreme right-wing ideologies, characterised by intolerance, racism and violent attitudes, throughout the continent;
- c) to promote clandestinity of migrants who arrive in Europe and cannot regularise their situation until several years later and with requirements which are often difficult to fulfil,⁵
- d) missing a workforce that could be incorporated into the working life of European countries and collaborate in the maintenance of welfare and pension standards.⁶
- e) create a framework for legitimising the repeated violation of the human rights of migrants.

Criminalisation of solidarity, the use of terrorism and reasons of national security as justification for harmful immigration policies are not, however, exclusive to Europe.

Just an example: in the United States of America, a person is being judged for offering, in the Arizona desert, water, food and clean clothes to immigrants seeking to enter the

³ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24628&LangID=E>.

⁴ Centros de Internamiento de Extranjeros.

⁵ Each state sets its own prerequisites which, often, are harder than the ones required to local people as in Real Decreto 557/2011 in Spain.

⁶ See paras. 8 and following of the Report of the Rapporteur on Rights of Migrants, A/71/285.

country. He was arrested along with them and now faces 20 years in prison for simply exercising international solidarity.

Pax Romana shares the reflection of Pope Francesco when saying he does not understand the insensitivity towards immigrants. There are fair and very feasible ways, that would benefit all parties, of guaranteeing the entry of immigrants who flee from their misery without having to risk or lose their lives for it. For example, the creation of safe humanitarian corridors, in the image of some experiences that already exist.

This requires the involvement of European civil society, local and national governments and, in particular, the will of the European Union to approach migration policy from a human rights perspective and to establish mechanisms to guarantee the reception of refugees and sanctions for countries of the Union that fail to fulfil their obligations. In other words, we must approach migration policy as a whole from an entirely different angle and stop promoting hatred of migrants and the criminalisation of solidarity.

Pax Romana urges the United Nations mechanisms to continue working on the issue, to help the European Union and other regions of the world affected by the effect of immigration, to find solutions that guarantee respect for the rights of all people who are or want to come to Europe, as well as to continue to help civil society to denounce practices and policies contrary to human rights.

We invite to a reflection shared with all interested parties to see what can be the best mechanism in the UN human rights defense system to fully study and analyze the situation, create binding instruments and encourage States to sign and respect those that already exist.
