



GNV 1/7/04-E NV 254

The Permanent Mission of the Republic of Malta to the United Nations and other International Organisations in Geneva presents its compliments to the Secretariat of the United Nations High Commissioner for Human Rights and has the honour to refer to the joint allegation letter AL G/SO 214 (106-10) G/SO 214 (S3-24) MLT 1-2013 dated 12 August 2013 from Mr Francois Crepeau, Special Rapporteur on the Human Rights of Migrants and Mr Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Permanent Mission of the Republic of Malta has the honour to present the response of the Government of the Republic of Malta to the aforementioned joint allegation letter.

The Permanent Mission of the Republic of Malta avails itself of this opportunity to renew to the Secretariat of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

14<sup>th</sup> October 2013



**The Secretariat of the United Nations High Commissioner for Human Rights  
Palais de Nations  
1211 Geneva 10**

The Government of Malta has the honour to address the questions raised by their Excellencies Mr Francois Crepeau, Special Rapporteur on the Human Rights of Migrants and Mr Juan E. Mendez, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in their communication to the Government of the 12 August 2013.

The Government of the Republic of Malta wishes to address the following responses to the four points raised:

### **1. Whether the facts alleged in the summary provided are accurate.**

In the first place it should be noted that the sequence of events as set out in the summary is incomplete and in some respects inaccurate.

The facts of the case are as follows:

The dinghy used by the rescued persons was a stateless vessel carrying no form of registration mark and not, as stated in the summary 'a Liberian –flagged dinghy'.

The presence of the dinghy was initially signalled to the Maritime Rescue Coordination Centre (MRCC) Rome shortly before 1520hrs on the 4<sup>th</sup> August 2013 and not 'on Sunday evening 4 August 2013'. MRCC Rome received this alert from an anonymous third party who also provided the number of a satellite telephone that was aboard the craft in question. At 1520hrs MRCC Rome informed the Rescue Coordination Centre (RCC) Malta of the alert in accordance with the standard cooperation procedures between the two centres. MRCC Rome also initiated action to localise the satellite telephone with assistance from the respective service provider.

At 1542hrs the service provider reverted to RCC Rome with a location for the telephone in question which was, as of 1439hrs that day, 46 nautical miles (NM) north off the Libyan coast and 140nautical miles south of Malta. In addition this position was 51NM south of the boundary of the Maltese Search and Rescue Region (SRR), i.e. that zone within which Malta is responsible for the coordination of all SAR activities and thus within the SRR falling under the responsibility of the Libyan Government.

In the light of the location of the distress alert, the fact that the geographically-competent authority had not yet assumed coordination and given that MRCC Rome was the first RCC to receive the said alert, MRCC Rome assumed coordination of this SAR event in accordance with its legal obligations under the SAR Convention<sup>1</sup>. MRCC Rome contacted and diverted

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<sup>1</sup> Article 6.7 of the Guidelines on the Treatment of persons rescued at Sea (adopted pursuant to the Convention) states that:

*"When appropriate, the first RCC contacted should immediately begin efforts to transfer the case to the RCC responsible for the region in which the assistance is being rendered. When the RCC responsible for the SAR region in which assistance is needed is informed about the situation, that RCC should immediately accept responsibility for co-ordinating the rescue efforts, since related responsibilities, including arrangements for a place of safety for survivors, fall primarily on the Government responsible for that region. The first RCC, however, is responsible for co-ordinating the case until the responsible RCC or other competent authority assumes responsibility".*



the Liberian-flagged tanker MT SALAMIS, which had departed the Libyan port of Khoms shortly before, to the distress position.

At 2027hrs, MRCC Rome, which was coordinating the operation, informed RCC Malta that the MT Salamis had located the distressed craft and had initiated rescue operations that resulted in a total of 102 persons being taken aboard the vessel.

MRCC Rome also stated that the Master of the Salamis had been instructed to disembark the rescued persons at the nearest place of safety. In such circumstances such place could only have been a port in Libya. MRCC Rome noted that the intended next port of call of the vessel was Malta and that the Master had indicated that his intention was to proceed to Malta rather than the nearest place of safety.

In the light of this RCC Malta undertook to contact the Master of the MT Salamis with a view to confirming his intentions. During numerous contacts with the Master, the latter indicated that his intention was to proceed to Malta given that Malta was his scheduled next port of call and thus he would be in a position to minimise his delays and any eventual commercial inconvenience.

RCC Malta repeatedly drew the attention of the Master to the fact that he was failing to comply with the instructions given to him by MRCC Rome and with the international legislative framework as laid down by the International Maritime Organisation (IMO).

The Master of the MT Salamis did not take any note of RCC Malta's position and was duly informed that, given his flagrant refusal to act according to his international obligations and instructions issued by the relevant competent SAR Authority, he would not be permitted to enter Maltese waters. It is pertinent to point out that, at the time of rescue, the MT Salamis was a merely 4 hours away from the nearest port of safety and a full 12 hours away from Malta. Furthermore, the only reasons quoted by the Master for his decision were the commercial concerns outlined above. No form of concern for the rescued persons was given as a reason for wanting to disembark the rescued persons in Malta.

At 0400hrs on 05 August 2013, the Master of the MT Salamis received formal notice from the Coast Radio Station in Malta that he would not be permitted to enter Maltese territorial seas. He was furthermore instructed to remain outside the 24NM contiguous zone established by Malta in accordance with Article 33 of the UN Convention on the Law of the Sea (UNCLOS) 1982. The Master of the MT Salamis complied with said instructions while making a number of requests for medical assistance and provisioning aboard his vessel.

Maltese patrol craft were deployed to the area to ensure compliance of the MT Salamis with the instructions of the Maltese Government. Helicopters were used on 4 occasions to bring medical personnel aboard the MT Salamis and provide the supplies requested by the Master. In this regard, on 5<sup>th</sup> August, at 7.35am, an Armed Forces of Malta medic and 5 Rapid Deployment Team (RDT) members boarded the MT Salamis in order to conduct an inspection and render medical assistance. On the 6<sup>th</sup> August, at 12.26pm, an Armed Forces of Malta vessel provided drinking water to the MT Salamis. At 1.34 pm on the same day, an Armed Forces of Malta surgeon and a rescuer were winched on board the MT Salamis in order to assess the situation of injured persons. On leaving the ship, the surgeon held a consultation meeting with his medical team. At 7.17pm on the same day the surgeon returned on board the MT Salamis to perform medical interventions. This support to the Master was



maintained until the 7<sup>th</sup> August 2013 on which date the Government of the Italian Republic, which was co-ordinating the rescue operation, accepted disembarkation of the rescued persons in Sicily. The MT Salamis departed towards the port of Syracuse where all rescued persons were disembarked in the absence of circumstances showing evidence of distress.

During the time when the MT Salamis was drifting south of Malta, thereby putting undue pressure on the Government of Malta to accept the disembarkation of persons who should have been disembarked elsewhere (whilst the rescue operation was coordinated by another State, namely Italy) a letter was sent to the Maltese agent of the vessel by the Government of Malta, acting through the Office of the Attorney General as the legal office of the Government, drawing attention to the facts that had taken place and calling upon the master to "proceed to that location which represented the nearest place of safety at the time of rescue" without mentioning any specific country. The letter also informed the Agent of the vessel that "the Maltese Government reserves the right to take all legal action against the Master, the vessel and the owners/operators of the said vessel and it is hereby holding you responsible for any damages and other costs". On the next day the Government filed a judicial protest in the Maltese Court in order to preserve its rights under Maltese law against the Agent of the vessel who it also called upon to restore the 'status quo ante' without any specific reference to particular action. This letter and judicial protest were not followed up by any military, forceful or other action in the international law field but were simply designed to protect the Government of Malta in respect of any civil damages that could ensue from the Master's refusal to respect Maltese law.

During the period between the morning of the 5<sup>th</sup> August 2013 and 7<sup>th</sup> August 2013 in which the MT Salamis was not permitted to enter Maltese territorial seas, Malta was at no time the State responsible for the rescued persons. The persons in question were aboard a vessel flagged in Liberia and had been rescued in the Libyan SRR in accordance with instructions from the Italian MRCC.

Moreover after the persons were rescued off the Libyan coast and were taken on board the MT Salamis there was no longer any question of danger to their lives.

## **2. Details of actions taken on the part of the Government of the Republic of Malta to guarantee the full respect of the human rights of the rescued persons aboard the MT Salamis during the time that the vessel was refused entry to Maltese territorial seas;**

The Government of Malta points to the fact that there is no legal basis to call the Republic of Malta to task to ensure observance of such rights any more than other countries. The rescue was not one co-ordinated by Malta and it did not happen in the Maltese SRR. However and despite the situation having been provoked purely by the commercially-motivated actions of the Master of the MT Salamis, Malta undertook all necessary actions to ensure the welfare and therefore the safeguarding of the most fundamental human rights of the persons on board the MT Salamis, by providing all assistance and material requirements to sustain both the rescued persons and the crew of the rescuing vessel. The action to deny entry to the MT Salamis into the territorial seas of the Republic of Malta, at a time when there was no longer a situation of danger to life at sea, was well within the rights of a Coastal State and does not represent in itself any violation of Human Rights also given the care provided by the Maltese Government to the persons on board.

**3. Indications of who instructed the Armed Forces of Malta to prevent such entry and whether any investigation has been initiated in respect of such orders;**

As stated above, Malta had no obligation to accept persons who were neither rescued in its SAR nor in distress particularly when the whole operation was coordinated by Italy.

The orders given to the Armed Forces of Malta were legitimate. The actions taken by the Armed Forces of Malta were taken under the rules providing for the entry and exit of vessels into Maltese waters.

**4. Indications of any action that has been taken to ensure that this kind of incident does not reoccur in the future.**

The Government of Malta has taken note of the incident and its ramifications and wishes to assure the rapporteurs that it will continue to consolidate further its efforts to protect fully persons in distress at sea in accordance with its international obligations.

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