IMO

UNHCR
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Refugee Agency

RESCUE AT SEA

A guide to principles and practice
as applied to migrants and refugees

Introduction

Sea-borne migrants and refugees are not a new phenomenon. Throughout the ages, people around the world have risked their lives aboard un-seaworthy ships and other craft, whether in search of work, better living conditions and educational opportunities, or international protection against persecution or other threats to their life, liberty or security, often placing their fate in the hands of unscrupulous, criminal smugglers. The term "boat people" has entered common parlance, designating all those who travel by sea in such a perilous way.

Search and Rescue (SAR) services throughout the world depend on ships – for the most part merchant vessels - to assist persons in distress at sea. Nowadays, distress signals can be rapidly transmitted by satellite and terrestrial communication techniques both to search and rescue authorities ashore, and to ships in the immediate vicinity. The rescue operation can be swift and co-ordinated.

Yet, even when the rescue has been accomplished, problems can arise in securing the agreement of States to the disembarkation of migrants and refugees, especially if proper documentation is lacking. Recognizing this problem, member States of the International Maritime Organization (IMO) have adopted amendments to two of the relevant international maritime conventions[1]. These aim to ensure that the obligation of the ship master to render assistance is complemented by a corresponding obligation of States to co-operate in rescue situations, thereby relieving the master of the responsibility to care for survivors, and allowing individuals who are rescued at sea in such circumstances to be delivered promptly to a place of safety.

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[1] 1974 International Convention for the Safety of Life at Sea; and 1979 International Convention on Maritime Search and Rescue. Amendments were adopted in May 2004. They entered into force on 1 July 2006.

This leaflet has been prepared jointly by the International Maritime Organization (IMO) and the Office of the United Nations High Commissioner for Refugees (UNHCR). It is intended for masters, ship owners, government authorities, insurance companies, and other interested parties involved in rescue at sea situations. It provides guidance on relevant legal provisions, and on practical procedures to ensure the prompt disembarkation of survivors of rescue operations, and measures to meet their specific needs, particularly in the case of refugees and asylum-seekers.

The Legal Framework

This section contains relevant obligations and definitions as defined under international law.

International maritime law

Obligations of the shipmaster

The shipmaster has an obligation to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found. This is a longstanding maritime tradition as well as an obligation enshrined in international law. Compliance with this obligation is essential to preserve the integrity of maritime search and rescue services. It is based on, *inter alia*, two essential texts:

– **1982 United Nations Convention on the Law of the Sea** (UNCLOS Convention) provides that

> *" Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:*
> *(a) to render assistance to any person found at sea in danger of being lost;*
> *(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him."* (Art. 98 (1))

– **1974 International Convention for the Safety of Life at Sea** (SOLAS Convention) obliges the

> *"master of a ship at sea which is in a position to be able to provide assistance, on receiving information*[2] *from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so…."* (Chapter V, Regulation 33(1)).

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[2] The word *"signal"* was replaced by *"information"* as part of the May 2004 amendments.

Obligations of Governments and Rescue Co-ordination Centres

Several maritime conventions define the obligations of State Parties to ensure arrangements for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around their coasts:

– 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention) imposes an obligation on every coastal State Party to

> *"…promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose".* (Art. 98 (2))

– 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) requires State Parties

> *"… to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary …"* (Chapter V, Regulation 7)

– 1979 International Convention on Maritime Search and Rescue (SAR Convention) obliges State Parties to

> *"… ensure that assistance be provided to any person in distress at sea … regardless of the nationality or status of such a person or the circumstances in which that person is found"* (Chapter 2.1.10) and to *" […] provide for their initial medical or other needs, and deliver them to a place of safety."* (Chapter 1.3.2)

– Amendments to the SOLAS[3] and SAR Conventions[4] aim at maintaining the integrity of the SAR services, by ensuring that people in distress at sea are assisted while minimizing the inconvenience for the assisting ship. They require the Contracting States/Parties to

- co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage; and
- arrange disembarkation as soon as reasonably practicable.

They also oblige masters who have embarked persons in distress at sea, to treat them with humanity, within the capabilities of the ship.

Guidelines on the Treatment of Persons Rescued at Sea[5] were developed in order to provide guidance to governments and to shipmasters in implementing these amendments. They contain the following provisions:

- The government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided. (para. 2.5).
- A place of safety is a location where rescue operations are considered to terminate, and where:
  - the survivors' safety or life is no longer threatened;
  - basic human needs (such as food, shelter and medical needs) can be met; and
  - transportation arrangements can be made for the survivors' next or final destination. (para. 6.12)

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3 Amending SOLAS Regulation 33.

4 Amending SAR Chapter 3.1.9.

5 Resolution MSC.167(78) (adopted in May 2004 by the Maritime Safety Committee together with the SAR and SOLAS amendments).

- While an assisting ship may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made. (para. 6.13)
- Disembarkation of asylum-seekers and refugees recovered at sea, in territories where their lives and freedom would be threatened should be avoided. (para. 6.17)
- Any operations and procedures such as screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress should not be allowed to hinder the provision of such assistance or unduly delay disembarkation. (para. 6.20)

International Refugee Law

If people rescued at sea make known a claim for asylum, key principles as defined in international refugee law need to be upheld. While the ship master is not responsible to determine the status of the people on board, he needs to be aware of these principles.

The 1951 Convention relating to the Status of Refugees, defines a refugee as a person who

> *"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his [or her] nationality*[6]*, and is unable to or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country".* (Article 1A(2))

and prohibits that refugees or asylum-seekers

> be expelled or returned in any way *"to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion."* (Article 33 (1))[7]

This refers principally to the country from which the individual has fled but also includes any other territory where he [or she] faces such a threat.

An asylum-seeker is an individual who is seeking international protection and whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.

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6 Or for stateless persons, the country of former habitual residence.

7 An obligation not to return a person where there are substantial grounds for believing that there is a real risk of irreparable harm derives from international human rights law (for example Articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights). The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly prohibits return where there are substantial grounds for believing that a person would be in danger of being subjected to torture.

Procedures

The following checklists are intended to define action that needs to be taken by the various parties involved in rescue at sea.

Action by the shipmaster

Inform the Rescue Co-ordination Centre (RCC) responsible for the region as to:

- ✓ **the assisting ship:**
  - its name, flag and port of registry;
  - name and address of the owner and the owner's agent at the next port;
  - position of the vessel, its next intended port of call, its continuing safety and current endurance with additional persons on board;
- ✓ **the survivors:**
  - name, age (if possible), gender;
  - apparent health, medical condition and special medical needs;
- ✓ **actions completed** or intended to be taken by the master;
- ✓ **master's preferred arrangement** for disembarking the survivors;
- ✓ **any help** needed by the assisting ship;
- ✓ **any special factors** (e.g. prevailing weather, time sensitive cargo, etc.).

If people rescued at sea claim asylum

- ✓ alert the closest RCC;
- ✓ contact UNHCR;
- ✓ do not ask for disembarkation in the country of origin or from which the individual has fled;
- ✓ do not share personal information regarding the asylum-seekers with the authorities of that country, or with others who might convey this information to those authorities.

Action by Governments and Rescue Co-ordination Centres (RCCs)

The RCCs have an important role to play to ensure co-operation and co-ordination arrangements under the Amendments to the SOLAS and SAR Conventions. They need to maintain effective plans of operation and co-ordinating arrangements (interagency or international plans and agreements if appropriate) in order to respond to all types of search and rescue situations, notably:

- ✓ a recovery operation;
- ✓ disembarkation of survivors from a ship;
- ✓ delivery of survivors to a place of safety;
- ✓ arrangements with other entities (such as customs, border control and immigration authorities, ship owner or flag State), while survivors are still aboard the assisting ship with regard to nationalities, status or circumstances of the survivors; including temporary provisions for hosting survivors while such issues are being resolved; and
- ✓ measures to relieve the ship as soon as practicable, avoiding undue delay, financial burden or other difficulties incurred by assisting persons at sea.

International Organizations and Useful Contact Information

- The **International Maritime Organization (IMO)** provides machinery for cooperation among governments on technical regulations and practices affecting shipping engaged in international trade, and facilitates the adoption of the highest practicable standards in matters such as maritime safety.
  www.imo.org
  (details of RCCs available by clicking on Circulars and GMDSS)
  Tel.: +44 207 735 7611

- The **Office of the United Nations High Commissioner for Refugees (UNHCR)** provides international protection and assistance to refugees, stateless persons and others of concerns. UNHCR can be contacted under the following telephone number +4122 739 8111.
  www.UNHCR.org

- The **Office of the High Commissioner for Human Rights (OHCHR)** promotes universal ratification and implementation of human rights treaties and ensures the practical implementation of universally recognized human rights norms.
  www.ohchr.org

- The **International Organization for Migration (IOM)** is committed to the principle that humane and orderly migration benefits migrants and society and acts with its partners in the international community to assist in managing migration, advance understanding of migration issues and uphold the human dignity and well-being of migrants.
  www.iom.int

- The **United Nations Office on Drugs and Crime (UNODC)** deals with questions of transnational organized crime and combats criminal trafficking and smuggling.
  www.unodc.org

- The **Office of Legal Affairs (OLA) /Division for Ocean Affairs and the Law of the Sea** promotes the wider acceptance of UNCLOS and assists States in the uniform and consistent application and effective implementation of its provisions.
  www.un.org/depts/los

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