

RESCUE

AT SEA

A GUIDE TO PRINCIPLES AND PRACTICE AS
APPLIED TO REFUGEES AND MIGRANTS

INTRODUCTION

Migrants and refugees travelling by sea are not a new phenomenon. Desperate people in all parts of the world have long risked their lives aboard unseaworthy ships and other craft. Some do so in search of work, better living conditions or educational opportunities. Others are seeking international protection against persecution, conflict or other threats to their life, liberty or security. Often this means placing their fate in the hands of unscrupulous, criminal smugglers. In addition to the dangerous conditions in which they travel, many face exploitation, abuse and violence during their journey.

Search-and-rescue (SAR) services throughout the world largely depend on international shipping to assist anyone 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 coordinated.

Nonetheless, rescue and disembarkation to a place of safety are complex operations involving a range of actors, each of which has particular obligations under international maritime law, as well as other bodies of international law such as refugee and human rights law.

Even when the rescue has been accomplished, problems can arise in securing the agreement of States to the disembarkation of migrants and refugees. Recognizing this problem, member States of the International Maritime Organization (IMO) adopted amendments to two

of the relevant maritime conventions in 2004.¹ Just as Masters have an obligation to render assistance, Member States have a complementary obligation to coordinate and cooperate so that persons rescued at sea are disembarked in a place of safety as soon as possible.

This leaflet has been prepared jointly by the International Maritime Organization (IMO), the International Chamber of Shipping (ICS), 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, on practical procedures to ensure the prompt disembarkation of rescued persons, and on measures to meet their specific needs, particularly in the case of refugees and asylum-seekers.



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.

THE LEGAL FRAMEWORK

RELEVANT
OBLIGATIONS AND
DEFINITIONS UNDER
INTERNATIONAL
LAW

INTERNATIONAL MARITIME LAW

Obligations of the Master

The Master 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, inter alia, on two essential texts:

The **1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)** 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' (Article 98(1)).*



Photo: © Christian Remøy

The **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 information² from any source that persons are in distress at sea, ... to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so' (SOLAS regulation V/33.1).

² The word 'signal' was replaced by 'information' as part of the May 2004 Amendments.



Obligations of Governments and Rescue Coordination Centres (RCCs)

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

UNCLOS 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' (Article 98(2)).



The **SOLAS CONVENTION** requires each State Party 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 ...*' (SOLAS regulation V/7).

In addition, the **1979 INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE (SAR CONVENTION)** obliges State Parties to

'... ensure that assistance [is] 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).

INTERNATIONAL REFUGEE LAW

If people rescued at sea claim to be refugees or asylum-seekers, or indicate in any way that they fear persecution or ill-treatment if disembarked at a particular place, key principles prescribed by international refugee law need to be upheld. The Master is not responsible for determining the status of rescued persons. Some basic definitions and core obligations of Governments and RCCs are set out below.

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] nationality³ and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country' (Article 1A(2)).

An **asylum-seeker** is a person who is seeking international protection and whose claim has not yet been finally decided. Not every asylum-seeker will ultimately be recognized as a refugee. Refugee status is 'declaratory'—that is, determining refugee status does not make a person a refugee, but rather recognizes that a person *is* a refugee.

³ Or, for stateless persons, the country of former habitual residence.



The **1951 REFUGEE CONVENTION** prohibits refugees and asylum-seekers from being expelled or returned in any manner whatsoever

'to the frontiers of territories where [their] life or freedom would be threatened on account of [their] race, religion, nationality, membership of a particular social group or political opinion' (Article 33(1)).

This refers not only to the country from which a person has fled, but also includes any other territory where he or she would face such a threat.

Rescued persons who do not meet the criteria of the 1951 Refugee Convention definition of a 'refugee', but who fear torture or other serious human rights abuses or who are fleeing armed conflict may also be protected from return to a particular place (*'refoulement'*) by other international or regional human rights or refugee law instruments.⁴

⁴ For instance, 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 (e.g. 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 subject to torture. The 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa prohibits return to a territory where a person's life, physical integrity or liberty would be threatened because of persecution, external aggression, occupation, foreign domination or events seriously disturbing public order.

GUIDANCE ON PROCEDURES

BASIC GUIDANCE ON THE ACTIONS TO BE TAKEN BY VARIOUS PARTIES INVOLVED IN A RESCUE OF PERSONS AT SEA

ACTION BY THE MASTER

When requested to provide assistance to the rescue of persons in distress at sea and diverting to the location, the Master of the ship should, if possible:

- identify the ship's equipment and life-saving appliances that may be appropriate for the rescue operation;
- determine if any special arrangements, additional equipment or assistance may be required for the rescue operation;
- implement any plans and procedures to safeguard the safety and security of the crew and the ship; and
- inform the ship's owner/operator and agent at the next intended port of call of the rescue operation.

When rescuing persons at sea, the Master of the ship providing assistance should, following a request, provide the Rescue Coordination Centre (RCC) responsible for the search-and-rescue region with the following specific information, if possible:

- details of the assisting ship, including: name, flag and port of registry; name and address of the ship's owner/operator and agent at the next port; position of the vessel, maximum speed, and next intended port of call; current safety and security status, and endurance with additional persons on board;



- ➔ details of the rescued persons, including: total number; name, gender, and age; apparent health and medical condition (including any special medical needs);
- ➔ actions completed or intended to be taken by the Master;
- ➔ the Master's preferred arrangement and location for disembarking or transferring the rescued persons, mindful that rescued persons should not be disembarked or transferred to a place where their life or safety would be at risk;
- ➔ any help needed by the assisting ship (i.e. due to limitations and characteristics of the ship's equipment, available manpower, stocks of supplies, etc); and
- ➔ any special factors (e.g. safety of navigation, prevailing weather conditions, time-sensitive cargo).

Masters who have embarked persons in distress at sea should treat them with humanity, within the capabilities of the ship.

If rescued persons appear to indicate that they are **asylum-seekers** or **refugees** or that they fear persecution or ill-treatment if disembarked at a particular place, the Master⁵ should inform the rescued persons concerned that the Master has no authority to hear, consider or determine an asylum request.

⁵ Note that Masters of *State-controlled* vessels have additional obligations flowing from international refugee law which are not considered here.



ACTION BY GOVERNMENTS AND RESCUE COORDINATION CENTRES (RCCS)

Governments have to coordinate and cooperate 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 have to arrange disembarkation as soon as reasonably practicable.

- As recognized in the Guidelines on the Treatment of Persons Rescued at Sea,⁶ the Government responsible for the SAR region in which the rescued persons were recovered is primarily responsible for providing a place of safety or ensuring that such a place of safety is provided.
- 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**

⁶ Resolution MSC.167(78).



the SAR region in which assistance is needed is informed about the situation, that RCC should immediately accept responsibility for coordinating the rescue efforts, since related responsibilities, including arrangements for a place of safety for rescued persons, fall primarily on the Government responsible for that region. The first RCC, however, is responsible for coordinating the case until the responsible RCC or other competent authority assumes responsibility.

- ➔ A **place of safety** is a location where rescue operations are considered to terminate, and where: the rescued persons' safety of 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 rescued persons' next or final destination.
- ➔ 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.
- ➔ Disembarkation of rescued asylum-seekers and refugees in territories where their lives or freedoms would be threatened must be avoided.



- ➔ 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.⁷
- ➔ RCCs have to maintain effective plans of operation and coordinating arrangements (interagency or international plans and agreements if appropriate) in order to respond to all types of search-and-rescue situations, notably: recovery operations; disembarkation of rescued persons from a ship; delivery of rescued persons to a place of safety; arrangements with other entities (such as customs, border-control and immigration authorities; the ship owner; or the flag State), while rescued persons are still aboard the assisting ship—with regard to nationalities, status or circumstances of the rescued persons, including temporary provisions for hosting rescued persons 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.

As well as RCCs and other State agencies and services, **State-controlled vessels** (such as coastguard vessels and warships) have direct obligations under international refugee law (notably, the obligation not to engage in or allow *refoulement*) which bear upon their obligations under international maritime law.

⁷ Note that screening or status-determination procedures to assess whether or not a person is a refugee should at any rate **not** take place at sea.

ADDITIONAL CONSIDERATIONS

Rescued persons may include asylum-seekers or refugees. Care should therefore be taken to ensure that:

- arrangements for the disembarkation of rescued persons do not result in their return to a place where they risk persecution or ill-treatment; and
- personal information regarding possible asylum-seekers or refugees is not shared with the authorities of their country of origin or any country from which they have fled and in which they claim a risk of harm, or with persons who may convey this information to the authorities of those countries.

International data-protection principles are to guide any sharing of personal information.⁸

UNHCR should be contacted if there are difficulties reaching agreement regarding arrangements for the treatment or disembarkation of rescued people who may be asylum-seekers or refugees.

Asylum-seekers and refugees have a right to contact UNHCR. This would usually take place as soon as possible after disembarkation.

⁸ See e.g. Guidelines for the Regulation of Computerized Personal Data Files, UN General Assembly Resolution A/RES/45/95 of 14 December 1990.

INTERNATIONAL ORGANIZATIONS AND USEFUL CONTACT INFORMATION

The International Maritime Organization (IMO)

is the United Nations agency responsible for safe, secure and efficient shipping and the prevention of pollution from ships.

☎ +44 207 735 7611

🌐 www.imo.org

✉ info@imo.org

Details of RCCs are available via GISIS at <https://gisis.imo.org>. GISIS provides public access to selected data collected by the IMO Secretariat.

The Office of the United Nations High

Commissioner for Refugees (UNHCR) is the United Nations agency entrusted with the global mandate to provide international protection and assistance to asylum-seekers, refugees, stateless persons and others of concern to the Office, and to find, together with Governments, solutions to their predicament. UNHCR is also responsible for supervising the implementation by Governments of their obligations under international refugee law. State Parties to the 1951 Refugee Convention are obliged to cooperate with the High Commissioner.

☎ +41 22 739 8111

🌐 www.unhcr.org

Contact details for UNHCR field offices are available by selecting the relevant country at www.unhcr.org/contact.

The International Chamber of Shipping (ICS) is the principal international trade association for the shipping industry, representing ship owners and operators in all sectors and trades. ICS is concerned with all technical, legal, employment affairs and policy issues that may affect international shipping.

☎ +44 20 7090 1460

🌐 www.ics-shipping.org

The Office of the High Commissioner for Human Rights (OHCHR) is mandated to promote and protect the enjoyment and full realization of all human rights by all people, and works to ensure the enforcement 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. It 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 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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