

Refugees and Asylum-Seekers in Distress at Sea – how best to respond?

Expert Meeting in Djibouti, 8 - 10 November 2011

Background Paper

This paper proposes a number of operational tools to improve responses to complex rescue at sea emergencies involving refugees and asylum-seekers, among others travelling as part of irregular mixed movements. The tools specifically focus on enhancing inter-State cooperation, including burden and responsibility sharing. The suggestions in this paper will be discussed at the Expert Meeting in Djibouti from 8 to 10 November 2011.

I. Introduction

1. The phenomenon of people taking to the seas in search of safety, refuge, or simply better economic conditions is not new. The mass exodus from Vietnam throughout the 1980s was followed in the 1990s by large-scale departures from Albania, Cuba and Haiti. More recently, international attention has focused on the movement of Somalis and Ethiopians across the Gulf of Aden, increasing numbers of sea arrivals in Australia, and the outflow of people from North Africa to Europe in the aftermath of the Libya crisis. But beyond these situations, irregular maritime movements are a reality in all regions of the world.
2. Most irregular maritime movements today are “mixed movements”, involving people with various profiles and needs, as opposed to being primarily refugee outflows.¹ However, all of these movements include at least some refugees, asylum-seekers or other people of concern to the Office of the United Nations High Commissioner for Refugees (UNHCR or the Office). They generally take place without proper travel documentation and are often facilitated by smugglers or traffickers. The vessels used for the journey are frequently overcrowded, unseaworthy and not commanded by professional seamen. Distress at sea situations are common, raising grave humanitarian concerns for those involved. Search and rescue operations, disembarkation, processing and the identification of solutions for those rescued are re-occurring challenges for States, international organizations, including UNHCR, the International Maritime Organization (IMO) and the International Organization for Migration (IOM), as well as the shipping industry.
3. The IMO in particular has continually sought to clarify the roles and responsibilities of various stakeholders that may be involved in or implicated by a

¹ “Mixed movements” involve individuals or groups travelling in an irregular manner along similar routes and using similar means of travel, but for different reasons. Mixed movements can include migrants in an irregular situation as well as refugees, asylum-seekers and other persons with specific needs such as trafficked persons, stateless persons, and unaccompanied or separated children. These categories are not mutually exclusive.

rescue at sea operation. Recent amendments to the International Convention for the Safety of Life at Sea (SOLAS Convention) and the International Convention on Maritime Sea and Rescue (SAR Convention), as well as accompanying IMO Guidelines, underline the duty of all State Parties to co-ordinate and co-operate in rescue at sea operations.² However gaps remain, especially when search and rescue (SAR) operations involve people without proper travel documentation.

4. UNHCR, in close cooperation with the IMO, has also convened several meetings of governments and other stakeholders to explore how protection of persons of concern to the Office travelling irregularly by sea can be enhanced.³ Separately, UNHCR has begun discussions on how to enhance international cooperation among States in response to refugee challenges, including for those travelling as part of irregular maritime movements.⁴
5. The purpose of this paper is to build on these developments by proposing practical tools that could enhance responses following rescue at sea operations involving refugees and asylum-seekers. Part II provides an overview of the key challenges. Part III summarizes the applicable legal framework. Part IV introduces four tools that could be developed to improve cooperative arrangements to address rescue at sea situations. Further detail on each of the four tools is outlined in Annexes A to D.
6. The suggestions made in this paper are based on UNHCR's mandate for persons in need of international protection. Areas within the specific responsibility of the IMO and other maritime actors are not addressed. The suggestions are also limited to rescue at sea emergencies. While some proposals could also apply to interception operations, generally these scenarios raise different legal and policy questions, and may also require different responses.⁵

II. Analyzing the Challenges

7. The 2004 amendments to the SAR and SOLAS Conventions and the corresponding IMO Guidelines, outlined in the Introduction, have made improvements to the global SAR regime. There remain, however, a number of

² 1974 International Convention for the Safety of Life at Sea (SOLAS), entry into force 25 May 1980, as amended, Regulation 33, 1-1; 1979 International Convention on Maritime Sea and Rescue (SAR), entry into force 25 March 1980, as amended, Chapter 3.1.9; IMO Resolution MSC.167(78), Annex 34, *Guidelines on the Treatment of Persons Rescued at Sea*, 2004; IMO Circular FAL.3/Circ. 194, *Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea*, 2009, 2.3.

³ The recommendations and conclusions from several of these meetings were considered by a broader group of States during the United Nations consultative process on the law of the sea in 2008: UNHCR, *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees: report of the Office of the United Nations High Commissioner for Refugees*, 11 April 2008, A/AC.259/17, available at: <http://www.unhcr.org/refworld/docid/49997aeb27.html>.

⁴ *Expert Meeting on International Cooperation to Share Burdens and Responsibilities*, Amman, Jordan, June 2011, documents available at: <http://www.unhcr.org/pages/4d22f95f6.html>.

⁵ For consideration of processing arrangements following interception operations, including applicable international legal standards, see: UNHCR, *Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing*, November 2010, available at: <http://www.unhcr.org/refworld/docid/4cd12d3a2.html>.

key challenges in ensuring the safety of life at sea and providing access to international protection for those in need.

8. These challenges include:

- Lack of capacity and/or willingness on the part of coastal States to fully implement their obligations under the SAR and SOLAS Conventions⁶ (e.g., insufficient controls to prevent the departure of unseaworthy vessels, no declared SAR area, insufficient SAR services).
- Difficulties faced by shipmasters in finding a coastal State willing to provide a place of safety for disembarkation, due to the costs and other complexities involved in processing and identifying solutions for rescued persons, as well as concerns about border security and human smuggling and trafficking, or creating pull factors.⁷ This can in turn make shipmasters reluctant to assist those in distress.
- Restrictive definitions of what constitutes a “distress situation”, resulting in lack of timely assistance.
- Tensions among States and delays in the initiation of rescue operations due to differing views on SAR and SOLAS responsibilities, resulting in prolonged stay of rescued persons on board vessels (costly, and can threaten maritime safety).
- Inadequate reception and processing facilities at places of disembarkation to meet people’s immediate needs, ensure protection against *refoulement*⁸ and provide timely outcomes, including for refugees.

III. Legal Framework

9. The legal framework governing search and rescue at sea and the treatment of refugees, asylum-seekers, and other groups travelling as part of mixed movements up to and following disembarkation is contained in the international law of the sea, international refugee and human rights law. Core principles include:⁹

⁶ See above, n 2.

⁷ Under the SAR and SOLAS Conventions the State responsible for the SAR area where persons are rescued is to “exercise primary responsibility for ensuring ...co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety...”: see above n 2. But there is no definitive obligation for one particular State to provide for disembarkation, cf. the IMO *Guidelines on the Treatment of Persons Rescued at Sea* which highlight that the Government responsible for the SAR area where the persons were rescued has the responsibility to provide a place of safety or to ensure that a place of safety is provided, see above, n 2.

⁸ See below, n 13.

⁹ For a more comprehensive overview see UNHCR, *Background Note on the Protection of Asylum-Seekers and Refugees Rescued at Sea* (Final version, including Annexes), 18 March 2002, available at: <http://www.unhcr.org/refworld/docid/3cd14bc24.html>. The observations and recommendations made during previous meetings convened by UNHCR and other actors could provide additional guidance: UNHCR, *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for*

- The duty to render assistance to those in distress at sea without discrimination.¹⁰
- The obligation to ensure arrangements for distress communication and coordination.¹¹
- The duty to cooperate to ensure that shipmasters providing assistance for those in distress are released from their obligations and that survivors are disembarked from the assisting ship and delivered to a place of safety as soon as reasonably practicable.¹²
- The principle of *non-refoulement*, which prohibits return to territories where an individual may face persecution, torture, inhuman and degrading treatment or other irreparable harm. The principle of *non-refoulement* also applies when a State acts extraterritorially.¹³
- The obligation to treat rescued persons humanely in line with international human rights law.¹⁴
- The duty to respect the sovereignty of other States.¹⁵
- The underlying principle of international cooperation in the refugee regime, stemming from the Charter of the United Nations and the 1951 Convention relating to the Status of Refugees.¹⁶

Refugees: report of the Office of the United Nations High Commissioner for Refugees, 11 April 2008, A/AC.259/17, available at: <http://www.unhcr.org/refworld/docid/49997aeb27.html>.

¹⁰ Article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), entered into force 16 November 1994; Chapter V, Regulation 33 1-1, SOLAS Convention; Chapter 2.1.10 SAR Convention.

¹¹ Article 98(2), UNCLOS; Chapter V, Regulation 7, SOLAS Convention.

¹² Regulation 33, 1-1, SOLAS Convention, as amended; Chapter 3.1.9, SAR Convention, as amended; IMO Resolution MSC.167(78), Annex 34, *Guidelines on the Treatment of Persons Rescued at Sea*, 2004, see above n 2.

¹³ See especially, Article 33 of the 1951 Convention relating to the Status of Refugees, entered into force 22 April 1954 (1951 Convention); Articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights, entered into force 23 March 1976 (ICCPR); Article 3 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force 26 June 1987 (CAT). See also UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

¹⁴ See generally, ICCPR, CAT and the 1966 International Covenant on Economic, Social and Cultural Rights, entered into force 3 January 1976 (ICESCR); Regulation 33.6, SOLAS Convention.

¹⁵ Article 2, Charter of the United Nations, entered into force 24 October 1945 (UN Charter).

¹⁶ Articles 55 and 56, UN Charter; Preamble, 1951 Convention. These instruments do not specify how international cooperation is to be implemented in practice, and it is best understood as a methodology underlying State action in the refugee area: see *Expert Meeting on International Cooperation to Share Burdens and Responsibilities*, Amman, Jordan, June 2011, documents available at: <http://www.unhcr.org/pages/4d22f95f6.html>.

IV. Operational Tools

10. In UNHCR's experience, a successful resolution of complex rescue at sea situations will often require close cooperation among affected States, including mechanisms for burden and responsibility sharing. Annexes A to D set out a number of practical tools to improve such responses, for discussion and further development at the Expert Meeting.¹⁷
11. The tools proposed are:
 - A Draft Model Framework for Cooperation (Annex A)
 - Mobile protection response teams to support the reception and processing of rescued persons (Annex B)
 - Specific resettlement quotas for refugees rescued at sea (Annex C)
 - Standard operating procedures for shipmasters (Annex D)
12. These suggestions are not exhaustive. Every regional situation is different and the tools would need to be adapted to the specific circumstances. The development of mobile protection response teams and specific resettlement quotas could also be adopted as part of the Draft Model Framework for Cooperation or independently from it, as appropriate.

V. Conclusion

13. The frequency of rescue at sea emergencies involving refugees and asylum-seekers and the high number of those who perish at sea are in themselves compelling calls for action. The suggestions outlined in this paper are designed to improve cooperation and ensure a more predictable and timely response to the various stages of rescue at sea emergencies. UNHCR would welcome careful review and consideration of these proposals at the Expert Meeting, as well as additional suggestions.

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¹⁷ In addition to the proposals outlined in this paper, UNHCR's recent discussion paper on international cooperation to share burden and responsibilities provides further examples of and suggestions for cooperative arrangements. These include the "DISERO" and "RASRO" schemes and the Eurema Project for relocation of refugees from Malta to other European countries: UNHCR, *International Cooperation to Share Burden and Responsibilities*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4e533bc02.html>. See also UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>.

ANNEX A

UNHCR has developed a Draft Model Framework for Cooperation following rescue at sea operations involving asylum-seekers and refugees, among others travelling as part of irregular mixed movements (The Model Framework). It focuses on actions undertaken after a rescue at sea operation involving persons of concern to the Office has been effected.

The Model Framework could be merged with or exist independently of the “Regional agreement on concerted procedures relating to the disembarkation of persons rescued at sea”, which has been developed by the IMO.¹

The Model Framework would need to be adapted to the specific regional circumstances to be addressed. It could also be adopted as one element in a broader comprehensive regional approach to address irregular mixed movements.² It follows the structure of UNHCR’s 10-Point Plan of Action on Refugee Protection and Mixed Migration.³

Draft Model Framework for Cooperation

I. Underlying Principles

- 1) The purpose of this Model Framework is to address complex rescue at sea operations involving refugees and asylum-seekers, among others travelling as part of irregular mixed movements. The Model Framework is based on the principles of international cooperation, including burden and responsibility sharing.
- 2) This Model Framework is without prejudice to and flows from existing international law, including international refugee and human rights law. It is a complement to, and not a substitute for, mechanisms adopted to implement the SAR and SOLAS Conventions.⁴

II. Scope and Application

- 1) This Model Framework applies to rescue at sea operations involving refugees and asylum-seekers conducted outside the search and rescue (SAR) area of the rescuing flag State; and where disembarkation and/or processing is being considered in the State responsible for the SAR area in which the rescue operation takes place or in a third State.

¹ IMO Facilitation Committee, 37th session, FAL 37/6/1 of 1 July 2011.

² For information on comprehensive regional approaches see UNHCR, *International Cooperation to Share Burden and Responsibilities*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4e533bc02.html> and UNHCR, “Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement”, November 2010, available at: <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>

³ UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, available at: <http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf>

⁴ 1979 International Convention on Maritime Sea and Rescue (SAR), entry into force 25 March 1980, as amended; 1974 International Convention for the Safety of Life at Sea (SOLAS), entry into force 25 May 1980, as amended.

- 2) The Model Framework does not apply to interception operations.

III. Operational Arrangements

- 1) Principal actors

States implicated by a particular rescue at sea operation may include:

- the flag State(s) of the rescuing vessel(s);
- the State(s) in whose Search and Rescue (SAR) area the rescue operation takes place;
- the State where the rescued persons are disembarked;
- the State where rescued persons are processed;
- countries of transit and origin of the rescued persons;
- third States, including resettlement States, as appropriate.⁵

Any or all of these States may consider joining this Model Framework. International organizations, including UNHCR, and non-governmental organizations may provide additional support as necessary and appropriate (see Part III for the role of UNHCR).

- 2) Identification of a country for disembarkation

[*Concerned States*⁶] will agree on the most appropriate country for disembarkation.

Relevant factors include:

- practical considerations (e.g., maritime safety, geographical proximity, the extent to which the rescuing vessel will be required to deviate from its intended voyage, the needs of rescued persons, and facilities at the proposed site of disembarkation, including to ensure that persons in need of international protection will have access to fair and efficient asylum procedures);
- applicable SAR and SOLAS provisions⁷ and the principle of *non-refoulement*.⁸

- 3) Establishment of Task Force

[*Concerned States*] may establish a Task Force to ensure smooth coordination and cooperation among principal actors and other stakeholders.

Functions would include:

- designation of specific focal points to share information;
- establishing clear lines of communication;
- clarification of responsibilities;
- coordination and cooperation.

⁵ In some situations, States may assume more than one of these roles.

⁶ The names of the States party to the Model Framework could be inserted here.

⁷ 1979 International Convention on Maritime Sea and Rescue (SAR), entry into force 25 March 1980, as amended; 1974 International Convention for the Safety of Life at Sea (SOLAS), entry into force 25 May 1980, as amended.

⁸ Article 33 of the 1951 Convention relating to the Status of Refugees, entered into force 22 April 1954.

4) Reception arrangements

[Concerned States] would cooperate to ensure adequate reception arrangements are in place at the site of disembarkation.

The purpose of reception arrangements includes:

- addressing the immediate needs of new arrivals, e.g., medical treatment, shelter and food;
- providing for a stay consistent with an adequate standard of living.⁹

The flag State of the rescuing vessel may be called upon by the State of disembarkation to provide particular support. Other States may also provide support for reception arrangements, subject to capacity and available resources.

5) Profiling and referral

[Concerned States] may establish profiling and referral mechanisms to rapidly identify and differentiate among rescued persons according to their background and needs.

Functions would include:

- the provision of information to rescued persons;
- gathering of information through questionnaires and/or informal interviews;
- the collection of preliminary profiles for each person;
- counselling and referral to differentiated processes and procedures, including the asylum procedure for those seeking international protection.¹⁰

Best practice is for profiling and referral to be conducted by multifunctional teams, including government officials and representatives from international agencies and/or non-governmental organizations.¹¹

6) Determining international protection needs

[Concerned States] will agree on an appropriate place, and the authorities responsible, for processing any asylum claims made by rescued persons.

Processing may occur:

- in the country of disembarkation, by the asylum authorities of the country of disembarkation or by the asylum authorities of the rescuing vessel's flag State;
- in the flag State of the rescuing vessel by the authorities of the flag State; or

⁹ Art. 25, Universal Declaration of Human Rights, General Assembly Resolution 217A (III), U.N. Doc. A/810 (1948); Art. 11, International Covenant on Economic Social and Cultural Rights, 003 U.N.T.S. 3, *entered into force* 3 January 1976.

¹⁰ For further guidance see UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, Chapter 5 "Mechanisms for profiling and referral", available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>.

¹¹ Multifunctional teams could be established specifically for profiling and referral; alternatively, if Mobile Protection Response Teams are deployed then they could also undertake profiling and referral in addition to their other functions. See Annex B.

- in a third State, which has agreed to assume responsibility and to process asylum claims in line with applicable international standards.

The existing capacity of each State to undertake fair and efficient asylum procedures will be a relevant factor in determining the location of processing.

7) Outcomes for rescued persons

[*Concerned States*] may provide for a range of outcomes depending on the profile and needs of different groups.

a) *Persons in need of international refugee protection*

- Usually granted permission to stay and the possibility to obtain self-reliance.
- [*Concerned States*] may agree to provide additional support to enhance protection and solutions in host States.
- Resettlement may be considered to countries within and beyond the region, including pursuant to a specific resettlement scheme for rescue at sea cases.¹²
- Resettlement is most appropriate where local integration or voluntary repatriation is not possible, or pursuant to a regional cooperative arrangement to share burdens and responsibilities.¹³

b) *Persons not in need of international protection*

- For those who are found not to be in need of international protection and who are not allowed to remain in the host country, voluntary return to countries of origin may be encouraged, subject to applicable human rights standards and humanitarian considerations.

c) *Other categories of persons with specific needs*

- A number of other processes and procedures may be developed for various groups with specific needs, e.g. unaccompanied or separated children, victims of trafficking.¹⁴

8) Additional support and capacity building measures for the country of disembarkation/processing

[*Concerned countries*] may agree on additional support and capacity building measures for the country of disembarkation and/or processing, such as increased resettlement places, financial support for the asylum system, and other activities.

¹² For further explanation see Annex C.

¹³ See, e.g., UNHCR, “Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement”, November 2010, available at: <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>.

¹⁴ See UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>, Chapter 5 “Mechanisms for profiling and referral” and Chapter 6 “Differentiated processes and procedures”.

IV. Role of UNHCR

- 1) UNHCR may become a party to this Model Framework, or other cooperative arrangements, as appropriate.
- 2) UNHCR's engagement will not prejudice pre-existing arrangements that UNHCR may have with the State of disembarkation and/or processing for the purposes of carrying out its regular mandate responsibilities.
- 3) Activities that may be undertaken by UNHCR, as appropriate and resources permitting, include:
 - supporting reception arrangements;
 - initiating/participating in a *Mobile Protection Response Team* should this be established in conjunction with the adoption of this Model Framework;¹⁵
 - initiating/participating in multifunctional teams for profiling and referral, along with other actors;
 - supporting refugee status determination (RSD);
 - supporting the return of persons without international protection needs by identifying and bringing together relevant partner organizations, in particular IOM;
 - coordinating resettlement, including with regards to specific resettlement quotas for refugees rescued at sea.¹⁶

¹⁵ For further explanation see Annex B.

¹⁶ For further explanation see Annex C.

ANNEX B

Mobile Protection Response Teams

Some States of disembarkation and/or processing may require support to ensure that the immediate needs of rescued persons are met, in addition to registration, refugee status determination or other procedures, and finding appropriate outcomes.

The “Praesidium Project” in Lampedusa, Italy, considerably improved the reception and processing of irregular sea arrivals. Teams of representatives from the Italian Government, UNHCR, IOM and a number of non-governmental partners: (1) provide information and legal assistance to new arrivals; (2) identify asylum-seekers, trafficked persons and unaccompanied or separated children in need of protection; (3) conduct capacity-building and training of reception staff; and (4) contribute to the development of a referral system for specific groups and vulnerable individuals.¹ There are similar such examples in other regions.²

Building on these models, international or regional mobile protection response teams could be established on a stand-by basis and deployed, on request, to support and develop government capacity in reception and processing of rescued persons.

Mobile Protection Response Teams – Possible Function and Elements

- Appropriate where it is not possible to establish permanent “Praesidium” arrangements on short notice or where maritime incidents remain isolated;
- Support governments in establishing reception arrangements for rescued persons and meeting their immediate needs;
- Provide information and counselling upon disembarkation;
- Undertake initial profiling of arrivals to identify asylum-seekers, unaccompanied/separated children, trafficked persons or other people with specific needs and assist in addressing these needs;
- Support refugee status determination (RSD) and other processing through assistance with interpretation, compilation of country of origin information, or case management;
- Provide advice and support with regard to processing resettlement cases;³
- Include experts with different backgrounds and relevant experience from governments, UNHCR and other international organizations such as IOM, and non-governmental organizations.

¹ See “Italy: Strengthening Reception Capacity to handle Migrants reaching the Island of Lampedusa (Praesidium Project)”, in UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, available at: <http://www.unhcr.org/refworld/docid/4d9430ea2.html>, Chapter 4, page 113.

² *ibid*, “Yemen: The Mayfa’a and Ahwar Reception Centres” and “Yemen: Additional Reception Arrangement”, Chapter 4, page 111.

³ See further Annex C.

ANNEX C

Specific Resettlement Quotas for Refugees Rescued at Sea

Third countries may consider allocating a number of places out of existing resettlement quotas for persons rescued at sea who are recognized as refugees and who may have resettlement needs.¹ It may be particularly appropriate to draw on such quotas where the disembarking and/or processing country is not in a position to integrate refugees, or as part of a broader cooperative regional arrangement to share burdens and responsibilities among States.

Approximately 500 places per year in total would be sufficient, amounting to only 0.5% of the global ceiling currently available. The places could be drawn from region specific quotas or unallocated or emergency quotas, as deemed appropriate by the resettlement country concerned.

Resettlement Quotas for Refugees Rescued at Sea

- Individuals rescued at sea could be disembarked and the claims of those who wish to seek asylum processed in a country willing to host them temporarily;
- Host State(s) supported by UNHCR (or in exceptional circumstances UNHCR on its own²) would process asylum claims;
- UNHCR would submit cases of refugees in need of resettlement to participating States;
- Timelines could be established for temporary stay in the disembarkation and/or processing country and completion of the resettlement process;
- Resettlement countries could provide for flexible arrangements to finalise the resettlement process, allowing for expedited decision-making and departure procedures;
- Priority for resettlement would be given to persons with most pressing protection vulnerabilities, and family links would be taken into account;
- To avoid “pull factors”, resettlement quotas may also be used for vulnerable refugees who are already in the country of disembarkation/processing;
- If places from the rescue at sea resettlement quota remain unutilized towards the end of a particular year, they could be reallocated for other purposes.

¹ Not everyone rescued at sea will be in need of international protection. As part of the Draft Model Framework for Cooperation, outlined in Annex A, cooperative arrangements for the pooling of resources for joint returns of persons without international protection or other humanitarian needs could be considered: see, e.g., Point 3 “Regional Support for return to countries of origin”, Annex 2, UNHCR, “Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement”, November 2010, available at: <http://www.baliprocess.net/files/Regional%20Cooperation%20Approach%20Discussion%20document%20-%20final.pdf>.

² For example, in States not party to the 1951 Convention relating to the Status of Refugees or States where there is no asylum system, UNHCR may undertake RSD on an exceptional basis for an interim period of time until State capacity is developed.

ANNEX D

Standard Operating Procedures for Shipmasters

In 2006, the IMO and UNHCR developed a leaflet outlining the most important obligations under the international law of the sea and refugee law relating to the rescue of migrants and refugees in distress at sea.¹

This leaflet could be supplemented with Standard Operating Procedures (SOPs) for shipmasters when rescuing groups, including refugees and asylum-seekers.

Standard Operating Procedures for Shipmasters – Suggested Provisions

- Definition of a “distress situation”, e.g., SAR activities should be initiated wherever there are indications that a vessel or the conditions of the people on board do not allow for safe travel, creating a risk that people may perish at sea. Relevant factors include overcrowding, poor conditions of the vessel, or lack of necessary equipment and expertise;
- Clarify information that should be sought from rescued persons;
- Provide indicators to assess whether rescued persons may be asylum-seekers or have other specific needs;
- Suggest recommendations on treatment of refugees and asylum seekers;
- Provide contact details of all relevant actors, including UNHCR and interpreters. While some general contacts could be provided, this information would need to be region/situation specific.

¹ UNHCR and IMO, *Rescue at Sea: A guide to principles and practice as applied to migrants and refugees*, September 2006, available at: <http://www.unhcr.org/refworld/docid/45b8d1e54.html>.