



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **Background note**

### **The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert roundtables convened by UNHCR**

#### Introduction

UNHCR has convened three recent meetings on rescue at sea and refugee protection: the Expert Roundtable on Rescue-at-Sea in Lisbon, Portugal in March 2002; the Expert Meeting on Interception and Rescue in the Mediterranean in Athens, Greece in September 2005; and the meeting of State Representatives on the same issue in Madrid, Spain in May 2006.

The meetings brought together participants from governments, the shipping industry, international organizations, non-governmental organizations and academia. They resulted in a number of important observations and recommendations, aimed at preserving the integrity of the global search and rescue (SAR) regime for which irregular migration poses a particular challenge, and at meeting the humanitarian and protection needs of those in distress. However, participants also recognized that efforts to improve search and rescue operations for migrants and refugees in distress at sea are only one aspect of addressing the broader challenges of irregular maritime migration. This requires tackling all the different aspects of this phenomenon in a comprehensive manner, from the root causes to differentiated solutions after disembarkation.

The points below synthesize the key conclusions coming out of these meetings. They include suggestions for the strengthening of the maritime SAR regime, as well as recommendations for a broader approach to address irregular maritime migration beyond the imminent rescue phase.

#### Conclusions and recommendations

##### *Irregular maritime migration*

- Irregular maritime migration is only a small component of the overall phenomenon of international migration, but it raises specific challenges which need to be addressed.
- While it is not in essence a refugee problem, there are refugee protection issues to contend with which must be addressed as part of the broader response to irregular maritime migration, and asylum must be effectively made available in such situations for those requiring it.

- Irregular maritime migration requires a collaborative response, involving a wide range of actors, including intergovernmental organizations.
- Human rights and refugee law principles are an important point of reference in handling rescue-at-sea situations.

*Preserving the integrity of the search and rescue regime*

- The rescue of persons in distress at sea is not only an obligation under maritime law but also a humanitarian necessity, regardless of who people are and what their reasons are for moving.
- The integrity of the global SAR regime as governed by the SOLAS and SAR Conventions must be scrupulously protected. This is a responsibility of the international community as a whole.
- All States should implement strict safety standards before authorizing any boat to depart their ports or shores.
- States should be encouraged to support the recently adopted amendments to the SAR and SOLAS Conventions, which provide clarity on the responsibility of Contracting States to provide a place of safety; or to ensure that a place of safety is provided under the coordination of the State responsible for the SAR region in which the survivors were recovered.
- States should facilitate rescue operations by ensuring that the necessary enabling arrangements are in place in their SAR area.
- It may be necessary to support and assist other States in establishing functioning, sustainable SAR facilities. Such support could also lead to gradual harmonization of approaches to SAR.
- States should take the necessary measures to disseminate to shipmasters and government officials involved in rescue-at-sea operations relevant provisions of maritime law and accompanying guidelines, including the new amendments.
- States should avoid the categorization of interception operations as SAR operations, as this can lead to confusion with respect to disembarkation responsibilities.

*Duties of shipmasters, shipping and insurance agencies*

- The responsibility to rescue is an obligation of shipmasters, established under maritime law. The duty is triggered at the outset of the actual rescue and ends when passengers have been disembarked at a place of safety.
- Decisions as to when and where to land rescued persons will be influenced by factors such as the safety and well-being of the ship and its crew, and the appropriateness of the place of landing (safety, closeness, and the ship's pre-rescue schedule).
- Shipping and/or insurance companies should promptly inform the International Maritime Organization (IMO), UNHCR and other relevant actors

when disembarkation proves problematic or when rescued persons claim international protection. This facilitates cooperation in finding an appropriate disembarkation solution.

- Cases of refusal of disembarkation should be documented by shipping companies and reported to the IMO. This information can then be used by relevant intergovernmental organizations to better quantify the problem and devise solutions with the concerned States.
- Shipping and insurance companies should provide regular statistics to the IMO on incidents of stowaways and people rescued at sea.
- Shipping companies should ensure that shipmasters are made aware of the practical consequences resulting from the IMO guidelines on the treatment of persons rescued at sea through the provision of multilingual information material.

#### *Minimizing the inconvenience for private actors in fulfilling their maritime obligations*

- Shipmasters who undertake rescue operations should not be seen as part of the problem; rather, their actions in saving lives should be recognized and supported by States.
- Their professional judgment as regards the determination of when and where to land the persons rescued should be respected.
- Shipping companies should not be penalized in any manner whatsoever for disembarking or attempting to disembark people rescued at sea.
- The shipmaster has the right to expect the assistance of coastal States with facilitation and completion of the rescue.
- States should not impose a requirement that shipping companies or their insurers cover the repatriation costs of stowaways or people rescued at sea as a precondition for disembarkation.
- A non-state vessel is not an appropriate place to screen and categorize those rescued, or devise solutions for them. Nor should it be used as a “floating detention centre”.

#### *Disembarkation*

- The responsibility for finding solutions to enable timely disembarkation in a humane manner rests exclusively with States and not with private actors. States have a duty to cooperate in finding a place of safety under maritime law.
- Disembarkation procedures should be governed by the maritime regime, not by immigration control objectives.
- Disembarkation procedures should be harmonized, speedy and predictable in order to avoid recurrent case-by-case time consuming negotiation problems, which can endanger the lives of those rescued. Procedures should balance the

interests of the shipping industry and the basic needs of individuals rescued at sea.

- Disembarkation, particularly when it involves large numbers, does not necessarily entail the provision of durable solutions in the country of disembarkation.

#### *Reception standards, profiling and referral to differentiated procedures after disembarkation*

- Comprehensive reception arrangements should be established for persons rescued at sea which meet the needs of the rescued persons, according to their different situations.
- Rapid response teams could assist States facing large-scale arrivals.
- There may be value in establishing multidisciplinary teams (including government experts as well as international and local governmental and non-governmental organizations) for maritime arrival situations; such teams would address any immediate needs, provide information and refer arrivals to appropriate response mechanisms (profiling). These teams may include or benefit from the expertise of non-governmental organizations.
- Persons claiming international protection should be allowed to enter the national asylum procedure without delay; in countries where no asylum procedure exists, they should be referred to UNHCR. The State providing for disembarkation will generally be the State whose refugee protection responsibilities are first engaged.
- Fair and efficient asylum procedures help to separate individuals with international protection needs from those who do not have such needs.
- Trafficked persons and other vulnerable groups such as separated children will require specific assistance. They may also have international protection needs.

#### *Comprehensive solutions*

- Persons with international protection needs should receive protection and, in due course, access to a durable solution, either through local integration or resettlement.
- Persons not seeking asylum, and those who are found not to be in need of international protection or have no other compelling humanitarian reasons to remain, should be encouraged and assisted to return to their country of origin in humane and safe conditions, unless an alternative legal migration option might be available to them. The International Organization for Migration (IOM) and other organizations may offer support to States in implementing assisted voluntary return programmes.
- Return should be complemented by efforts to reintegrate migrants in their community of origin, to ensure the sustainability of return and avoid a “recycling” phenomenon.

- The development of an appropriate response to secondary movements of refugees is a critical challenge.

#### *Combating smuggling and trafficking*

- More vigorous and effective action is needed to identify, arrest and prosecute smugglers and traffickers.
- States should renew their cooperation in protecting witnesses and victims who assist in identification and prosecution of smugglers and traffickers.
- Measures to combat people smuggling must not undermine international refugee protection responsibilities.

#### *Prevention: information strategy and addressing root causes*

- Multilateral cooperation should include a proper review of mechanisms for the creation of orderly migration and protection channels, to provide alternative opportunities for migrants.
- States, relevant intergovernmental organizations and non-governmental actors should explore the feasibility of establishing mass information campaigns to inform prospective clandestine passengers of the risks associated with irregular maritime migration. Such campaigns would also need to touch on the various risks associated with overland travel en route to the prospective embarkation point. They should be targeted at communities in countries of origin, transit countries and migrant communities in countries of destination.
- States should adopt broader, longer-term multilateral commitments to address the root causes of irregular migration. Additional efforts are called for, such as re-targeting aid to achieve sustainable development and the development of alternative legal migration channels.

#### *Improved information management*

- Empirical data on the scale and scope of irregular maritime migration, interception, rescue at sea, disembarkation and treatment of persons disembarked should be harmonized and more systematically compiled by governments and international agencies. Statistical information should include the number and profile of persons intercepted and disembarked as stowaways or following a rescue.
- An exchange of data would enable all stakeholders to better address emerging trends and reinforce their cooperation to combat trafficking and abuse or exploitation of migrants.
- Improved communication procedures among all actors and a better understanding and analysis of the challenges in relation to disembarkation may facilitate sharing of best practices and the identification and realization of timely and fair solutions.

*Cooperation and responsibility sharing*

- International cooperative efforts to address complex rescue-at-sea situations should be built around burden-sharing arrangements. These arrangements could encompass the processing of asylum applications and/or the realization of durable solutions, such as resettlement. Further, they should address, as appropriate, the issue of readmission to first countries of asylum and/or safe third countries. Burden-sharing arrangements should be in place with regard to persons not in need of international protection.
- UNHCR should mobilize States to establish adequate burden-sharing arrangements and/or standby resettlement programmes, as appropriate.

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