RESCUE AT SEA

A guide to principles and practice in the context of refugees and migrants movements

INTERNATIONAL MARITIME ORGANIZATION

UNHCR The UN Refugee Agency

INTERNATIONAL CHAMBER OF SHIPPING

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

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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 Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Chamber of Shipping (ICS). 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.

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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.

The Legal Framework

RELEVANT OBLIGATIONS AND DEFINITIONS UNDER INTERNATIONAL LAW

International Maritime Law

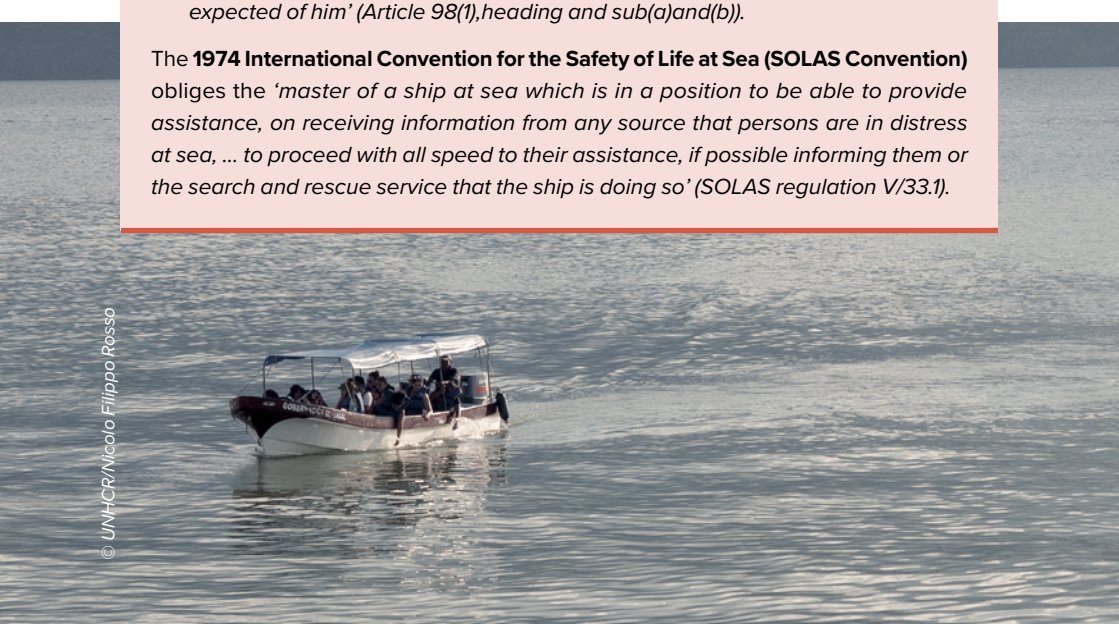
Obligations of the master

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),heading and sub(a)and(b)).*

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 information 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).*



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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 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).

Definition of distress phase

The SAR Convention defines "distress phase" as '*a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance*'[2] whereas in its annex chapter 4 provides the following details on this phase for operational purposes: *".1 when positive information is received that a person, a vessel or other craft is in danger and in need of immediate assistance; or*

.2 when, following the alert phase, further unsuccessful attempts to establish contact with a person, a vessel or other craft and more widespread unsuccessful enquiries point to the probability that a distress situation exists; or

.3 when information is received which indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a distress situation is likely."[3]

2 SAR Convention, 1979, annex, paragraph 1.3.13.

3 SAR Convention 1979, annex, paragraph 4.4.3.

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.

Under International Refugee Law the main concepts that are especially relevant to search and rescue operations include the refugee definition, the right of everyone to seek asylum and the principle of non-refoulement, among others.

The **1951 Convention relating to the Status of Refugee** 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[4] *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.

The **principle of non-refoulement**, enshrined notably at Article 33 of the Refugee Convention, is a cardinal principle of international refugee law prohibiting 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)).

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

International Human Rights Law

The duty to render assistance at sea is consistent with States' duties to respect and protect and fulfil the right to life under international human rights law. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to life (Article 6), in addition to a number of other rights relevant for the protection of people moving by sea: protection from torture or cruel, inhuman or degrading treatment or punishment (Article 7); freedom from arbitrary detention (Article 9); and non-discrimination (Article 26), among others.[5]

Additionally, the UN Human Rights Committee General Comment No 36 on Article 6 Right to Life, clarifies that *'States parties are also required to respect and protect the lives of all individuals located on marine vessels and aircrafts registered by them, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea.'*

Importantly, these obligations must be carried out without regard to the nationality, status or circumstances of the individuals being assisted.

The Principle of Non-Refoulement

As mentioned, the **1951 Refugee Convention** prohibits the exposure to the risk of "refoulement" of asylum-seekers and refugees. This includes not only expulsion or return to a country from which a person has fled, but also includes any other territory where he or she would face threats to life or freedom, subject to very limited exceptions. This obligation is now part of customary international law, which means that even if a State is not a signatory to the 1951 Refugee Convention, it is regardless bound to comply with the principle of non- refoulement under international refugee law.

5 Other relevant sources of international human rights law include the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

To ensure respect for the obligation principle of non-refoulement, States need to ensure, prior to disembarking, transferring or otherwise delivering or returning a person who may be in need of international protection to the territory or jurisdiction of another State, that the person concerned:

- will be admitted and protected against refoulement there;
- will have access to fair and efficient procedures for the determination of refugee status or, as applicable, other forms of international protection (including the ability to benefit from previous recognition of refugee or similar protective status);
- will be treated in accordance with international refugee law and human rights standards, including appropriate reception arrangements and safeguards against arbitrary detention, as well as appropriate assistance for persons with specific needs; and
- if recognized as being in need of international protection, will be able to enjoy it n line with relevant standards.[6]

Rescued persons who do not meet the criteria of the 1951 Refugee Convention definition of a 'refugee', but who fear torture[7] or other serious human rights abuses or who are fleeing armed conflict may also be protected from return to a particular place ('non-refoulement') by other international or regional human rights or refugee law instruments.[8] The non-refoulement obligation under international human rights law is also part of customary international law, which means it is binding on all States.

To assists States in identifying a safe place for disembarkation at the conclusion of a SAR operation, the **IMO Guidelines on the treatment of persons rescued at sea**[9], describe a place of safety as "a location where rescue operations are considered to terminate. It is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors' next or final destination". Further to that, the same Guidelines provide "the need to avoid disembarkation in territories where the lives and freedoms of those alleging well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea." This is a reference to the non-refoulement obligation under international refugee law.

6 See UNHCR's General legal considerations: search-and-rescue operations involving refugees and migrants at sea, 2017.

7 See the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also explicitly prohibits return where there are substantial grounds for believing that a person would be in danger of being subject to torture. Other relevant sources of international human rights law include the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

8 For instance, an obligation not to return a person where there are substantial grounds for believing that there is a real risk of harm derives from international human right law . Furthermore, international human rights bodies, regional human rights courts, as well as national courts have guided that this principle is an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights.

9 Resolution MSC.167(78), annex, paragraph 6.12

Transnational Criminal Law

MIGRANTS AND REFUGEES AT SEA ARE PROTECTED AT SEA BY CERTAIN ASPECTS OF TRANSNATIONAL CRIMINAL LAW.

The *Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol)*, supplementing the *United Nations Convention against Transnational Organized Crime (UNTOC)*, for example, establishes that, in adopting measures against smuggling by sea, each State Party is to "ensure the safety and humane treatment of the persons on board"[10]. Further, the same Protocol sets out an obligation to preserve and protect the rights of persons who have been the object of smuggling, taking into account the special needs of women and children.[11]

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (Trafficking Protocol) supplementing the United Nations Convention against Transnational Organized Crime (UNTOC)* provides for the protection and assistance of victims of trafficking with full respect for their human rights. To that end, it includes several largely discretionary provisions (Articles 6-9).

The Smuggling and Trafficking Protocols also include a "saving clause" (respectively Article 19 and Article 14), which notably stipulates that the Protocols do not affect international obligations under international humanitarian and human rights law, including where applicable the 1951 Refugee Convention and the 1967 Protocol and the principle of non-refoulement.

10 UNTOC Protocol against the Smuggling of Migrants, article 9(1)a)

11 UNTOC Protocol against the Smuggling of Migrants, article 16(1)

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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.

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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; 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 person;
- 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.

The master is not responsible for determining the status of rescued persons. The master should inform the rescued persons concerned that the master has no authority to hear, consider or determine an asylum request.

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,[12] 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 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.
- As recalled in the refoulement section, it is the responsibility of States to determine a **place of safety**, which, according to the IMO Guidelines, 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.[13]

12 Resolution MSC.167(78)

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

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- 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.

Additional Considerations for Governments and RCC

Rescued persons may include asylum-seekers or refugees.[14]

In identifying a place for disembarkation of rescued persons, care should therefore be taken to ensure that the arrangements for the disembarkation of rescued persons do not result in their return to a place where they may be exposed to the risk of harm.

Additional arrangements should be taken to avoid any risk of persecution or ill-treatment, in particular personal information regarding possible asylum-seekers or refugees should not, wherever possible, be 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.

If the profile of the persons rescued at sea or the circumstances in a country of potential disembarkation indicate they would be subject to irreparable harm, disembarkation in such places would constitute refoulement, which should be prevented.

International data-protection principles are to guide any sharing of information concerning all rescued persons.[15]

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.

14 FAL.3/Circ.194

15 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.
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.
www.unhcr.org
Contact details for UNHCR field offices are available by selecting the relevant country at: www.unhcr.org/contact.

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 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 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, rights and well-being of migrants.
www.iom.int

The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations promotes a better understanding and wider appreciation of the United Nations Convention on the Law of the Sea and related Agreements and assists with their uniform and consistent application and implementation through the provision of information, advice and assistance to States and intergovernmental organizations.
www.un.org/depts/los
doalos@un.org

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