

The Duty to Render Assistance at Sea under International Law



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Introduction

- The duty to render assistance at sea is a long-standing rule of international law
- Of crucial importance to maritime safety and manifestation of fundamental considerations of humanity
- Applies to all vessels and to all areas of the sea
- Codified in various international conventions
 - Regulated generally in the 1982 UN Convention on the Law of the Sea (UNCLOS)
 - Regulated more specifically in two IMO treaties
 - 1974 International Convention for the Safety of Life at Sea (SOLAS Convention)
 - 1979 International Convention on Maritime Search and Rescue (SAR Convention)

Obligations of flag States: duty to render assistance

- Article 98(1) of UNCLOS, which deals with the duty to render assistance, provides:
 1. 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;
 - c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

- The duty to render assistance at sea extends to all areas of the ocean space
 - Territorial sea
 - Straits used for international navigation
 - Archipelagic waters
 - Exclusive economic zone
 - High seas
- Article 98 should be read in conjunction with other relevant articles of UNCLOS
- The duty applies to all vessels without distinction
 - Private vessels
 - Warships and other government vessels
- “any person at sea in danger of being lost”
 - No distinction between persons
 - The obligation extends from seafarers to irregular migrants in need of assistance at sea

- UNCLOS does not impose the duty to assist persons in distress directly upon the shipmaster but rather on the flag State
- Article 98(1), chapeau: the shipmaster's obligation to assist should be performed "in so far as he can do so without serious danger to the ship, the crew or the passengers"
- Article 98(1)(b): shipmasters are to proceed to the assistance of persons in distress "in so far as such action may reasonably be expected of him"
- This wording suggests that the shipmaster's duty to render assistance is limited under international law
- Shipmaster required to balance his duties towards persons in distress with the safety and security of his ship, crew and passengers

- The SOLAS Convention is the primary instrument dealing with the safety of life at sea
- Chapter V of the Annex to the Convention deals with the safety of navigation and elaborates on the duty to render assistance
- Regulation 33 in Chapter V adds important requirements for shipmasters to comply with in connection with their obligation to assist persons in distress regulated in UNCLOS
- Paragraph 1 provides:

1. 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, 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.

This obligation to provide assistance applies *regardless of the nationality or status of such persons or the circumstances in which they are found*.

If the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, *the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress*, taking into account the recommendation of the [International Maritime] Organization, to inform the appropriate search and rescue service accordingly. (*Emphasis added*)

Obligations of coastal States: search and rescue services

- According to article 98(2) of UNCLOS:
 2. Every State shall 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.
- A specific legal framework for the obligations relating to search and rescue is established in the SAR Convention; it requires Parties to establish services for search and rescue of persons in distress
- The SAR Convention includes in its Annex regulations on the establishment of search and rescue regions within which the coastal State is responsible for the provision of search and rescue services
- Following the entry into force of the SAR Convention, the world's sea areas were divided into Search and Rescue Regions

- Like the SOLAS Convention, the SAR Convention includes the principle of non-discrimination with respect to assistance to persons in distress
- The SAR Convention, in its Annex, deals with the important issue of disembarkation:

3.1.9 Parties shall 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 ships' intended voyage, provided that releasing the master of the ship from these obligations does not further endanger the safety of life at sea.

The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the [International Maritime] Organization. In these cases, the relevant Parties shall arrange for such disembarkation to be effected as soon as reasonably practicable.

- The SAR Convention contains important definitions of key terms, for example:
- “Distress phase”; “[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”
- “Rescue”; “[a]n operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety”

Treatment of persons rescued at sea

- Following the Tampa incident in 2001, the IMO intensified consultations aimed at protecting the human rights of migrants at sea and ensuring crime prevention in search and rescue operations
- Main partners:
 - UN High Commissioner for Refugees (UNHCR)
 - International Organization for Migration (IOM)
 - UN Office for Drugs and Crime (UNODC)
 - Office of the High Commissioner for Human Rights (OHCHR)
- Amendments to the SOLAS and SAR Conventions
- Adoption of important soft law instruments regarding the implementation of search and rescue operations, including:
 - IMO Resolution A.920(22) from 2001 on Review of Safety Measures and Procedures for the Treatment of Persons Rescued at Sea
 - IMO Guidelines on the Treatment of Persons Rescued at Sea from 2004 (Resolution MSC.167(78))

- The Guidelines include, inter alia, the following definition of the “place of safety” to which rescued persons should be transported in accordance with the SAR Convention:

[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.

- Furthermore, in 2015 the IMO, in collaboration with UNHCR and the International Chamber of Shipping (ICS), issued a Guide to Principles and Practice as Applied to Refugees and Migrants, entitled, “Rescue at Sea”
- Finally, the UN General Assembly has in recent years highlighted these issues in its annual resolution on “Oceans and the law of the sea”, most recently in resolution 72/73 of 4 January 2018

Conclusion

- The duty of flag States to render assistance at sea and the duty of coastal States to provide search and rescue services are regulated
 - generally in article 98 of the 1982 Law of the Sea Convention and
 - more specifically in some IMO treaties, in particular the 1974 SOLAS Convention and the 1979 SAR Convention
- Those two treaties have been subject to several amendments aimed at protecting the human rights of migrants at sea and ensuring crime prevention in search and rescue operations
- Furthermore, the IMO has adopted guidelines and other soft law instruments, which, although non-binding, clarify further the obligations of States and shipmasters under UNCLOS and the SOLAS and SAR Conventions

- Focus here on the part of the legal framework relevant to the problem of mass migration across the Mediterranean which falls within the field of *the law of the sea*
- The law of the sea indeed plays an important role in this respect but there are other fields of international law that are also of great importance
- In particular, when faced with the question of where rescued migrants and refugees should be taken *following rescue at sea*, international law contains further obligations
- In this regard, the most relevant treaty is the 1951 United Nations Convention Relating to the Status of Refugees (1951 Refugee Convention); it is imperative to distinguish between different categories of persons, for example refugees and economic migrants, as they enjoy different rights
- Furthermore, when considering the obligations of shipmasters, one must, in addition to the law of the sea, have recourse to maritime law

- The law of the sea therefore plays an important, although limited, role in the context of the problem of mass migration across the Mediterranean
- From a policy perspective, however, it is clear that this problem will not be solved in the oceans
- The international community must work together to address the root causes of irregular migration by sea on land, in particular in Africa and the Middle East, and find a sustainable solution

THANK YOU FOR YOUR ATTENTION

