

# STATE OBLIGATIONS RELATING TO RESCUE AT SEA

BOOKLET FOR THE CIVIL SOCIETY  
2018



*Rescue  
and assistance at sea*

*Assistance to persons  
in distress at sea*

*Shipwrecked persons*

*Coordination  
of rescue operations at sea*

*Disembarkation  
in a place of safety*

*Cooperation of the States*

*Migration at sea*



## MIGRATION AT SEA – KEY FIGURES

**68,5 million**  
people worldwide  
were forced  
to flee their homes  
in 2017

**25,4 million**  
of these people  
are refugees

**171,635**  
sea crossings  
in 2017 leading  
to **3116**  
deaths,  
i.e. 1 person out of 38  
and 1 out of 19  
in 2018

**114,286**  
migrants  
were rescued  
or intercepted  
in the  
Mediterranean Sea  
in 2017

**22,000**  
migrants  
have died at sea  
trying to reach Europe  
since 2000

*\* Figures from  
the United Nations High  
Commissioner for Refugees  
(UNHCR or UN Refugee Agency)  
and from the International  
Organization for Migration  
(IOM)*

## MIGRATION AT SEA – KEY DATES

### **1939** – *The unfortunate story of the St. Louis ocean liner.*

*The 973 passengers on board, most of them Jewish were fleeing Nazi German. They were denied entry to Cuba and the United States. They sailed back to Europe where most of them would suffer atrocities in the countries under German occupation.*

### **1942** – *Struma disaster.*

*Bulgarian ship carrying 767 Jewish refugees, detained at the entrance of the Bosphorus during Winter 1941 and sunk by mistake by a Soviet torpedo.*

### **1979** – *“Boat people” tragedy.*

*Vietnamese refugees fleeing persecution by the Communists were denied permission to land in the ports of Malaysia, Singapore and Thailand.*

### **2001** – *Tampa case.*

*Norwegian cargo ship which had taken on board 438 Afghan people and to which Australian authorities had closed its ports*

### **2004** – *Wandering of the Cap Anamur,*

*between Italy and Malta for 3 weeks with 37 migrants on board.*

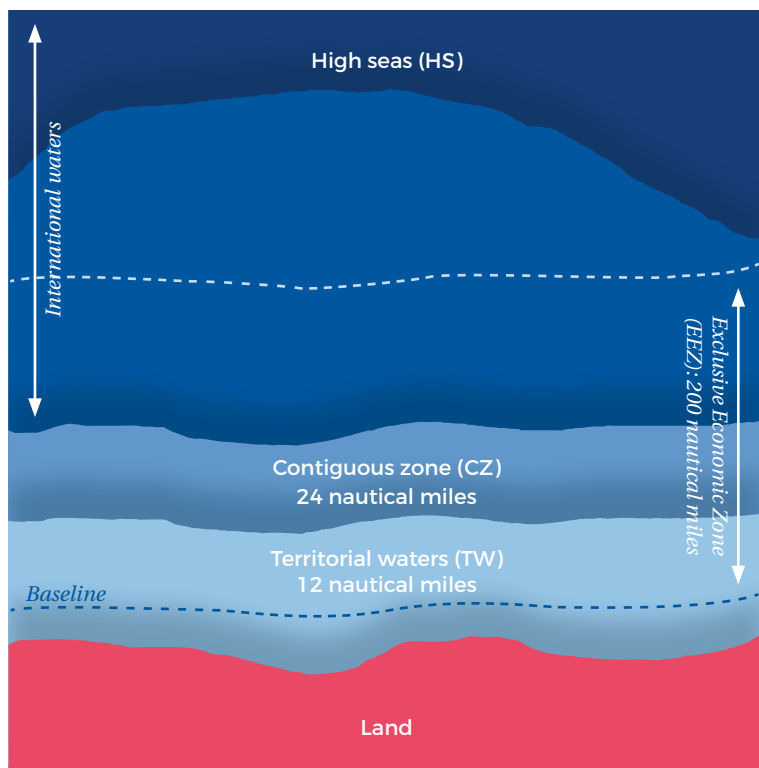
### **2009** – *Wandering of the Turk cargo Pinar,*

*between Malta and Italy for 4 days with 140 migrants on board.*

### **2018** – *Repeated wanderings of the Aquarius, ship dedicated to sea rescue.*

*In June, for one week between Malta, Italy, France and Spain with 630 migrants on board. In September, for one week between Malta, Italy and France with 58 migrants on board. The ship has its flag withdrawal by Gibraltar and Panama to prevent it from sailing and rescuing.*

## SEA AREAS



**High seas:** Areas which are not subject to the sovereignty of any State.

**EEZ:** Area where the coastal State has exclusive rights over the natural resources. However the State must comply with rights linked to the regime of the high seas, such as freedom of navigation.

**CZ:** Area in which a coastal state may prevent and punish infringements of its laws and regulations with regards to customs, taxation, immigration and health within its territory or territorial waters.

**TW:** Area over which the coastal state applies its full sovereignty.

**Baseline:** Line from which States' maritime spaces are measured.

# OBLIGATIONS RELATED TO RESCUE AT SEA

## United Nations Convention on the Law of the Sea (UNCLOS)

The UNCLOS was adopted on **10<sup>th</sup> December 1982** and came into on **16<sup>th</sup> Nov. 1994**. 168 States have joined in the Convention that **defines and delimits maritime spaces**, rights and obligations of the States over these areas, specifically those relating to navigation, use of natural resources and protection and preservation of the marine environment. It also created the **International Tribunal for the Law of the Sea (ITLOS)**, a tribunal which is competent to hear any dispute regarding the interpretation and application of the UNCLOS.

## International Convention on Maritime Search and Rescue

It was adopted by the IMO on **27<sup>th</sup> April 1979** and entered into force on 22<sup>nd</sup> June 1985. It has 111 State Parties and its purpose is not only to enable **cooperation and coordination of State actions in terms of rescue at sea** but also to “encourage cooperation between search and rescue organizations worldwide and between all those who take part in search and rescue operations at sea”. Amendments to the 2004 Annex to the Convention include an **obligation of disembarking persons to a place of safety**. By joining in the Convention, the States accept to define a search and rescue geographical area called **SAR area** and to create one or more Rescue Coordination Centres (**RCCs**).

## International Convention for the Safety of Life at Sea (SOLAS)

This text was adopted by the IMO on **1<sup>st</sup> November 1974** and came into force on 25<sup>th</sup> May 1980. It includes 121 State Parties. The idea of establishing an international convention for the safety of ships at sea was developed in response to the Titanic disaster in 1912. It imposes **important obligations to States in terms of search and rescue**. In particular they are committed to monitoring coasts and supplying any information regarding their own rescue means.

## EU regulation no 656/2014 of 15<sup>th</sup> may 2014

It applies to all **28 European Union member States** including France. It establishes rules for the **surveillance of the external sea borders** of the member States and for **assisting and rescuing persons in distress independently of their status or their nationality**, in accordance with international law.

“Obligations relating to rescue at sea fall on ship masters but also and mainly on the three types of States involved, whether they are coastal States, States responsible for a SAR area or flag States”

OBLIGATION TO PLAN SEARCH AND RESCUE CENTRES AT SEA



OBLIGATION TO RESCUE PERSONS IN DISTRESS



OBLIGATION TO PROCEED TO THEIR DISEMBARKATION IN A PLACE OF SAFETY



## UNCLOS

**I Obligation for the flag State:** according to article 98 of the UNCLOS, it is the duty of the master of a ship to render assistance to “*any person found at sea in danger of being lost*” except where this leads to serious danger to the crew, the passengers or the ship. The flag State must ensure that this duty is complied with.

**I Obligation for coastal States:** article 98 requires that coastal States “*Every coastal 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 cooperate with neighbouring States for this purpose*”.



## IMO Instruments: Amendments to the SAR Convention

### I PROVIDE ASSISTANCE AND CARRY RESCUE OPERATIONS

- **Obligation for coastal States to ensure that assistance be provided to people in distress at sea:** chapter 2 § 2.1.1: *“Parties shall ensure that necessary arrangements are made for the provision of adequate search and rescue services for persons in distress at sea round their coasts”.*
- **Obligation for the State responsible for the SAR area to provide urgent assistance to individuals in distress at sea:** chapter 2 § 2.1.9: *“On receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available”.*
- **Obligation for all States to carry out non-discriminatory rescue operations regardless of the nationality or status of the rescued persons:** chapter 2 § 2.1.10 : *“Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found”.*

### I COORDINATE RESCUE OPERATIONS, INCLUDING DISEMBARKATION

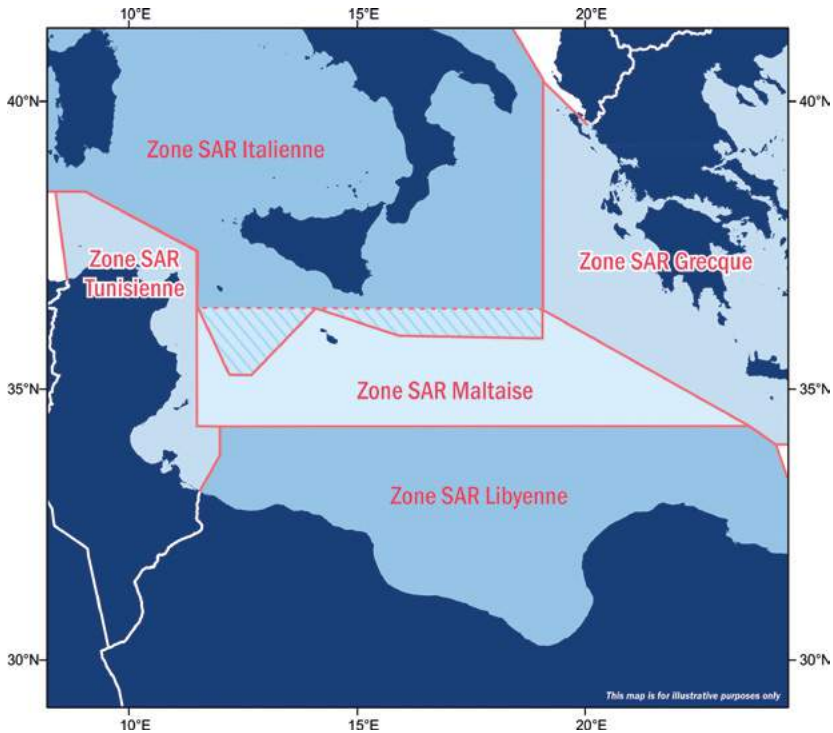
- **Obligation for all States to coordinate search and rescue operations with neighbouring States:** chapter 3 § 3.1.1 : *“Parties shall co-ordinate their search and rescue organizations and should, whenever necessary, co-ordinate search and rescue operations with those of neighbouring States”.*
- **Obligation for all States to cooperate in order to identify a place of safety for disembarkation:** chapter 3 § 3.1.6, paragraph 4: *“Each Party should authorize its rescue co-ordination centres [...] to make the necessary arrangements in co-operation with other RCCs to identify the most appropriate place(s) for disembarking persons found in distress at sea” and chapter 4 § 4.8.5 with regards to the end and suspension of search and rescue operations: “the rescue co-ordination centre or rescue sub-centre concerned shall initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea [...]”.*

### I SOLAS CONVENTION

- **Possibility for the States to authorize supernumerary passengers within their ships when necessary:** Article V a): *“For the purpose of evacuating persons in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under the present Convention”.*
- **Obligation for coastal States to establish facilities for search and rescue at sea:** chapter V, Regulation 7: *“Each Contracting State undertakes 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 [...]”.*



**I Obligation for ship masters to proceed with all speed to the assistance of persons in distress at sea:** chapter V, Regulation 33(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 [...]”.*



**SAR areas** are search and rescue areas defined by the States according to their technical capabilities. They are unrelated to maritime laws of the coastal States. States cannot therefore claim, on this basis, an expansion of their sovereign jurisdiction, in particular of their police enforcement rights. SAR areas are enacted through a unilateral notification made by the coastal State to the IMO. Since August 2018, Libya has declared a SAR area along its coasts.

“ **CONTRARY  
TO POPULAR BELIEF  
AND POLITICAL STATEMENTS,  
INTERNATIONAL LAW  
DOES NOT IMPOSE ANY OBLIGATION  
TO DISEMBARK IN THE CLOSEST PORT  
BUT TO DISEMBARK PROMPTLY  
IN A “PLACE OF SAFETY”.**

**I Obligation for the State responsible for the SAR area to promptly find a place of safety for disembarkation:** chapter 3 § 3.1.9 : *“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 Organization. In these cases, the relevant Parties shall arrange for such disembarkation to be effected as soon as reasonably practicable.”*

**I Obligation of co-operation and assistance of all States by virtue of the principle of solidarity with the SAR State:** chapter 3 § 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”.*

## WHAT IS A PLACE OF SAFETY?



According to resolution **MSC.167 (78)** adopted by the Maritime Safety Committee (MSC) in 2004, **“a place of safety [...] is a location where rescue operations are considered to terminate”** and it is a place:

- “where the survivors’ safety of life is no longer threatened”
- “where their basic human needs (such as food, shelter and medical needs) can be met”
- “from which transportation arrangements can be made for the survivors’ next or final destination”

*In the same way: “the need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea” (6.17 of Resolution MSC.167).*

*This means that: “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 of survivors from the assisting ship(s)” (6.20 of Resolution MSC.167).*

## IS THE OBLIGATION TO RENDER ASSISTANCE AT SEA AN OBLIGATION OF CONDUCT (DUE DILIGENCE)?



Pursuant to **article 98 of the UNCLOS**, the obligation to provide assistance to persons in distress at sea is not absolute. On the one hand, it is limited by the risk that the ship, the crew or the passengers may run during the rescue operation. On the other hand, the said operation must only be carried out by the master of the ship “in so far as he can do so”. **As such, the obligation to render assistance may be defined as an “obligation of means”**. But it is also an **obligation of due diligence**: according to the IMO instruments States must take all measures to ensure that rescue at sea is provided to people in distress and coordinate rescue operations.



# LACUNAE AND UNCERTAINTIES IN INTERNATIONAL LAW

## 1 HARMONIZING THE LAW OF THE SEA AND THE REFUGEE LAW

The 1951 Geneva Convention Relating to the Status of Refugees as well as international law both oblige the States to comply with the principle of “non-refoulement”. Article 33§1 of the Geneva Refugee Convention specifies that “no Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. The refugees law applies in principle from the moment when people looking for asylum entered the territory of the State. Migrant rescue operations take place in international waters. However, the European Court of Human Rights held that the principle of non refoulement could be opposed to a State party to the Convention when rescue operations were undertaken under its control (*Hirsi Jamaa v Italy*, 2012).

## 2 ESTABLISHING THE INNOCENT NATURE OF A PASSAGE

Determining the innocent nature of a passage remains a prerogative of the coastal State. The Montego Bay Convention limits itself to specifying that in order to be innocent, the passage of a ship must not infringe the peace, good order or security of the coastal State. Hence, for instance, a passage is considered to violate the sovereignty of a coastal State in the event of “loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State”. The coastal State may, under the protection right guaranteed by the Convention (article 25), take all necessary measures to prevent a passage considered as not innocent. The question is how can this obligation be reconciled with the obligation to promptly provide for a safe place for disembarkation.

## 3 ESTABLISHING A SITUATION OF DISTRESS

In this case too, the SAR Convention only provides a definition of a “distress phase” and a “person in distress” without determining from which moment a ship or a person may find itself/himself/herself in a situation of distress. It is the responsibility of the States to determine the moment when this situation begins and finishes.

# GLOSSARY



**Rescue Coordination Centre (RCC):** centre that is responsible for the efficient organization of the search and rescue services and coordination of search and rescue operations within a search and rescue area.

**Coastal State:** State that has sovereignty over specific territorial waters as well as sovereign rights in the contiguous zone and in the exclusive economic zone.

**Flag State:** State in which the ship is registered. The State in question therefore has the authority and responsibility over the ship.

**SAR State:** State which is responsible for the search and rescue of persons using its services and equipment within the SAR area.

**Innocent passage:** As indicated under article 19 of the Montego Bay Convention, a “passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State”.

**Safe country:** State where there is no serious danger or persecution for the individual based on its status or personal situation, in which the “non-refoulement” principle is being observed in accordance with the 1951 Geneva Convention and customary international law, which does not accept removal orders that go against the prohibition of torture and inhumane and degrading treatments, and where it is possible to request recognition of refugee status and thus benefit from protection under the Geneva Convention.

**Distress phase:** Situation wherein there is reasonable certainty that a ship or a person is threatened by grave and imminent danger and requires immediate assistance.

**Rescue:** Operation which aims at recovering persons in distress, administering first aid or anything they might need and delivering them to a place of safety.

**SAR area:** Search and rescue area. Region of defined dimensions within which search and rescue services are provided.

## GENERAL PRESENTATION

This booklet was created by PhD students from the University of Angers. Their purpose is to summarize international obligations for States regarding rescue at sea at a time when the matter has been the subject of much debate. This work is also a result of the symposium for the Francophone Network for International Law entitled "Refugees at sea: refugee law or law of the sea?" co-organised by Prof. A. Miron and Prof. B. Taxil, and of research work undertaken by students who took part in the 2018 edition of the Charles Rousseau international law moot court competition on the topic of refugees at sea.

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## PROJECTS AND FORTHCOMING EVENTS

**ARRECO: "L'accueil et la relocalisation des réfugiés en Europe : catégorisation et opérationnalisation"** ("hosting and relocalising refugees in Europe : categorisation and operationalisation") is led by **Bérangère TAXIL, Estelle d'HALLUIN** and **Carole BILLET** and funded by Alliance Europa. It is a collective research project carried out between 2017 and 2020 with the purpose of analysing the hosting processes of refugees in Europe and by Europe using a cross-disciplinary approach.

**« La mer, la dernière frontière »** ("The sea – the last frontier") is led by **Alina MIRON**. It is a project for a maritime litigation watchdog. It aims at studying the exact delimitation of maritime spaces as legal security requisite in accordance with obligations imposed on coastal States.

