

PROPOSALS FOR AN EXECUTIVE COMMITTEE CONCLUSION
ON RESCUE AT SEA

A. Current position based on previous Executive Committee Conclusions

1. The Executive Committee (ExCom) adopted six Conclusions specifically on rescue at sea between 1980 and 1985.¹ It was clear that the context was specific to the situation of refugees and asylum-seekers in the South China Sea, and also concerned, criminal attacks (acts of piracy) inflicted upon them.

2. Among the six Conclusions, the most substantive one is ExCom Conclusion No. 23 (XXXIII). Based on region-specific events of the time, this ExCom Conclusion covers essentially three issues: rescue at sea; disembarkation based on resettlement guarantees and international solidarity and burden sharing; and the importance of the continued provision of durable solutions by all countries. The main provisions concern:

- fundamental obligation of ship masters to rescue persons in distress at sea;
- willingness of flag States to provide resettlement guarantees had facilitated disembarkation;
- agreement of flag States and other States to contribute to a pool of resettlement guarantees had facilitated disembarkation and should be further encouraged;
- importance of the continued provision of durable solutions by all countries;
- disembarkation at next port of call;
- admission at least on a temporary basis if there is large scale influx;
- disembarkation based on principles of international solidarity and burden sharing.

3. Since then, the issue had been referred to in the context of the ExCom Conclusion on Protection Safeguards in Interception Measures² in which ExCom recalled the duty of States and shipmasters to ensure the safety of life at sea, and distinguished between rescue at sea and interception.

¹ ExCom Conclusion No. 20 (XXXI), No. 23 (XXXII), No. 26(XXXIII), No. 31(XXXIV), No. 34(XXXV) and No. 38 (XXXVI).

² ExCom Conclusion No. 97(LIV).

B. The issue today and the relevance of an ExCom Conclusion

4. Recently the issue of rescue at sea has once again come to the fore, *inter alia* in the Mediterranean and in the Gulf of Aden. While those rescued are not necessarily asylum-seekers or refugees, UNHCR's interest in the issue is based on the fact that there may be asylum-seekers and refugees among those who take to the seas. It is clear that the issue of protection of asylum-seekers at sea has moved beyond the South-east Asian context. Today, it concerns asylum seekers in mixed-flow situations spanning continents, and burden and responsibility sharing cannot be simply confined to pools of resettlement places only.

5. The issue of rescue at sea was taken up in the Global Consultations and a number of useful elements surfaced, particularly at the Lisbon expert roundtable. Rescue at sea features in Goal 2 of the Agenda for Protection, where it is provided that UNHCR, States and other stakeholders are to seek to reach common understanding on responsibilities in the context of rescue at sea. Over the last two years, efforts have been made to this end. UNHCR organized two roundtable meetings on the subject: an expert meeting in Athens, and a States' meeting in Madrid. The aims of these meetings were to engender a better understanding of roles and obligations, to foster a spirit of burden and responsibility sharing, and to highlight the importance of a solutions-oriented approach. The outcome took the Lisbon discussions forward somewhat. Furthermore, UNHCR has prepared jointly with the International Maritime Organization (IOM) a leaflet on rescue at sea.

6. In view of the developments, *inter alia*, in the Gulf of Aden and the Mediterranean, the issue of rescue at sea has a high profile; a better understanding of the norms and responsibilities entailed is therefore critical to ensuring better protection of the individuals concerned. Legal developments which have taken place with regard to the international law of the sea include the entering into force of the United Nations Convention of the Law of the Sea (UNCLOS), and recent amendments to the Safety of Life at Sea (SOLAS) and the Search and Rescue (SAR) Conventions, as well as their implementing guidelines issued by the IMO. Furthermore, the IMO Facilitation Committee is working on guidelines on disembarkation. These developments would merit an update of ExCom guidance with regard to rescue at sea situations where asylum-seekers are present. At the same time, the subject is not entirely legal in nature, but one where a pragmatic and humanitarian approach could be called for, including tackling root causes of mixed flows as well as the activities of those who capitalize on them. ExCom could also review these situations and affirm its concern at the impact these developments have on refugee protection and on the institution of asylum.

7. An ExCom Conclusion on rescue at sea, would be a timely complement to the ExCom Conclusion on Protection Safeguards in Interception Measures and could follow along similar lines.

C. Outline for a possible Conclusion on rescue at sea

8. A possible ExCom Conclusion could include the following:

- The normative framework, intersection of maritime law, human rights law, international criminal law, and refugee law;
- The obligation to rescue (affirms the search and rescue regime);

- State responsibility and disembarkation (flag, coastal, international community);
- Duty of captains, shipping companies and necessity of support for them;
- Burden and responsibility-sharing modalities;
- Treatment of those rescued;
- Access to procedures for those who claim asylum, non-refoulement;
- Concerted action against smuggling and trafficking;
- Importance of a solutions-oriented approach;
- Importance of information gathering and sharing;
- UNHCR's efforts and role, other agencies, especially IMO, an inter-agency approach;

Division of International Protection Services
UNHCR
10 January 2007