

Rescue-at- Sea Specific Aspects Relating to the Protection of Asylum-Seekers and Refugees

Expert Roundtable, Lisbon 25 – 26 March 2002.

Summary of Discussions

This Expert Roundtable addressed the question of rescue-at-sea and specific aspects relating to the protection of asylum-seekers and refugees, basing the discussion on UNHCR's *Background Note on the Protection of Asylum-Seekers and Refugees Rescued at Sea* (March 2002). The roundtable was composed of 33 participants from governments, the shipping industry, international organisations, non-government organisations, and academia. The first day was organised around two expert panels, while the second day was divided into two working groups to consider (1) guidelines on rescue-at-sea and disembarkation and (2) an international cooperative framework.

The following propositions relate principally to specific aspects of rescue-at-sea by non-State vessels. They do not represent the individual views of each participant, but reflect broadly the tenor of the general discussion.

1. The integrity of the global search and rescue regime already in place and governed by the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR) was fully recognised, and needs to be scrupulously protected.
2. Rescue-at-sea is first and foremost a humanitarian issue, with the fact of distress the priority defining feature, and rescue and alleviation of distress the first and absolute imperative, regardless of who the people are and how they came to be where they are.
3. The undertaking to rescue is an obligation of ships' masters, provided for under maritime law, and an old humanitarian tradition. The duty of the master begins with the actual rescue and ends when the rescue is complete which necessitates delivery to a place of safety.
4. The duty of the master does not entail other responsibilities, such as determining the character or status of the people rescued.
5. To ensure full and effective discharge of duties with respect to rescue, it is important that the professional judgment of the master is respected, with regard to the determination of when and where to land the persons rescued. Factors influencing the exercise of this judgment will be the safety and wellbeing of the ship and its crew, and the appropriateness of the place of landing, defined by one or a combination of factors, such as its safety, its closeness, and its location on the ship's schedule.
6. The master has the right to expect the assistance of coastal States with facilitation and completion of the rescue, which occurs only when the persons are landed somewhere or otherwise delivered to a safe place.
7. A non-State vessel, under a competent master and crew, is not an appropriate place in which to screen and categorize those rescued or devise solutions for them, whatever these might be. Nor is it appropriate to use the ship as, in effect, a "floating detention centre".

8. On completion of the rescue, following delivery to a place of safety, other aspects of the matter come to the fore. These include screening for protection needs, conditions of stay and treatment, and realisation of solutions. Their resolution will depend variously on factors such as, or considerations relating to, the preceding situation of the persons concerned and their mode of transport, as well as on how best to achieve a balancing of responsibilities of all concerned.
9. International law does not prescribe how such additional aspects of the problem must be resolved, though certain provisions of international maritime law, considered as customary international law, are of great importance. The legal gaps concern where disembarkation should take place and which parties are responsible for follow-up action and effecting solutions. International law does, however, more generally give indicators of how they might be resolved. It offers a framework for resolution of the situation, albeit that there are important gaps to be filled by evolving practice together with further development of the law.
10. In terms of the law, human rights principles are an important point of first reference in handling the situation. This body of law requires certain rights to be respected regardless of the formal status of the persons concerned. The law also imposes some general constraints on how the people can be treated. In other words, human rights law prescribes that, wherever and by whomever, certain standards must be upheld and certain needs addressed. Refugee law is similarly prescriptive as regards the refugee component in the rescued caseload.
11. Practice and State policies help to fill the legal gaps, with the laws likely to follow rather than precede practice. The International Maritime Organisation is encouraged to undertake a legal gaps analysis (within its focal point structure), with a view to encouraging positive development of the law.
12. Policy makers are encouraged to recognise:
 - The issue of “boat people” is best approached as a challenge, not a crisis.
 - Signals are important and the wrong ones should not be sent either to States generally or to ships’ masters, which would have the effect of undermining the integrity of global search and rescue activities.
 - Any measures to combat people smuggling must not undermine international refugee protection responsibilities.
 - The issue is multi-disciplinary and must be approached as such.
13. General responsibilities concerning rescue should be accepted as including that:
 - Coastal States have a responsibility to facilitate rescue through ensuring that the necessary enabling arrangements are in place.
 - Flag States are responsible for ensuring that ships’ masters come to the assistance of people in distress at sea.
 - The international community as a whole must cooperate in such a way as to uphold the integrity of the search and rescue regime.
14. Determining the character or status of those rescued by non-State vessels must normally be undertaken on dry land. If asylum-seekers and refugees are found to be among them, the State providing for disembarkation will generally be the State whose refugee protection responsibilities are first engaged. This entails in principle ensuring access to fair and efficient asylum procedures, and the provision of adequate conditions of reception. The transfer of responsibility for determining refugee status to another State is permissible under international law under

certain conditions and provided that appropriate protection safeguards are in place. Furthermore, disembarkation, particularly when it involves large numbers of people rescued, does not necessarily mean the provision of durable solutions in the country of disembarkation.

15. 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. They should furthermore address, as appropriate, the issue of readmission to first countries of asylum and/or safe third countries, as well as return arrangements for those found not to be in need of international protection. Preventative action concerning people smuggling is another important aspect of any international cooperative framework.

16. In follow-up to this expert roundtable, there was support for the more systematic compiling of empirical data on the scale and the scope of the problem. This, coupled with an analysis of the data, should be done by the varying actors from their various perspectives. UNHCR, for its part, would consolidate guidance on rescue-at-sea involving asylum-seekers and refugees. The International Maritime Organisation's inter-agency initiative will be informed of the outcome of this Expert Roundtable and IMO is encouraged to utilise its existing mechanisms to address any inadequacies in the law. UNHCR's Executive Committee and the UNHCR, IOM consultative mechanism, Action Group on Asylum and Migration (AGAMI) were considered as other appropriate fora to take the discussion further.

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