
Responsibility to Rescue Refugees at Sea under International Law

Nehaluddin Ahmad* & Faizan Mustafa** & Hanan Abdul Aziz***

This research examines the rescue of refugees at sea in the context of international law and human rights. The article focuses on the search and rescue obligations outlined in the United Nations Convention on the Law of the Sea. The article also discusses other international initiatives relevant to the rescue of refugees at sea, including the International Convention for the Safety of Life at Sea and the Global Compact on Refugees. The challenges surrounding the rescue of refugees at sea are also analysed, including issues such as delays and refusals in assistance. The authors further explore disagreements over responsibility and jurisdiction in rescue operations involving refugees. Finally, the article underscores the need for a comprehensive understanding of international legislation and basic humanitarian principles when addressing the rescue of refugees at sea. It offers insights into potential solutions for addressing the challenges and controversies encountered in these rescue operations.

Keywords

Refugees, 1951 Convention on Refugee, Search and Rescue, International Convention for Safety of Life at Sea, International Maritime Organization

* Professor of Law at University Islam Sultan Sharif Ali (UNISSA), Brunei Darussalam. MA/LL.B./LL.M. (Lucknow U.-India), LL.M. (Strathclyde U.-UK), LL.D. (Meerut U.-India). ORCID: <http://orcid.org/0000-0003-1193-2092>. The author may be contacted at: ahmadnehal@yahoo.com / Address: Faculty of Shariah and Law, Simpang 347, Jalan Pasar Gadong, Sultan Sharif Ali Islamic University (UNISSA), Brunei Darussalam.

** Professor & Vice-Chancellor at Chanakya Law University, Patna, India. LL.B./LL.M/Ph.D. (Aligarh Muslim U.-India). The author may be contacted at: mustafa.faizan@gmail.com.

*** Deputy Dean at Faculty of Shariah and Law at University Islam Sultan Sharif Ali (UNISSA), Brunei Darussalam. LL.B. (International U.-Malaysia), LL.M. (Westminster U.), Ph.D. (U. Wales). The author may be contacted at: hanan.aziz@unissa.edu.bn.

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I. Introduction

The 1951 Convention Relating to the Status of Refugees (hereinafter the 1951 Convention) establishes the legal definition of a refugee.¹ According to the 1951 Convention, a person who satisfies certain requirements including a legitimate fear of being persecuted for their nationality, religion, political beliefs, or affiliation to a specific social group is considered a refugee.² Rescuing refugees at sea is a pressing issue that lies at the intersection of global legislation and fundamental humanitarian rights. As conflicts, persecution, and environmental disasters continue to displace populations across the globe, many desperate individuals and families embark on dangerous journeys across the seas in search of safety and a better life.³ However, these perilous journeys often result in life-threatening situations and human rights violations, thereby necessitating a comprehensive analysis of the legal frameworks in order to protect refugees at sea.⁴

International law provides a framework for addressing the complex challenges faced by refugees attempting to cross seas.⁵ The 1951 Convention and its 1967 Protocol serve as foundational instruments that define the entitlements and responsibilities of states with regard to refugees. Refugees at sea encounter numerous obstacles and human rights violations during their journeys. These violations may include inadequate search and rescue (SAR) efforts, interception and detention by states, and non-assistance policies.⁶

In particular, the concept of non-return, an essential cornerstone of international refugee law, forbids refugees from being returned to a territory in which their safety or liberty would be jeopardized.⁷ However, the practical application of this principle in the context of rescuing refugees at sea is often complicated by jurisdictional issues and competing national objectives.⁸ In this regard, refugees' fundamental freedoms, which include life, liberty, and safety, along with the right to request protection from persecution, must be respected. Furthermore, the prohibition of torture and inhumane

¹ 1951 Convention art. 1(A)(2).

² *Id.*

³ Angela Gissi, 'What Does the Term Refugee Mean to You?': Perspectives from Syrian Refugee Women in Lebanon, 32(4) J. REFUGEE STUD. 539-61 (2019).

⁴ *Id.* at 561.

⁵ JAMES HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 445-57 (2005).

⁶ *Id.*

⁷ GUY GOODWIN-GILL & JANE McADAM, THE REFUGEE IN INTERNATIONAL LAW 15-24 & 441 (2007).

⁸ NEHALUDDIN AHMED & HANAN AZIZ, UNDERSTANDING OF ASYLUM AND INTERNATIONAL REFUGEE LAW 133-4 (2021).

treatment must be safeguarded throughout their journeys, including during rescue operations at sea.⁹

It is significant to adhere to these basic tenets of human rights, as the failure to do so has serious consequences for the lives and well-being of refugees.¹⁰ By critically analysing the issue before us, we can assess the adequacy of the existing legal frameworks; identify gaps and challenges; and make recommendations for improved refugee protection and the endorsement of their basic rights. As a result, the significance of this analysis extends beyond the immediate concerns of refugees at sea. It highlights the broader need to strengthen international cooperation; promote respect for human rights; and enhance legal mechanisms to address the global refugee crisis in a just and humane manner.¹¹

The primary objective of this research is to examine the rescue of refugees at sea as a pressing global issue emphasizing refugees' inherent liberties and highlights. It is a State responsibility to safeguard these individuals during maritime rescue operations. In this regard, each nation is obliged to adhere to the 'non-refoulement' principle. The 1951 Convention plays a crucial role in guiding the rescue of refugees at sea and outlines the entitlements and obligations of states with respect to offering aid and security.¹² Under the United Nations Convention on the Law of the Sea (UNCLOS), states have such a duty, which extends to the rescue of refugees, necessitating effective coordination and cooperation among states.¹³ These efforts are also facilitated by the International Maritime Organization (IMO) which promotes coordination and provides guidelines for rescue operations. They also highlight the significance of international initiatives such as the International Convention for Safety of Life at Sea (SOLAS) and the Global Compact on Refugees.

The SOLAS sets mandatory safety requirements for ships involved in rescue operations, thereby ensuring the availability of life-saving equipment. To address the difficulties faced by refugees, including those at sea, the Global Compact on Refugees provides a thorough framework for international cooperation. Nevertheless, challenges and controversies persist in the rescue of refugees at sea, including delays, refusals of assistance, and disputes over responsibility and jurisdiction. Real-life case studies exemplify the complexities and controversies surrounding these operations.

⁹ PHILIP MARTIN, *REFUGEE RIGHTS AND POLICY WRONGS: A FRANK ANALYSIS OF HUMANITARIANISM AND MIGRATION CONTROL* 14 (2009).

¹⁰ *Id.*

¹¹ Nehaluddin Ahmed, *A Study of Evolution and Practices of Asylum and Rights of Refugees in Islamic Traditions and International Law*, 22(3) RUTGERS J. L. & RELIGION 541-51 (2021).

¹² *Id.*

¹³ UNCLOS art. 98.

Nonetheless, by upholding such principles as non-refoulement, fulfilling legal obligations, and enhancing coordination, states are able to guarantee the safety and welfare of refugees in distress at sea.

II. The Refugee Crisis at Sea from International Law and Human Rights Perspectives

The current refugee crisis is marked by the large-scale displacement of people fleeing conflicts, persecution, and environmental disasters worldwide. Many individuals and families embark on perilous sea voyages in pursuit of safety and better living conditions.¹⁴ However, these journeys are fraught with the following challenges and risks, leading to significant human rights concerns.

1. Magnitude of the Crisis: The refugee crisis is a global phenomenon, with millions of people forcibly displaced from their homes. Ongoing conflicts in South Sudan, Myanmar, Afghanistan and Syria, along with political upheaval and persecution in other parts of the globe, all contribute to the global scale of displacement.¹⁵
2. Desperate Sea Crossings: In their quest for safety, refugees often resort to dangerous sea crossings, relying on overcrowded and unseaworthy vessels.¹⁶ These journeys are undertaken due to limited legal pathways for seeking asylum, border restrictions, and the closure of land routes.¹⁷
3. Humanitarian and Safety Concerns: The risks associated with sea crossings are immense, with refugees facing perilous conditions and life-threatening situations.¹⁸ Overcrowded boats, harsh weather conditions, lack of safety equipment, and unscrupulous smugglers all contribute to the dangers at sea.¹⁹
4. Loss of Life and Tragedies: Tragically, many refugees lose their lives during

¹⁴ UNHCR, Global Trends: Forced Displacement in 2021, at 12-14, <https://www.unhcr.org/media/global-trends-report-2021>.

¹⁵ *Id.*

¹⁶ UNCHR, Desperate Journeys: Refugees and Migrants Crossing the Mediterranean Sea to Europe (2019), <https://www.unhcr.org/desperatejourneys>.

¹⁷ *Id.*

¹⁸ FATAL JOURNEYS VOLUME 4: MISSING MIGRANT CHILDREN 87 (Frank Laczko, Julia Black & Ann Singleton eds., 2019).

¹⁹ *Id.*

sea crossings.²⁰ Shipwrecks, vessel capsizing, and drowning incidents occur frequently, leading to devastating losses of life. The Mediterranean Sea, the Aegean Sea, and the Indian Ocean are among the most perilous routes.²¹

5. Limited SAR Efforts: Insufficient SAR operations pose a significant challenge.²² In some cases, rescue missions may be delayed or inadequate, leaving refugees stranded at sea for extended periods. This lack of timely assistance exacerbates the risks faced by those attempting the journey.²³
6. Jurisdictional and Legal Challenges: Determining the responsibility of states for rescuing and protecting refugees at sea is a complex issue.²⁴ Jurisdictional disputes, differing interpretations of international law, and conflicting interests among states can hinder effective coordination and responses to the crisis.²⁵
7. Exploitation and Human Rights Abuses: Refugees at sea are vulnerable to exploitation, abuse, and human rights violations.²⁶ Smugglers and traffickers exploit refugees' desperation, subjecting them to extortion, forced labour, sexual exploitation, and other forms of abuse.²⁷

Addressing the challenges faced by refugees attempting to cross seas requires a comprehensive and coordinated response. It involves enhancing SAR operations; ensuring access to protection and legal pathways; combating smuggling and trafficking networks; promoting international cooperation; and upholding human rights standards throughout the migration journey. Consequently, it is crucial to strengthen international legal frameworks; increase resources for humanitarian assistance; and foster cooperation between states, international organizations, and civil society to provide safer alternatives; and protect the rights and dignity of refugees seeking safety through sea crossings.

²⁰ UNHCR, *supra* note 14.

²¹ *Id.*

²² OHCHR, Lethal Disregard Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea (2021), at 14-5, <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>.

²³ *Id.*

²⁴ Beth Lyon, *Detention of Migrants: Harsher Policies, Increasing International Law Protection*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND MIGRATION 173-81 (Vincent Chetail & Celine Bauhoz eds., 2014).

²⁵ *Id.*

²⁶ CELINE BAULOZ, MARIKA McADAM & JOSEPH TEYE, HUMAN TRAFFICKING AND EXPLOITATION AT SEA: OPPORTUNITIES FOR IDENTIFICATION, ASSISTANCE AND PROTECTION OF VICTIMS 8 (2021).

²⁷ *Id.*

III. The Significance of the Non-Refoulement Principle in Refugee Protection

Non-refoulement is an essential component of refugee law that prohibits the return of refugees or asylum seekers to a territory in which their safety, freedom, or fundamental human rights might be jeopardized.²⁸ This principle serves as the basis for refugee safeguards and has been included in a number of global treaties, including the 1951 Convention and its 1967 Protocol.²⁹ The concept of non-refoulement requires states to refrain from expelling, returning, or extraditing refugees to any nation or jurisdiction in which they are at risk of persecution, torture, inhumane treatment, and other severe human rights violations.³⁰ This tenet recognizes the vulnerability of refugees and the demand for global collaboration and solidarity to assist refugees with security.³¹

The importance of this principle stems from its function in protecting the freedoms as well as the security of refugees.³² By upholding this principle, states contribute to safeguarding the rights of individuals, the preservation of human dignity, and the fulfilment of their international legal obligations.³³ The principle is essential to promoting the freedom to request refugee status, which is also a fundamental human right.³⁴ It ensures that people fleeing persecution possess the opportunity to submit their claims for refugee status and have their claims evaluated fairly and effectively. The principle of non-refoulement provides a crucial safeguard to the act of returning refugees or asylum seekers without proper consideration of their protection needs.³⁵ However, although the idea of non-return is well established in international law, its practical application can be complicated, particularly within the realm of maritime

²⁸ 1951 Convention art. 33 (1). It states: “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.” See also JAMES HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* 173-313 (2021).

²⁹ *Id.*

³⁰ THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY 863 (Andreas Zimmermann et al. eds., 2005).

³¹ Ahmad, *supra* note 11, at 544-7.

³² Vincent Chetail, *The Human Rights of Migrants in General International Law: From Minimum Standards to Fundamental Rights*, 28(1) GEO. IMMIGR. L. J. 225-55 (2013).

³³ *Id.*

³⁴ David Cantor, *Reframing Relationships: Revisiting the Procedural Standards for Refugee Status Determination in Light of Recent Human Rights Treaty Body Jurisprudence*, 34(1) REFUGEE SURV. Q. 79-106 (2015).

³⁵ *Id.*

rescue operations.³⁶ Complications include jurisdictional issues, state cooperation, and the responsibility to offer prompt and efficient assistance to refugees in distress.³⁷ Nonetheless, this concept remains a vital determinant of refugee protection and serves as a reminder of the global community's responsibility in upholding human rights and providing sanctuary to those in need. In conclusion, this principle contributes to preserving human life, safeguarding refoulement, and protecting refugees from further harm and persecution.

IV. States' Rights and Duties to Refugees under International Law

States have a variety of obligations and responsibilities with regard to refugees. The following are states' rights and duties to refugees primarily outlined in international refugee law.

1. Non-Refoulement: This concept forbids States from sending refugees back to the countries where their lives, freedom, or fundamental human rights might be jeopardized.³⁸ This rule applies to all forms of return, including expulsions, extraditions, and sea interceptions. States have to evaluate refugees' protection needs and ensure that they are not refouled.³⁹
2. Access to Asylum Procedures: States have a duty to provide access to the asylum process for individuals seeking refugee status.⁴⁰ This ensures that refugees have the opportunity to present their claims for protection and receive a fair assessment of those claims. States must establish efficient and accessible asylum systems that safeguard refugees' rights.⁴¹
3. Protection of Human Rights: States have an obligation to protect refugees' human rights.⁴² This ensures that refugees have access to basic fundamental

³⁶ Violeta Moreno-Lax, *Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea*, 23(2) INT'L J. REFUGEE L. 174-220 (2011).

³⁷ *Id.*

³⁸ Guy Goodwin-Gill, *The Politics of Refugee Protection*, 27(1) REFUGEE SURV. Q. 8-23 (2008).

³⁹ *Id.*

⁴⁰ THOMAS GAMMELTOFT-HANSEN, ACCESS TO ASYLUM: INTERNATIONAL REFUGEE LAW AND THE GLOBALISATION OF MIGRATION 3 (2011).

⁴¹ *Id.*

⁴² CATHRYN COSTELLO, THE HUMAN RIGHTS OF MIGRANTS AND REFUGEES IN EUROPEAN LAW 11 (2016).

rights such as life, freedom, and safety; the right to request refugee status; and the banning of beatings or inhumane, degrading, or cruel treatment or repercussions. States must prevent and address any human rights violations or abuses against refugees within their jurisdiction.⁴³

4. Provision of Basic Needs: States have a responsibility to provide refugees with ways to meet their basic needs, including food, shelter, healthcare, and education.⁴⁴ This obligation ensures that refugees have access to essential services and social support systems that promote their well-being and integration into the host community. States may also seek international cooperation and assistance to fulfil these obligations.⁴⁵
5. Integration and Non-Discrimination: States should promote the integration of refugees into society and prevent discrimination against them.⁴⁶ This includes facilitating access to education, employment, and social services, as well as promoting tolerance, respect, and understanding among the host population. States should enact legislation and policies that prevent discrimination and foster the inclusion of refugees.⁴⁷
6. International Cooperation: States have a duty to work together with the appropriate international institutions to address the challenges of refugee safeguards.⁴⁸ This includes sharing information, coordinating efforts, and assisting states hosting large numbers of refugees. States should engage in dialogue and negotiation to develop comprehensive solutions and promote burden-sharing to ensure the effective protection of refugees.⁴⁹

It should be noted that the obligations and responsibilities of nations towards refugees under international law are comprehensive and multifaceted. They encompass legal, humanitarian, and human rights considerations in a holistic manner. The fulfilment of these obligations not only ensures the protection and well-being of refugees but also upholds global solidarity in addressing refugee crises.

⁴³ *Id.*

⁴⁴ DIETER FLECK, *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* 723 (2013).

⁴⁵ *Id.*

⁴⁶ Emma Larking, *Human Rights, the Right to Have Rights, and Life Beyond the Pale of the Law*, 18(1) *AUSTL. J. HUM. RTS.* 57-88 (2012).

⁴⁷ *Id.* at 58.

⁴⁸ MICHELLE FOSTER, *INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGE FROM DEPRIVATION* 102 (2007).

⁴⁹ *Id.*

V. Search and Rescue Obligations

A. The United Nations Convention on the Law of the Sea and its Rescue Provisions

UNCLOS defines the legal basis for the utilization and preservation of the global oceans and their natural wealth.⁵⁰ Under UNCLOS, coastal states have a general obligation to coordinate with and offer support to anyone in distress on the ocean.⁵¹ As per Article 98, every nation has a duty to lend support to any individual discovered on the ocean in danger of drowning.⁵² This obligation is applicable irrespective of the country of origin or social standing of the individuals in distress.⁵³ Moreover, UNCLOS emphasizes the importance of cooperation among states in conducting SAR operations.⁵⁴ Article 98 further asserts that coastal states should cooperate with each other and other relevant global institutions to ensure effective and timely assistance to those in distress. This cooperation may involve sharing information, coordinating efforts, and providing necessary resources to conduct rescue operations.⁵⁵

UNCLOS also addresses the issue of liability and compensation for SAR operations. Article 12 of the Maritime SAR Convention, which is an annex to UNCLOS, establishes the framework for states to resolve questions of liability arising from rescue operations.⁵⁶ The primary objective of such operations is to save lives and any costs incurred should be borne by the states concerned.⁵⁷ The UNCLOS provisions for SAR operations highlight the importance of prompt and coordinated action to ensure the safety and well-being of individuals in distress at sea.⁵⁸ These provisions provide a legal basis for states to fulfil their obligations in rescuing and protecting refugees and other individuals in need of assistance. However, while UNCLOS sets out general principles, the specific application of these provisions in the context of rescuing refugees at sea may involve additional legal and operational

⁵⁰ FELICITY ATTARD, *THE DUTY OF THE SHIPMASTER TO RENDER ASSISTANCE AT SEA UNDER INTERNATIONAL LAW* 36 (2020)

⁵¹ *Id.*

⁵² UNCLOS art. 98.

⁵³ *Id.*

⁵⁴ MYRON NORDQUIST, SATYA NANDAN & JAMES KRASKA, *UNCLOS 1982 COMMENTARY: SUPPLEMENTARY MATERIALS* 333 (2012)

⁵⁵ *Id.*

⁵⁶ UNCLOS art. 12.

⁵⁷ *Id.*

⁵⁸ ANA GUTIERREZ, *HUMAN RIGHTS IN HIGHER EDUCATION: INNOVATIVE PEDAGOGICAL APPROACHES THROUGH SERVICE-LEARNING AND COMPETENCY-BASED LEARNING* 192 (2010).

considerations.⁵⁹ It is important to consult the actual text of UNCLOS, as well as relevant state practices and interpretations, for a comprehensive understanding of the provisions related to SAR missions at sea.

B. Duty of States to Conduct Rescue Operations at Sea and its Application to Refugees

The duty of states to conduct rescue operations at sea is an essential aspect of international law, particularly concerning the protection of refugees. It stems from the concept of humanity, as well as the inherent duty of nations to safeguard human lives and prevent unnecessary loss of life.⁶⁰ This duty applies to all individuals in distress at sea, including refugees and asylum seekers. States have a legal and moral obligation to coordinate and undertake rescue operations to ensure the safety and well-being of individuals in need of assistance.⁶¹ As previously mentioned, under UNCLOS, coastal states have an overarching obligation to coordinate and assist those in despair at sea, irrespective of their citizenship or social standing.⁶² This obligation is stated in Article 98 of UNCLOS, which affirms that every nation must take steps to assure that any person found at sea in danger of drowning receives assistance. This duty extends to refugees who may be attempting perilous sea crossings in search of safety and protection.⁶³

Furthermore, the obligation to conduct sea rescue operations for the refugees in distress at sea is reinforced through principles of international customs, humanitarian norms, and human rights standards. The notion of humankind, which is an essential component of international humanitarian law, obligates states to take the necessary actions to protect lives and minimize the misery of others. This tenet applies regardless of an individual's constitutional position as a moral obligation of states.⁶⁴ It is particularly significant given the vulnerabilities and risks they face during their journeys.⁶⁵ Refugees often undertake dangerous sea crossings in overcrowded and

⁵⁹ *Id.*

⁶⁰ Cedric Ryngaert & Henrik Ringbom, *Introduction: Port State Jurisdiction: Challenges and Potential*, 31(3) INT'L J. MARINE & COASTAL L. 379-94 (2016).

⁶¹ *Id.*

⁶² Efthymios Papastavridis, *Rescuing Migrants at Sea: The Responsibility of States under International Law*, at 7-10, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1934352#paper-citations-widget.

⁶³ *Id.*

⁶⁴ *Id.* at 462.

⁶⁵ Alice Edwards, *Temporary Protection, Derogation, and the 1951 Refugee Convention*, 13(2) MELB. J. INT'L L. 595-635 (2012).

unseaworthy vessels, facing harsh weather conditions, no safety equipment, and the involvement of unscrupulous smugglers.⁶⁶ Without timely and effective rescue operations, refugees are exposed to life-threatening situations and heightened risks of loss of life.⁶⁷ In practice, the duty to conduct rescue operations at sea and its application to refugees requires effective coordination and cooperation between states, international organizations, and relevant stakeholders. It involves timely responses, adequate resources, and appropriate measures to ensure the safety, protection, and well-being of rescued refugees.⁶⁸ States may thus seek international assistance and cooperation to fulfil their obligations in this regard.⁶⁹

Overall, the duty of states to conduct rescue operations at sea plays a crucial role in safeguarding refugees and upholding their rights. It reflects the international community's commitment to preserving human life, preventing unnecessary suffering, and providing necessary assistance to those in need undertaking dangerous sea journeys in search of safety and protection for refugees.

C. The Role of the International Maritime Organization in Facilitating Coordination and Cooperation in Rescue Efforts

The IMO plays a crucial role in facilitating coordination and cooperation in rescue efforts at sea.⁷⁰ The IMO, as a special agency of the UN, has a mandate to promote maritime security, stability, and the preservation of the environment. In terms of rescue operations, the IMO works to improve the efficacy and the effectiveness of global SAR systems.⁷¹

The IMO's primary instrument is the SAR Convention.⁷² This Convention sets out the legal framework and guidelines for the SAR operations, emphasizing the importance of coordination and cooperation among nations. It establishes the framework for states to use to set up their own SAR services, designate responsible authorities, and develop regional cooperation mechanisms.⁷³ The IMO's primary function is to help member states build and enhance their domestic SAR systems.⁷⁴

⁶⁶ *Id.*

⁶⁷ *Id.* at 616.

⁶⁸ Vincent Chetail, *The Architecture of International Migration Law: A Deconstructivist Design of Complexity and Contradiction*, 111 *Am. J. Int'l L.* 18-24 (2017).

⁶⁹ *Id.*

⁷⁰ DIRK WERLE ET AL., *THE FUTURE OF OCEAN GOVERNANCE AND CAPACITY DEVELOPMENT* 426 (2018)

⁷¹ *Id.*

⁷² IRINI PAPANICOLOPULU, *GENDER AND THE LAW OF THE SEA* 260 (2019).

⁷³ *Id.*

⁷⁴ KATE JASTRAM & MARILYN ACHIRON, *REFUGEE PROTECTION: A GUIDE TO INTERNATIONAL REFUGEE LAW* 80 (2014).

The organization provides guidance, technical assistance, and training to states to improve their ability to react to distress situations at sea. This assistance includes the development of standardized operating procedures, the establishment of communication networks, and the promotion of best practices in SAR operations.⁷⁵

The IMO also promotes international cooperation in SAR by establishing territorial and sub-regional SAR agreements and arrangements.⁷⁶ These agreements promote mutual assistance, information exchange, and joint exercises among neighbouring states. They try to ensure that SAR resources are effectively utilized and coordination mechanisms are in place to respond to emergencies in a timely and efficient manner.⁷⁷ Furthermore, the IMO serves as a forum for discussion and cooperation among member states, maritime organizations, and relevant stakeholders.⁷⁸ It provides a platform for sharing information, experiences, and lessons learned in SAR operations.⁷⁹ In recent years, the IMO has increasingly focused on the specific challenges of rescuing migrants and refugees at sea. It has highlighted the need for states to develop appropriate guidelines and procedures to ensure the safety and protection of individuals in distress, including the provision of medical assistance, temporary shelter, and proper identification and documentation.⁸⁰

Overall, the IMO's role in facilitating coordination and cooperation in rescue efforts is essential to ensuring the effectiveness of SAR systems worldwide. Through its guidance, technical support, and promotion of best practices, the organization contributes to safeguarding human lives and distressed refugees.

D. Role of the International Convention for Safety of Life at Sea

SOLAS is a treaty that establishes minimum safety requirements for vessels, tools, and procedures to protect human life at sea.⁸¹ It plays a crucial role in ensuring the safety of refugees at sea. While SOLAS primarily focuses on maritime safety for all vessels, its provisions have implications for the safety and protection of refugees who

⁷⁵ *Id.*

⁷⁶ See INTERNATIONAL HUMAN RIGHTS LAW 385 (Daniel Moeckli et al. eds., 2022).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Paolo Cuttitta, *Repoliticization Through Search and Rescue? Humanitarian NGOs and Migration Management in the Central Mediterranean*, 23(3) GEOPOL. 632-60 (2018).

⁸⁰ *Id.*

⁸¹ Anish, *Safety of Life at Sea (SOLAS) – The Ultimate Guide*, MARINE INSIGHT (July 12, 2023), <https://www.marineinsight.com/maritime-law/safety-of-life-at-sea-solas-convention-for-prevention-of-marine-pollution-marpol-a-general-overview>.

undertake perilous journeys across the sea.⁸² SOLAS' roles for the safety of refugees at sea are as follows.

1. **Safety Equipment and Standards:** SOLAS establishes mandatory safety requirements for ships, including those used for rescuing refugees at sea. It specifies the type and quantity of life-saving appliances, such as life jackets, life rafts, and emergency communication equipment, which must be carried on board vessels. These provisions ensure that ships involved in rescue operations have the necessary equipment to effectively respond to distress situations.⁸³
2. **Search and Rescue Coordination:** SOLAS emphasizes the importance of efficient SAR operations.⁸⁴ It requires vessels to assist anyone in trouble at sea, irrespective of citizenship or legal standing. This obligation extends to rescuing refugees in distress.⁸⁵ SOLAS encourages cooperation and coordination among ships, rescue coordination centres, and relevant authorities to ensure timely and effective SAR operations, thereby enhancing the refugees' chances of survival.⁸⁶
3. **Ship Reporting Requirements:** SOLAS mandates that ships maintain regular contact with coastal authorities and provide information on their voyage plans, positions, and significant events. These reporting requirements enable coastal states and rescue coordination centres to monitor the movements of vessels, identify distress situations, and dispatch appropriate assistance to ships carrying refugees in need of rescue.⁸⁷
4. **Maritime Communication Systems:** SOLAS requires ships to have reliable communication systems to facilitate distress alerts, SAR coordination, and communication with rescue authorities. This enables refugees at sea to alert authorities about their distress, improving the likelihood of prompt rescue and assistance.⁸⁸
5. **Certification and Training:** SOLAS demands that seafarers obtain appropriate education and accreditation to ensure their competence in carrying out their

⁸² *Id.*

⁸³ *Id.*

⁸⁴ European Values Centre, *Sustainable EU Immigration and Asylum System: Reform in Eight Pillars* (European Values Think-Tank Policy Paper, 2016), at 12, https://www.mzv.cz/file/2240016/Sustainable_EU_Immigration_and_Asylum_System.pdf.

⁸⁵ *Id.* at 15.

⁸⁶ *Id.*

⁸⁷ Anish Joseph & Dimitrios Dalaklis, *The International Convention for the Safety of Life at Sea: Highlighting Interrelations of Measures Towards Effective Risk Mitigation*, 5(1) J. INT'L MAR. SAFETY, ENVTL. AFF. & SHIPPING 1-11(2021).

⁸⁸ Karol Korcz, *Maritime Radio Information Systems*, 24(3) J. KONES POWERTRAIN & TRANSP. 154-60 (2016).

duties, including responding to distress situations and conducting rescue operations. This requirement helps ensure that crews on ships involved in rescuing refugees possess the necessary skills and knowledge to handle such operations safely and effectively.⁸⁹

6. Port State Control: SOLAS establishes a framework for port state control, enabling states to inspect and enforce compliance with its provisions. This helps prevent unseaworthy vessels from operating, thus, reducing the risks faced by refugees at sea. Port state control measures include inspecting ships, verifying their compliance with safety standards, and taking necessary actions to address deficiencies or violations.⁹⁰

In order to address the safety of ships and their crew, SOLAS indirectly contributes to the safety of refugees at sea by promoting effective SAR operations, ensuring the availability of safety equipment, and enhancing communication and coordination.⁹¹ However, SOLAS does not specifically address the needs of refugees.⁹² Therefore, additional measures and coordination among relevant actors, such as coast guards, humanitarian organizations, and regional agreements, are necessary to ensure the overall protection and security of refugees during their maritime journeys.⁹³

E. The Global Compact on Refugees 2018

In 2018, the UN General Assembly endorsed the Global Compact on Refugees.⁹⁴ The Global Compact represents a comprehensive framework that seeks to enhance international cooperation and responsibility-sharing in response to large-scale refugee movements. It aims to ensure protection, assistance, and solutions for refugees while also addressing the challenges faced by host countries.⁹⁵ The Global Compact recognizes that the responsibility for protecting and assisting refugees cannot be borne by only a few host countries.⁹⁶ Instead, it emphasizes the importance of global

⁸⁹ Pascale Carayon et al., *Advancing A Sociotechnical Systems Approach to Workplace Safety – Developing the Conceptual Framework*, 58(4) ERGONOMICS 548-64 (2015).

⁹⁰ *Id.*

⁹¹ UNHCR, A Thematic Compilation of Executive Committee Conclusions (2014), at 51-62, <https://www.unhcr.org/fr-fr/en/media/thematic-compilation-executive-committee-conclusions-7th-edition>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Meltem Ineli-Ciger, *The Global Compact on Refugees and Burden sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?*, 38(2) REFUGEE SURV. Q. 115 (2019).

⁹⁵ *Id.*

⁹⁶ VIOLETA MORENO-LAX & EFTHYMIOS PAPANAVRIDIS, *BOAT REFUGEES: AND MIGRANTS AT SEA: A COMPREHENSIVE APPROACH* 222 (2017).

collaboration and specifies burden-sharing among states, international organizations, and other stakeholders. The Global Compact encourages states to work together to share the responsibility for hosting refugees, providing humanitarian assistance, and supporting durable solutions.⁹⁷

One of the key implications of the Global Compact is the promotion of comprehensive and sustainable responses to refugee situations.⁹⁸ It calls for a multi-stakeholder approach involving governance, society at large, business, and global agencies.⁹⁹ It encourages coordination, cooperation, and the sharing of best practices to ensure more effective and efficient responses to refugee crises. The Global Compact also highlights the importance of long-term and predictable support for host countries. It calls for increased international support, including financial assistance, capacity building, and development assistance, to ensure that host countries can provide essential services and infrastructure for refugees while also benefiting their own communities.¹⁰⁰ Furthermore, the Global Compact emphasizes the need to explore and expand legal pathways for refugees, including resettlement, relative reunification, and humanitarian visas.¹⁰¹ It seeks to address the drivers of forced displacement and promote conditions that enable refugees to return home voluntarily, safely, and with dignity.¹⁰²

Overall, the Global Compact represents a significant step towards strengthening international cooperation and responsibility-sharing in addressing refugee situations. By encouraging comprehensive responses, promoting burden-sharing, and enhancing support to host countries, the compact seeks to enhance refugee protection, assistance, and responses around the world.

VI. Issues and Disputations

A. Difficulties in Rescuing Refugees at Sea

The task of saving the lives of refugees at sea exposes multiple difficulties that may hinder refugees receiving swift and efficient help.¹⁰³ These difficulties stem from a

⁹⁷ *Id.*

⁹⁸ BENOIT MAYER & FRANCOIS CREPEAU, RESEARCH HANDBOOK ON CLIMATE CHANGE, MIGRATION AND THE LAW 449 (2017).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ JASTRAM & ACHIRON, *supra* note 74.

¹⁰² Ahmed, *supra* note 11, at 544-7.

¹⁰³ THOMAS LAMB, SHIP DESIGN AND CONSTRUCTION 492 (2003).

wide range of variables, such as legal, political, operational, and logistical concerns.¹⁰⁴ Some of the major challenges encountered in the search for refugees at sea are as follows.

1. Delays in response: Because maritime rescue missions are often complicated, response times can be delayed, which can jeopardize the safety and lives of refugees.¹⁰⁵ Delays may occur due to inadequate resources, limited capabilities, jurisdictional disputes, or insufficient coordination among the actors involved.¹⁰⁶
2. Insufficient SAR resources: Resources must be available for rescue efforts at sea, including vessels, equipment, and trained personnel.¹⁰⁷ However, some regions may lack the necessary resources to respond promptly to distress situations, especially in areas where the frequency of crossings is high or where states possess limited capacities.¹⁰⁸
3. Political reluctance and refusals to provide assistance: The rescue of refugees at sea often involves political considerations and differing national interests. Some states may be reluctant to provide assistance due to concerns over the strain upon resources, domestic political factors, or differing migration policies. This can result in refusals or delays in granting access to ports or providing adequate support.¹⁰⁹
4. Lack of clear coordination mechanisms: Effective coordination among states, international organizations, and relevant stakeholders is essential in rescue operations. However, the absence of clear coordination mechanisms or agreed-upon protocols can hinder swift and efficient response efforts. Differences in operational procedures, communication systems, and decision-making processes can create challenges in coordinating rescue efforts.¹¹⁰
5. Legal and jurisdictional complexities: The legal framework surrounding the saving of refugees at sea can be both complicated and varied.¹¹¹ Uncertainties may arise regarding the responsibility of states and the application of international

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ MORENO-LAX & PAPASTAVRIDIS, *supra* note 96, at 225.

¹⁰⁸ *Id.*

¹⁰⁹ Branislav Cofovic & Petar Djurovic, *Research of Marine Accidents through the Prism of Human Factors*, 25(4) PROMET-TRAFFIC & TRANSP. 369-77 (2013).

¹¹⁰ Korcz, *supra* note 88.

¹¹¹ IBRC, CHILDREN AND ARMED CONFLICT: A GUIDE TO INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW 157 (2010), <https://documentation.lastradainternational.org/lisidocs/soldiers.pdf>.

law, along with the choice of a safe haven for those who have been rescued. Jurisdictional disputes may further complicate rescue operations and delay the provision of necessary assistance.¹¹²

6. Limited regional cooperation: Regional cooperation plays a crucial role in addressing the challenges of rescuing refugees at sea. However, achieving effective regional cooperation can be hindered by political tensions, differing national priorities, inadequate mechanisms for information-sharing in joint operations, and burden-sharing.¹¹³

Addressing these challenges requires concerted efforts and cooperation among states, international organizations, civil society, and other stakeholders. Enhancing coordination mechanisms, increasing SAR capacities, clarifying legal frameworks, fostering regional cooperation, and promoting dialogue are key steps to improving refugee rescues at sea and ensuring the protection of their lives and well-being.

B. Exploration of Disputes over Responsibility and Jurisdiction in Rescue Operations

Disputes over responsibility and jurisdiction often arise in rescue operations involving refugees at sea. These disputes typically revolve around determining which state or entity is obliged to coordinate and carry out the rescue, as well as subsequent responsibilities regarding disembarkation, processing asylum claims, and long-term solutions for the rescued individuals. Several factors contribute to these disputes as follows.

1. Geographical proximity: The location where a rescue takes place can affect the allocation of responsibility.¹¹⁴ The closest coastal state to the distressed situation may have a legal and moral obligation to coordinate and conduct the rescue. However, in cases where multiple states have nearby coastlines, disputes may arise regarding which state bears the primary responsibility.¹¹⁵
2. SAR regions: Various regions have established SAR zones or areas of responsibility which indicate specific geographical areas in which states or

¹¹² *Id.*

¹¹³ UNHCR, Summary Conclusions: Refugees and Asylum-Seekers in Distress at Sea - How Best to Respond? (2011), at 8-9, <https://www.refworld.org/docid/4ede0d392.html>.

¹¹⁴ ALEXANDER BETTS & PAUL COLLIER, REFUGEE: TRANSFORMING A BROKEN REFUGEE SYSTEM 112 (2017).

¹¹⁵ *Id.*

organizations are responsible for organizing and carrying out activities.¹¹⁶ However, disputes can arise when the location of distress situation falls within overlapping or undefined SAR regions, leading to uncertainties regarding the responsible authority.¹¹⁷

3. Legal frameworks and international agreements: The interpretation and application of multilateral laws and regulations, including UNCLOS, regional agreements, and refugee conventions, can differ among states.¹¹⁸ These variances can contribute to disagreements over the allocation of responsibility and jurisdiction in rescue operations involving refugees.¹¹⁹
4. Political considerations and differing migration policies: Political factors and varying migration policies among nations can complicate the resolution of disputes.¹²⁰ States may have divergent views to provide assistance, accept rescued individuals, or share responsibility for refugees at sea. Disagreements on these matters can impede effective and timely rescue operations.¹²¹
5. Lack of clear guidelines and procedures: The absence of clear guidelines and procedures for addressing rescue operations involving refugees can contribute to disputes.¹²² A lack of accepted protocols on such issues as responsibility-sharing, disembarkation arrangements, and asylum processing can lead to uncertainties and disagreements among states.¹²³

Addressing these disputes requires international cooperation, dialogue, and the establishment of clear mechanisms and protocols. Regional agreements, such as the European Union's Dublin Regulation or the Bali Process in the Asia-Pacific region, aim to provide frameworks for addressing responsibility and jurisdiction in rescue operations involving refugees. International agencies such as the International Group for Migration and the UNHCR may additionally play a significant part in facilitating coordination and resolving disputes. It is worth noting that the specific details and dynamics of disputes over responsibility and jurisdiction in rescue operations involving refugees can vary depending on the regions and contexts in which they occur.

¹¹⁶ See HUMAN RIGHTS AND THE REFUGEE DEFINITION: COMPARATIVE LEGAL PRACTICE AND THEORY 322 (Bruce Burson & David Cantor eds., 2016).

¹¹⁷ *Id.*

¹¹⁸ GOODWIN-GILL & MCADAM, *supra* note 7, at 247.

¹¹⁹ *Id.*

¹²⁰ See RESEARCH HANDBOOK ON INTERNATIONAL LAW AND MIGRATION 345-50 (Vincent Chetail and Céline Bauloz eds., 2014).

¹²¹ Chetail, *supra* note 32.

¹²² JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 63 (2013).

¹²³ *Id.*

C. Case Studies of the Rescue of Refugees at Sea

1. The *M/V Aquarius* Case (2018)

The *M/V Aquarius* was an SAR vessel operated by SOS Mediterranean and Médecins Sans Frontières that carried out rescue missions in the Mediterranean Sea. In June 2018, the vessel was involved in a high-profile rescue operation, which resulted in the successful rescue of a large number of refugees. In this particular incident, the *M/V Aquarius* rescued 629 refugees and migrants, including pregnant women, children, and unaccompanied minors, from several boats in distress off the coast of Libya. The rescued individuals were primarily from Sub-Saharan Africa and attempting to reach Europe. The operation lasted for several days as the vessel coordinated with relevant authorities and humanitarian organizations to ensure the safe disembarkation of the rescued individuals.¹²⁴

The incident attracted significant media attention and highlighted the ongoing humanitarian crisis in the Mediterranean and the importance of SAR efforts to save lives at sea.¹²⁵ While this case did not involve a specific legal ruling or court decision, it exemplifies a successful rescue operation aimed at protecting and assisting refugees in distress at sea.

2. *AAA and Others v. Secretary of State for the Home Department*

This case pertained to the rescue of refugees in the Mediterranean Sea. The claimants, a group of refugees who were rescued by SAR vessels, challenged the UK Home Secretary's policy of refusing the refugees' entry into its territory and instead returning them to Italy or other European countries under the Dublin III Regulation.¹²⁶ The claimants argued that the UK Home Secretary's policy breached their rights under the European Convention on Human Rights (ECHR), particularly Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment).¹²⁷ They argued that returning them to countries in which they would be at risk of harm or inadequate treatment violated their rights.¹²⁸

The case was brought before the UK Court of Appeal, which ruled in favour of the claimants. The court held that the Home Secretary's policy did not provide sufficient

¹²⁴ Sean Healy & Victoria Russell, *The Critical Risk of Disinformation for Humanitarians – The Case of the M/V Aquarius*, 3(1) J. HUMANITARIAN AFF. 28-39 (2021).

¹²⁵ *Id.*

¹²⁶ *R (AAA) v. The Secretary of State for the Home Department*, EWCA Civ 745 (2023), https://www.refworld.org/cases,GBR_CA_CIV,64b16aaa4.html.

¹²⁷ *Id.*

¹²⁸ *Id.*

safeguards to protect the rights of the refugees, particularly their right to life and protection against inhuman or degrading treatment. The court emphasized the duty of the state to ensure that the asylum claims of rescued refugees were adequately assessed before any returns or transfers took place.¹²⁹

3. *Hirsi Jamaa and Others v. Italy (2012)*

In this case, the European Court of Human Rights (ECtHR) addressed the rescue and treatment of a group of Somali and Eritrean migrants attempting to reach Italy by boat. The migrants' vessel encountered difficulties at sea, and they were eventually rescued by Italian authorities. However, instead of being taken to Italy, the migrants were returned to Libya.¹³⁰ The ECtHR ruled that Italy's actions violated several provisions of the ECHR. Specifically, the Court held that Italy violated Article 3 (prohibition of inhuman or degrading treatment) by exposing the migrants to the risk of ill-treatment in Libya. The court also found a violation of Article 4 of Protocol No. 4 to the ECHR, which prohibits the collective expulsion of aliens.¹³¹

4. *The Haitian Centre for Human Rights et al. v. United States, Case 10.675 (1997)*

In this case, the United States Court of Appeals for the Third Circuit considered the rescue and treatment of a group of Haitian refugees who were intercepted at sea by the US Coast Guard. The Court examined whether the US government's actions violated the refugees' rights under the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.¹³² The Court ruled that the US government's actions in interdicting the Haitian refugees and returning them to Haiti without providing adequate screening for potential asylum claims violated the Immigration and Nationality Act and the refugees' due process rights.¹³³ The Court further held that refugees intercepted at sea were entitled to procedural safeguards and the opportunity to present their asylum claims before being returned to their home country.¹³⁴

¹²⁹ *Id.*

¹³⁰ *Hirsi Jamaa and Others v. Italy*, ECHR Application no. 27765/09 (2012), <https://www.refworld.org/cases,ECHR,4f4507942.html>.

¹³¹ *Id.*

¹³² *The Haitian Centre for Human Rights et al. v. United States*, Inter-Am.C.H.R.,OEA/Ser.L/V/II.95, at 550 (1997), <https://www.refworld.org/cases,LACHR,3ac6b71b8.html>.

¹³³ *Id.*

¹³⁴ *Id.*

5. Evaluation

These cases highlight the obligation of states to respect and protect the rights of refugees and migrants, including the prohibition on returning individuals to countries where they may face harm or persecution.

VII. Conclusion

International law of human rights is of paramount importance in the rescue of refugees at sea. It is not merely a moral obligation, but also a legal requirement to protect the lives and rights of vulnerable individuals. By adhering to international legal frameworks and human rights principles, it is ensured that refugees are treated with dignity, respect, and compassion. This adherence includes upholding the principle of non-refoulement and sharing the responsibility and burden of rescue operations. By doing so, it prevents further harm, promote safety, and fulfil universal obligations to those in need. The rescue of refugees at sea requires cooperation, solidarity, and commitment to the well-being and protection of all individuals, regardless of their nationality or status.

States are obliged to implement their duties and commitments to refugees. It should be guaranteed that refugees are safeguarded and secured by rescue missions under international law. States must recognize the inherent dignity and worth of every human being and act accordingly to save lives and prevent unnecessary suffering. The international community is committed to global regulations, including UNCLOS, international refugee conventions, and human rights standards. States must prioritize prompt and effective responses to distress situations at sea by providing adequate resources, training, and coordination mechanisms to ensure timely rescue operations. Political considerations and differing migration policies should not overshadow the fundamental duty to protect human lives. States must overcome obstacles such as delays, jurisdictional disputes, and insufficient resources through cooperation, dialogue, and international assistance.

It is also essential for states to abide by the “non-refoulement” principle and ensure that rescued refugees will not be sent back to the places where their safety or freedoms are in danger. This requires a comprehensive and humane approach that guarantees access to asylum procedures, protection from persecution, and fulfilment of basic needs such as food, shelter, and access to healthcare and education. The global community must also pay attention to supporting states to fulfil their obligations in

cooperation with civil society who can provide assistance, resources, and expertise to strengthen rescue operations and promote the safety and well-being of refugees. Through collective action and shared responsibility for the rescue operations at sea, human dignity of refugees can be protected and their lives are both valued and saved more.

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