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The Treatment of Persons Rescued at Sea

Session 6 Manual

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Objectives

By the end of this Session, participants will:

- Be familiar with the main principles and practice as applied to migrants and refugees in situations of rescue at sea to ensure the respect and protection of their rights, particularly the principle of *non refoulement*.
- Have gained an overview of who the main stakeholders are in search and rescue operations involving refugees and asylum-seekers.
- Be familiar with the responsibilities of carriers and their limitations, particularly vis-à-vis the State's own international protection responsibilities.



Session Outline

Methodology	Material required	Duration: (Total: 1h40 mins)
6.1. Analysis of communication exchange	<ul style="list-style-type: none">- Handouts with text of communication between captain and RCC- Copies of <i>“Rescue at sea: A guide to principles and practice as applied to migrants and refugees”</i> (1 copy x participant)	45 minutes for participants' individual work
6.2. Participatory Debriefing	<ul style="list-style-type: none">- Key messages	45 minutes
6.3. Wrap Up	<ul style="list-style-type: none">- Key messages	20 minutes



6.1. Analysis of exchange of communications between captain and ship owner

For the purposes of this exercise, the selected case study does not directly refer to entry officials. This methodology has been chosen to be able to present a very “inappropriate” response by a relevant actor in a rescue operation at sea and give participants the opportunity to criticize it freely and constructively, without going on the defensive. The same results may not have been achieved if the *authors* of the inappropriate response would have been entry officials. For this reason it is important that, at the end of the debriefing, the facilitator asks participants to draw key messages for their own functions.

Instructions to participants:

The facilitator should explain to the participants that this exercise consists of the analysis of a communication exchange between the captain of a cargo ship that comes across a small vessel with 40 passengers in distress in high seas, and the Regional Coordination Centre (RCC).

In his telex, the shipmaster of the cargo ship briefly presents the situation to the RCC and requests the instructions of the latter for dealing with the passengers found in the small vessel.

- As a first step, workshop participants should read the Captain’s telex and underline all the protection concerns that they can identify.
- Secondly, they should draft a reply from the RCC, which provides appropriate advice to the Ship Master.

The facilitator should explain these instructions to the participants and distribute the handouts containing the exchange of communications.

The handouts with the communication exchange are available by means of the [following link](#).

To assist participants in this exercise, they may consult the document with the title ‘[Rescue at sea](#): A guide to principles and practice as applied to migrants and refugees’. The facilitator should distribute one copy per participant.

It could also be noted that in the very specific situation of a maritime rescue or other encounter with a vessel in distress that could occur during a Frontex-coordinated border operation, the EU Council Decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by Frontex (OJL, III/20, 4.5.2010)

In order to introduce some variation, it is recommended that the participants work on this exercise individually and without much time pressure.

Telex from Ship Master:

TO: REGIONAL COORDINATION CENTRE
TELEX

FROM: C/V

VERY URGENT VERY URGENT VERY URGENT

ATTN. EMERGENCY RESPONSE DEPARTMENT.

AA. FOUND FOREIGN MAKESHIFT VESSEL IN DISTRESS. NO FLAG.

BB. 40 PASSENGERS? ALTHOUGH CAPACITY 10. THOSE ONBOARD ALIVE.
UNKNOWN NUMBER DROWNED.
EMERGENCY MEDICAL AID REQUIRED.
DEHYDRATION. HYPOTHERMIA. 4 CHILDREN. ONE NEWBORN

CC. MOTOR AND CASCO FOREIGN VESSEL DAMAGED. UNSEAWORTHY. URGENT ASSISTANCE NEEDED.

DD. CURRENT LOCATION THREE DAYS FROM COUNTRY A. FIVE DAYS TO B.
BOUND COUNTRY B FROM COUNTRY A.

EE. COUNTRY B IS PROBABLY COUNTRY OF DEPARTURE OF PERSONS IN DISTRESS. ALMOST ALL
UNDOCUMENTED. MAYBE SOME ASYLUM SEEKERS?

FF. OUR CREW 15, CERTIFICATE ACCEPTS UP TO 17.

GG. WE CARRY PERISHABLE CARGO 3,000 TONS FRESH TOMATOES.
IF ROTTEN, CLIENT LIKELY TO REJECT MERCHANDISE AS PER CONTRACT.

HH. LIMITED FOOD WATER SUPPLIES FOR ALL.

II. INSTRUCTIONS URGENTLY REQUIRED.

JJ. END

SHIPMASTER



6.2. Participatory debriefing

The debriefing should take the form of a plenary discussion where participants share their views. Again, the facilitator should help the group to figure out the correct reply, which can be found in the Rescue at Sea brochure.

At the end of the discussion, the facilitator should ask the participants which points of this case study could be relevant for an entry official.

Throughout the discussion, the following key messages should be raised. [See Table on next page]

Excerpts of Telex to RCC	Key messages for participants	Legal basis
<p>AA. FOUND FOREIGN MAKESHIFT VESSEL IN DISTRESS. NO FLAG.</p> <p>BB. 40 PASSENGERS CAPACITY 10. THOSE ONBOARD ALIVE. UNKNOWN NUMBER DROWNED. EMERGENCY MEDICAL AID REQUIRED. DEHYDRATION. HYPOTHERMIA. 4 CHILDREN. ONE NEWBORN</p> <p>CC. FOREIGN VESSEL DAMAGED. UNSEAWORTHY. URGENT ASSISTANCE NEEDED.</p> <p>FF. OUR CREW 15, CERTIFICATE ACCEPTS UP TO 17.</p> <p>GG. WE CARRY PERISHABLE CARGO 3,000 TONS FRESH TOMATOES. IF ROTTEN, CLIENT LIKELY TO REJECT MERCHANDISE AS PER CONTRACT.</p> <p>GG. LIMITED FOOD WATER SUPPLIES FOR ALL.</p>	<ol style="list-style-type: none"> The ship has to proceed immediately to the rescue of all persons at distress at sea without regard to circumstances in which they are found. The situation described in the telex shows that they are in danger, which calls an immediate rescue operation. No time may be wasted, even while the ship master is waiting for instructions. Unless the rescue operation may endanger the lives of crew members or the ship itself, the fact that the cargo ship is not intended to carry a large crew is irrelevant at this point. The top priority is to save the lives of the passengers in the skiff. (a) All shipmasters, both for State and merchant vessels, are bound to render assistance, including under the UNCLOS and SOLAS; (b) State vessels may carry additional obligations, including under the SAR Convention; and (c) the nature of border control operations may also trigger specific obligations on the part of State vessels involved in them, including notably where they take steps which could amount to exercising control or jurisdiction over another vessel or its passengers. 	<ul style="list-style-type: none"> - The 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) obliges the “<i>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, (...) to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so.</i>” (Chapter V, Regulation 33 (1)). - The 1982 UN Convention on the Law of the Sea (UNCLOS Convention) provides that “<i>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.</i>”
<p>DD. CURRENT LOCATION THREE DAYS FROM COUNTRY A. FIVE DAYS TO B. BOUND COUNTRY B FROM COUNTRY A.</p> <p>EE. COUNTRY B IS PROBABLY COUNTRY OF DEPARTURE OF PERSONS IN DISTRESS</p>	<ol style="list-style-type: none"> In deciding which country would be most appropriate, it is also important to ensure that the chosen country will not only refrain from persecuting or inflicting harm on the asylum-seekers, but also that they will be granted access to an asylum procedure and that they will not be sent by that country back to the place where they fear persecution. For the same reason, no personal information on the asylum-seekers can be shared with the authorities of their country of origin, or with any others who might convey this information to those authorities. States parties to the SOLAS and SAR Conventions must ensure that people in distress are assisted while minimizing the inconvenience for the assisting ship. Whichever State has jurisdiction over the people is bound by the principle of non-refoulement. Apart from the above concerns related to “refoulement”, it is important to note that country B is still five days away. If there are survivors in need of emergency health care, the ship should contact the closest RCC responsible for the region and identify the closest State. 	<ul style="list-style-type: none"> - The 1951 Convention on the Status of Refugees prohibits that refugees or asylum-seekers be expelled or returned in any way “<i>to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion</i>” (Art. 33 (1)) - According to Resolution MSC¹ 167(78) <i>disembarkation of asylum-seekers and refugees recovered at sea, in territories where their lives and freedom would be threatened, should be avoided.</i> - The same Resolution states that <i>the government responsible for the SAR region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided.</i> - The SOLAS and SAR Conventions² require the Contracting States/Parties to <i>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 ship's intended voyage; and arrange disembarkation as soon as reasonably practicable.</i> - The UNCLOS Convention imposes an obligation on every coastal State Party to “<i>...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 (to) cooperate with neighbouring States for this purpose</i>” (Art. 98 (2)). - The 1979 Convention on Maritime Search and Rescue (SAR Convention) obliges State Parties to “<i>...ensure that assistance be provided to any person in distress at sea...regardless of the nationality or status of such a person or the circumstances in which that person is found</i>” (Chapter 2.1.10) and to “<i>...provide for their initial medical or other needs, and deliver them to a place of safety</i>”.

¹ Resolution MSC 167 (78) adopted in May 2004 by the Maritime Safety Committee together with the SAR and SOLAS amendments.

² As in amended SOLAS Regulation 33 and SAR Chapter 3.1.9.

Excerpts of Telex to RCC	Key messages for participants	Legal basis
<p>EE. ALMOST ALL UNDOCUMENTED MAYBE SOME ASYLUM SEEKERS?</p>	<ol style="list-style-type: none"> 1. The fact of being documented or not is irrelevant at this stage. The Ship Master should try to find a way to bring survivors to safety as soon as possible and all neighbouring States are obliged to provide that place of safety regardless of issues related to migratory status. 2. Documentation is irrelevant in a rescue operation. All decisions should be based on the survivor's well-being and pursue the fastest way to a place of safety. 3. Whether the survivors are ultimately refugees is not relevant at this stage. The absolute priority is to bring them to safety to a place where they do not fear persecution. Once they can formally lodge their asylum claim, they will have the opportunity to undergo a formal asylum procedure. 4. Only States or UNHCR may determine refugee status under international and national legislation. Even within state structures, it has to be done by trained personnel in the national asylum institution. 5. Without prejudice to the above, it should be recalled that the determination of refugee status is an individual procedure. It is not correct to seek out "heads of family". Any family member may have an asylum claim. "Group" discussions should not be held on such sensitive issues. 	<ul style="list-style-type: none"> - The 1979 Convention on Maritime Search and Rescue (SAR Convention) obliges State Parties to "...ensure that assistance be provided to any person in distress at sea...regardless of the nationality or status of such a person or the circumstances in which that person is found" (Chapter 2.1.10) and to "...provide for their initial medical or other needs, and deliver them to a place of safety" - According to Resolution MSC³ 167(78), 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. (para.6.20)

³ Ibis.



6.3. Wrap-up

Towards the end of the discussion, the facilitator should ask participants to point out which aspects of this exercise could be relevant to their own functions as entry officials, as well as which other principles of a more general character could be applied to such situations. Some key messages would be the following:

Key wrap-up messages

- Protection begins before physical entry into the territory of a State. The human rights of all people on the move should be protected at every stage of their journey, regardless of their status or their reasons for moving.
- In operations at high seas, entry officials are sometimes obliged to decide quickly on interception measures and need to be fully conversant with international protection obligations.
- A non-state vessel is not an appropriate place to screen and categorize those rescued, or devise solutions for them. Nor should it be used as a “floating detention centre”.
- Disembarkation procedures should be governed by the maritime regime, not by immigration control objectives.
- The *non-refoulement* principle applies extraterritorially wherever the State exercises its jurisdiction.
- States retain basic protection obligations and responsibilities even when delegating immigration functions to private actors, such as carriers.
- Co-operation with international and non-governmental organizations is essential to ensure an adequate protection and humanitarian response to survivors of rescue operations in high seas. Co-operation requires clarity about mandate, roles and responsibilities of all actors involved in border management and coordination.
- UNHCR can play a facilitating role in such situations, including by
 - providing legal advice in assessing whether an individual would need to be taken elsewhere for protection reasons;
 - bringing together private carriers with the relevant institutions and specialized organizations; or
 - Assisting entry officials in implementing *ad hoc* innovative strategies for protection sensitive entry systems, based on the circumstances of each case.
- Persons not seeking asylum, and those who have no other compelling humanitarian reasons to remain, should be encouraged and assisted to return to their country of origin in humane and safe conditions, unless an alternative legal migration option might be available to them. The International Organization for Migration (IOM) and other organizations may offer support to States in implementing assisted voluntary return programmes.



Background documents and further reading for facilitators:

- UN High Commissioner for Refugees, *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert roundtables convened by UNHCR*. - Background note, November 2007. [↗](#)
- UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007. [↗](#)
- UN High Commissioner for Refugees, *Selected Reference Materials, Rescue at Sea, Maritime Interception and Stowaways*, November 2006. [↗](#)
- UNHCR, *Rescue-at-Sea, Specific Aspects Relating to the Protection of Asylum-Seekers and Refugees*, Expert Roundtable, Lisbon 25 – 26 March 2002. [↗](#)