



IMO Feature



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SOLAS and SAR amendments to strengthen international rescue regime

On 1 July 2006, amendments to two IMO Conventions entered into force. The amendments, concerning the treatment of persons rescued at sea, are particularly timely in view of several recent incidents involving migrants and refugees unwittingly involved in accidents at sea.

For centuries, shipwreck and the subsequent plight of survivors at sea have been a staple of art and literature, often used as an allegorical device to portray mankind's broader predicament, cast adrift on a sea of troubles in search of some kind of eternal salvation. For some unfortunate souls, however, shipwreck, the struggle for immediate survival and the subsequent horrors of waiting for rescue, not knowing whether anyone is aware of their plight and uncertain as to whether they can survive long enough even if they are, become terrifying reality. Even in the modern world, when advances in ship design, construction and technology coupled with highly trained and capable ships' crews mean a passage by sea is safer than ever before, the sea remains capricious and unforgiving – and accidents still happen.

Although the chances of shipwreck are smaller than ever and diminishing progressively, no one who takes to the sea is completely immune from danger. It matters not whether one is a professional seafarer or fisherman at work, a fare-paying passenger travelling for pleasure or business, a yachtsman engaged in one's favourite pastime or a refugee or migrant taking to the sea out of desperation; the sea does not distinguish.

Which is precisely why the age-old tradition among seafarers of going immediately to the aid of anyone in distress at sea became established and continues to this day. For centuries, seafarers have considered it their duty to assist fellow mariners in peril on the high seas. In modern

times, this tradition has become more than just a moral obligation and is now enshrined in international law.

The United Nations Convention on Law of the Sea (UNCLOS), for example, says that every State must require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost and to proceed to the rescue of persons in distress. Furthermore, it requires every coastal State to 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 require, by way of mutual regional arrangements, to co-operate with neighbouring States for this purpose.

In this way, UNCLOS provides the legal framework for action. However, the details of any search and rescue obligations are to be found in various IMO Conventions.

The Search and Rescue (SAR) Convention of 1979 gives a clear definition of the term “Rescue”. It involves not only “an operation to retrieve persons in distress, provide for their initial medical or other needs” but also to “deliver them to a place of safety”. This obligation to initiate action is activated once the responsible authorities of a State Party receive information that any person is, or appears to be, in distress at sea. It further states that, once a State Party has accepted responsibility to provide search and rescue services for a specified area, it is obliged to use search and rescue units and other available facilities for providing assistance to anyone in distress at sea, and that such assistance is to be provided “regardless of the nationality or status of such a person or the circumstances in which that person is found”.

The Safety of Life at Sea Convention (SOLAS) spells out the obligation on ships’ masters to render assistance. It says, “The master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal 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.” Elsewhere, it stipulates that contracting Governments should undertake “to ensure that necessary arrangements are made ... for the rescue of persons in distress at sea around its coasts.”

Furthermore, the Salvage Convention of 1989, while primarily concerned with the salvage of property and the prevention of marine pollution, nevertheless restates the SOLAS obligation on the master to render assistance to any person in danger of being lost at sea. And the Convention

on Facilitation of International Maritime Traffic (FAL Convention) sets forth special facilitation measures for ships calling at ports in order to put ashore sick or injured crew members, passengers or other persons for emergency medical treatment.

Every year, thousands of migrants and asylum seekers undertake perilous journeys at sea in search of safety, refuge from persecution, or simply better economic conditions. IMO's prime concern with respect to the rescue of those involved in incidents during such journeys was that, unless the matter was considered in all its aspects and appropriate action was taken, there might be a negative impact on the integrity of the global search and rescue system which the Organization had put in place.

On 1 July 2006, amendments to the SOLAS and SAR Conventions concerning the treatment of persons rescued at sea (adopted in May 2004) entered into force. These amendments were developed in response to IMO Assembly resolution A.920(22) on *Review of safety measures and procedures for the treatment of persons rescued at sea*, which was adopted by IMO's 22nd Assembly in 2001, following a number of incidents that highlighted concerns surrounding the treatment of persons rescued at sea, in particular undocumented migrants, asylum seekers, refugees and stowaways.

Resolution A.920(22) requested IMO to review all IMO instruments so that any existing gaps, inconsistencies, ambiguities, vagueness or other inadequacies could be identified and any action needed could be taken. The idea was to ensure that co-ordination and co-operation among all parties concerned could be strengthened so that rescued persons are promptly and effectively delivered to a place of safety, regardless of their nationality and status or the circumstances in which they are found. Survivors, including undocumented migrants, asylum seekers and refugees, as well as stowaways, should be treated, while on board, in accordance with relevant international agreements and long-standing humanitarian maritime traditions.

Among the resultant amendments are those to SOLAS chapter V - *Safety of Navigation*, which add a definition of search and rescue services. They also add to and clarify the existing longstanding obligation to provide assistance, adding the words: "This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found."

Moreover, the amendments mandate co-ordination and co-operation between States to assist

the ship's master in delivering persons rescued at sea to a place of safety. This is the first time that such an obligation has been placed on States.

The amendments also add a new regulation concerning a ship master's discretion, which states that "the owner, the charterer, the company operating the ship..., or any other person shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgement, is necessary for safety of life at sea and protection of the marine environment."

Amendments to the SAR Convention add a new paragraph in chapter 2 - *Organization and co-ordination*, relating to the definition of persons in distress; new paragraphs in chapter 3 - *Co-operation between States*, relating to assistance to the master in delivering persons rescued at sea to a place of safety; and a new paragraph in chapter 4 - *Operating procedures*, relating to rescue co-ordination centres initiating the process of identifying the most appropriate places for disembarking persons found in distress at sea.

Related *Guidelines on the treatment of persons rescued at sea*, also adopted in May 2004, provide guidance with regard to humanitarian obligations and obligations under the relevant international law. These confirm that the obligation of the master to render assistance should be complemented by the corresponding obligation of IMO Member Governments to co-ordinate and co-operate in relieving the master of the responsibility to provide follow up care of survivors and to deliver the persons rescued at sea promptly to a place of safety.

In addition, and again following resolution A.920(22), the IMO Secretary-General brought the issue of persons rescued at sea to the attention of a number of competent United Nations specialized agencies and programmes, highlighting the need for a co-ordinated approach among United Nations agencies and soliciting the input of relevant agencies, including UNHCR, the UN Refugee Agency, within the scope of their respective mandates.

An inter-agency effort focusing on State responsibilities for non-rescue issues, such as immigration and asylum, which are beyond the competence of IMO, is an essential complement to IMO's own efforts. IMO is co-operating with UNHCR and other relevant agencies as necessary following rescue incidents involving persons in distress who subsequently are found to be asylum seekers or undocumented migrants.

An excellent example of this inter-agency co-operation occurred in June this year, when a passenger ship, the **Noordam** – rescued 22 persons of various nationalities after their boat had sunk in the Aegean Sea between the Greek island of Samos and the coast of Turkey. When IMO was informed of the rescue by the International Council of Cruise Lines (ICCL), the Organization quickly established lines of communications with UNHCR and the appropriate authorities in Greece, the Netherlands and Turkey to ensure the disembarkation of the survivors at the ship's next port of call, Kuşadası in Turkey.

The timeliness of the entry into force of the new IMO amendments has been emphasised by the rising death toll among migrants and asylum seekers attempting sea passages, often in unseaworthy and overcrowded vessels. The new Convention provisions constitute a significant milestone, of which the entire maritime community can feel justifiably proud, since they strengthen further the centuries-old tradition of mariners throughout the world, of giving succour and salvation to fellow human beings in distress at sea.

In an age when ships' captains are constantly asked to improve efficiency and cut costs, it remains vital that they continue to rescue those found in grave peril on the sea – whoever they are and whatever their reason for being there. The new IMO amendments should help to ensure that any ambiguities surrounding the obligations of all concerned towards those who become involved in an accident at sea are clarified, and that anything which might serve as a disincentive to ships' masters in the fulfilment of their obligations, is removed.

IMO – the International Maritime Organization – is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships.

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