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# Private Ships Faced with Large-Scale Rescue Operations at Sea - A Challenge for the Law of the Sea

by **Kiara Neri**

Associate Professor of International Law  
Université Jean Moulin Lyon 3

**Abstract:** The existence of an obligation to render assistance applicable to the private sector is clear. However, its implementation gives rise to numerous challenges. The present article highlights the difficulties faced by the private ships and the shipping industry when involved in a rescue operation in the context of migration and demonstrates that they are not properly addressed by the international law of the sea, leading to detrimental consequences on the implementation of the obligation to render assistance at sea. The lack of political will of States to accept the disembarkation of migrants in their ports has serious practical, legal, and commercial consequences for the shipmasters and their crews. Besides, most of the time, commercial ships are not equipped nor trained for conducting search and rescue missions making them both significantly expensive and dangerous.

**Key words:** Obligation to render assistance at sea; Merchant ships; Disembarkation; Migration by sea

**Summary:** **1.** Introduction. **2.** The obligations of the private ships under international law of the sea. **2.1.** Relevant Law of the Sea. **2.2.** Specific Instruments and Guidelines. **3.** The challenges faced by the private sector. **3.1.** The lack of preparedness. **3.2.** The lack of coordination for disembarkation. **3.3.** Security, safety and sanitary issues. **4.** Conclusion.

## 1. Introduction

“Ships are now shutting off their radio in strategic locations to avoid being called in to help migrants in the Mediterranean”.<sup>1</sup> These very serious allegations, formulated by Danish shipping following the *Maersk Etienne* saga in 2020, highlight the difficulties and challenges faced by the private sector when rescuing migrants at sea. At the request of the Maltese SAR services, on 4 August 2020, the Danish Flag Oil-tanker

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<sup>1</sup> T. KRISTIANSEN, *Migrant crisis has ships going off radio and rerouting near Malta*, Shippingwatch, 9.9.2020, <https://shippingwatch.com/carriers/Tanker/article12401608.ece>

*Maersk Etienne* rescued 27 people on a small fishing vessel in distress off the coast of Tunisia. The tanker, its crew and the 27 persons rescued were stuck for 38 days at sea with no place to disembark the survivors. Eventually, on 11 September 2020 the *Maersk Etienne* was able to transfer them on the *Mare Jonio*, an NGO operated vessel. They reached Pozzallo (Sicily) on 13 September. This incident dramatically shows the difficulties faced by the private ships and the shipping industry when involved in a rescue operation in the context of migration.<sup>2</sup> The lack of political will of States to accept the disembarkation of migrants in their ports has serious practical, legal, and commercial consequences for the shipmasters their crews. Besides, most of the time, commercial ships are not equipped nor trained for conducting search and rescue missions making them both significantly expensive<sup>3</sup> and dangerous.

Nevertheless, the recourse to private ships in the framework of search and rescue (SAR) operations is essential. As pointed out by the IMO itself, “SAR services throughout the world depend on ships at sea to assist persons in distress. It is impossible to arrange SAR services that depend totally upon dedicated shore-based rescue units to provide timely assistance to all persons in distress at sea.”<sup>4</sup> As a result, the SAR services rely upon private ships to ensure the effectivity of their actions and save human lives.<sup>5</sup> For example, the Agreement between the United States of America and Mexico on Maritime Search and Rescue provides for the use of “other units”: “the United States Coast Guard makes use of available non-United States Coast Guard units in lieu of, or in addition to, United States Coast Guard units, in responding to existing or potential maritime distress situations. Such units may include, but are not limited to, privately- owned Coast Guard Auxiliary resources and *available merchant vessels*. Similarly, the Mexican Navy may use non-Navy resources for search and rescue. The United States Coast Guard and the Mexican Navy undertake, for purposes of this Agreement, to treat such units as falling under the

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<sup>2</sup> See L. IUSSICH and L. MAGLIC, *Search and rescue operations of Immigrants at sea: challenges for the crew of Merchant ships*, in *Journal of Maritime & Transportation Science*, 2019, pp. 45-58; R. L. KILPATRICK, Jr, *Why Evolving European SAR Policies threaten Merchant Shipping*, in *MarSafeLaw Journal – Special Issue on the EU and Maritime Security*, 2019, pp. 39-61; R. L. KILPATRICK Jr and A. SMITH, *The International Legal Obligation to Rescue During Periods of Mass Migration at Sea: Navigating the Sovereign and Commercial Dimensions of a Mediterranean Crisis*, in *University of San Francisco Maritime Law Journal*, 2018, pp. 142-195; R. L. KILPATRICK Jr., *The “Refugee Clause” for Commercial Shipping Contracts: Why Allocation of Rescue Costs is Critical During Periods of Mass Migration at Sea*, in *Georgia Journal of International and Comparative Law*, 2018, pp. 403-446; K. S. GODDARD, *Rescuing Refugees and Migrants at Sea: Some Commercial Shipping Implications*, in *International Journal of Maritime Law*, 2015, pp. 352-367; Robert D. PELTZ, *Adrift at Sea – The duty of Passing Ships to rescue Standed Seafarers*, in *Tulane Maritime Law Journal*, 2014, pp. 363-388; F. G. ATTARD and R. L. KILPATRICK, Jr., *Reflections on the Maersk Etienne Standoff and its Ramifications for the Duty to Render Assistance at Sea*, in *EJIL Talks !*, 2020; F. G. ATTARD, *The Duty of the Shipmaster to Render Assistance at Sea under International Law*, Brill, in Series: Queen Mary Studies in International Law, Volume 41, 2020.

<sup>3</sup> R. L. KILPATRICK Jr., *The “Refugee Clause” for Commercial Shipping Contracts*, cit.

<sup>4</sup> IMO, MSC.167(78) - Guidelines on the Treatment of Persons Rescued at Sea, 5.1.

<sup>5</sup> See also International Convention on Maritime Search and Rescue (SAR), 27 April 1979, entered into force 22 June 1985, Annex, 2.1.9 “Parties having accepted responsibility to provide search and rescue services for a specified area shall use search and rescue units and *other available facilities* for providing assistance to a person who is, or appears to be, in distress at sea.”

terms of this agreement, when they are identified by a United States Coast Guard or Mexican Navy rescue coordination center as acting under the orders and direction of the rescue coordination center on a specific search and rescue mission.”<sup>6</sup>

Therefore, a significant number of private ships are involved in rescue operations every year. It is difficult to have clear reliable figures,<sup>7</sup> but the IMO estimates that a private ship is involved in one in ten SAR operations in the Mediterranean Sea between 2015 and 2017.<sup>8</sup> For instance, in 2016, almost 400 ships were diverted from their routes and around 120 were involved in the rescue of nearly 14 000 people.<sup>9</sup> The participation of the shipping industry and private shipping in general to the global objective of rescuing people in distress at sea is an old and well-implemented practice. International law is providing a well-established legal framework and contains an obligation, for the shipmasters to rescue persons in distress at sea. Most of the time, these operations are conducted without any problems, especially when the persons rescued are fellow seafarers, fishermen or tourists.

However, the legal framework organizing their participation is challenged during massive waves of migration at sea. The situation in the Mediterranean Sea since 2014 is, of course, significant, but it is not unprecedented. It had already been the case in the 1970’s, during the Indochinese crisis when the establishment of communist regimes in Vietnam, Laos and Cambodia led to an important wave of migration by sea to neighboring states. At the time, thousands of migrants were rescued by merchant ships, sometimes with no place to go as the neighboring States refused, one after the other, to allow disembarkation of survivors in their ports.<sup>10</sup> Since then, important instruments were adopted to prevent this situation to happening again, especially the 1979 Convention on search and rescue at sea (SAR Convention). Despite the undeniable enhancement of the legal framework, the issue of finding a place for disembarkation remains and is at the very center of the current challenges faced by the international merchant fleet.<sup>11</sup>

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<sup>6</sup> Agreement between USA and Mexico on Maritime Search and Rescue, August 7, 1989, art. VII.

<sup>7</sup> “In general, it is estimated that different merchant ships are conducting rescue operations alone or in cooperation with public or navy ships in one third of all rescue operations at sea”, L. IUSSICH and L. MAGLIC, *Search and rescue operations of Immigrants at sea*, cit. *supra*, note 2, p. 49.

<sup>8</sup> IMO [website](#) (accessed April 2021).

<sup>9</sup> *Ibid.* See also J.-P. GAUCI, [When private vessels rescue migrants and refugees. A Mapping of Legal Considerations](#), Mirpuri Foundation and British Institute of International and Comparative law, 2020: “Of the 152,343 people rescued at sea in 2015, over 16,000 were rescued by merchant ships and over 20,000 were assisted by NGO rescue boats.”

<sup>10</sup> UNGA, Report of the Secretary-General on Oceans and the Law of the Sea, 7 November 1979, UN Doc A/34/627. See also F. G. ATTARD, *The Duty of the Shipmaster to Render Assistance at Sea under International Law*, cit. p. 6 ; W. C. ROBINSON, *The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck*, in *Journal of Refugee Studies*, 2004, pp. 319–332; B. WAIN, *The Indochina Refugee Crisis*, in *Foreign Affairs*, 1979, pp. 160–180.

<sup>11</sup> “It is argued that the lack of international cooperation in providing a place for disembarkation has serious practical, legal, and commercial ramifications for the shipping industry which may have detrimental repercussions on the duty to render assistance at sea.” F. G. ATTARD and R. L. KILPATRICK, Jr., *Reflections on the Maersk Etienne Standoff and its Ramifications for the Duty to Render Assistance at Sea*, cit.

As a result, since 2015, the shipping industry has been trying to raise the issue in the relevant international *forum* (IMO, ICS, etc.) advocating that the reliance on commercial shipping for SAR operations, especially in the framework of a migration crisis was not sustainable.<sup>12</sup> In the early years of the migration wave, private vessels performed approximately 25% of all maritime rescues in the Mediterranean Sea.<sup>13</sup> In the period from January 2014 to December 2015 in the Mediterranean Sea alone, “over 1,350 merchant vessels diverted from their intended voyage to rescue over 57,000 mixed migrants in danger of being lost at sea.”<sup>14</sup> This proportion decreased in the following years because of the increase of states and NGOs resources and the modification of the migration routes.<sup>15</sup> However, due to the seizure of most of the NGO vessels in European ports, the part of merchant ships is expected to rise again.

It is clear -and undisputed- that private ships have obligations under the law of the sea in the framework of search and rescue operations (2.1). But it is equally clear that the solicitation of the private fleet raises a significant number of challenges (2.2) which are not properly addressed by the coastal States leading to detrimental consequences on the implementation of the obligation to render assistance at sea.

## **2. The Obligations of the Private Ships Under International Law of the Sea**

Under the law of the sea, private ships have the obligation to render assistance (2.1). However, the implementation of this obligation is far from easy. Therefore, the IMO issued instructions, guidelines and manuals in order to assist private ships (2.2).

### **2.1. Relevant Law of the Sea**

*The obligation to render assistance at sea.* Under customary international law and law of the sea conventions,<sup>16</sup> every State has the obligation to require the master of a ship flying its flag whether private or public, to

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<sup>12</sup> S. TREVISANUT, *Search and rescue operations in the Mediterranean: Factor of cooperation or conflict*, in International Journal of Marine and Coastal Law, 2010, pp. 523-542.

<sup>13</sup> Strategic Note, “Irregular Migration via the Central Mediterranean”, European Commission European Political Strategy Center, 22, 2 February 2017, [https://ec.europa.eu/epsc/sites/epsc/files/strategic\\_note\\_issue\\_22\\_0.pdf](https://ec.europa.eu/epsc/sites/epsc/files/strategic_note_issue_22_0.pdf) (accessed April 2021), at 4, cited by S. TREVISANUT, *Search and rescue operations in the Mediterranean*, cit.

<sup>14</sup> IMO, Assembly, Resolution A. 1093(29), Special recognition for merchant vessels and their crew involved in the rescue of mixed migrants at sea.

<sup>15</sup> Strategic Note, “Irregular Migration via the Central Mediterranean”, putting forward that reliance on merchant ships has decreased since 2014 because SAR operations have moved closer to Libya and away from the main commercial routes. Cited by S. TREVISANUT, *Search and rescue operations in the Mediterranean*, cit. See also R. L. KILPATRICK, Jr, *Why Evolving European SAR Policies threaten Merchant shipping*, cit.

<sup>16</sup> Art. 11 of the Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, 23 September 1910: “Every master is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost” ; art. 12 para.1 of the Geneva Convention on the High Seas, 29 April 1958; art. 98 para.1 of the United Nations convention on the Law of the Sea (UNCLOS), 10 December 1982; art. 2.1.10 of the International Convention on Maritime Search and Rescue (SAR), 27 April 1979, entered into force 22 June 1985; International Convention for the Safety of Life at Sea (SOLAS), 1 November 1974, entered into force 25 May 1980, Regulation V33.2.

render assistance at sea to any person in distress or in danger of being lost. This obligation is a longstanding maritime tradition: “[t]he duty to rescue persons in distress at sea has been universally recognized from time immemorial. It is an age-old practice based on moral considerations which predate laws and which no one ever saw fit to challenge.”<sup>17</sup>

Under art. 98 para.1 of UNCLOS:

1. 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;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

Under Regulation V33.1 of the SOLAS Convention: “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.”

Under art. 2.1.10 of the Annex to the SAR Convention: “Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.”

*Content of the obligation.* The obligation to render assistance at sea contains the obligation to rescue, namely “to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety.”<sup>18</sup> It goes beyond the strict recovery of people. Under the SOLAS Convention, the SAR services of the coastal State as well as the Master of the ship in distress, have the right to requisition one or more private ships to render assistance.<sup>19</sup> The *requisition is mandatory* for the shipmaster of the private ship.

Therefore, at the request of the competent SAR services or the Master of the ship in distress, the Master of the private ship has the obligation to *proceed with all possible speed*<sup>20</sup> to the rescue of persons in distress and to inform, if possible and as soon as possible the ship in distress and the competent SAR services.

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<sup>17</sup> K. G. JURAS, E. FRANCKX, and L. B. SOHN, *Cases and Materials on the Law of the Sea*, 2014, Leiden, Brill.

<sup>18</sup> IMO and ICAO *International Aeronautical and Maritime Search and Rescue Manual (IAMSAR Manual)*, November 1999, Volume III, definition of “rescue”, p. xviii.

<sup>19</sup> *International Convention for the Safety of Life at Sea (SOLAS)*, 1 November 1974, Regulation V33.2.

<sup>20</sup> Art. 98 para.1b) UNCLOS and Regulation V33.1 SOLAS Convention.

In addition, the SAR Convention<sup>21</sup> contains a *prohibition of discrimination* in the SAR operations. The obligation to render assistance has to be applied regardless of the nationality of the persons in distress, their status or the circumstances in which the persons are found. Therefore, international law expressly prohibits any distinction between the rescue of migrants and the operations concerning fellow seafarers or tourists.

The obligation to render assistance also contains the obligation for the private retrieving ship to *treat the survivors humanely* while on board, i.e. meet their immediate needs and act consistently with the relevant IMO instruments, international agreements and long-standing humanitarian maritime traditions.<sup>22</sup>

Lastly, the retrieving ship shall *deliver the survivors to a place of safety*.<sup>23</sup> This obligation cannot be fulfilled by the private ships without the cooperation of neighboring coastal States and is very often at the very heart of the difficulties faced by the ships which have retrieved persons in distress at sea.

*Exceptions.* International law provides for two exceptions to the obligation to render assistance. The shipmaster is relieved from its obligation either if the rescue operation could cause serious danger to the ship, the crew or the passengers<sup>24</sup> or if another ship has been requested to proceed with the rescue or has already conducted it.<sup>25</sup> The first exception can be difficult to apply in practice, especially when security issues are at stake (see *infra*). In any case, if the shipmaster of the ship receiving the distress alert is unable to proceed with the assistance or finds it too dangerous for the ship or its crew, “the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress, taking into account the recommendation of the Organization to inform the appropriate search and rescue service accordingly.”<sup>26</sup>

*The recipient of the obligation.* The obligation to render assistance at sea applies, in international law, to the State.<sup>27</sup> As stated by article 98 of UNCLOS, “every State shall require the master of a ship flying its flag” to render assistance. Therefore, States are required to incorporate this obligation in their municipal law,<sup>28</sup>

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<sup>21</sup> Art. 2.1.10 of the Annex. See also IMO, Resolution A.920(22) - Review of Safety Measures and Procedures for the Treatment of Persons Rescued at Sea.

<sup>22</sup> IMO, MSC.167(78) - Guidelines on the Treatment of Persons Rescued at Sea and resolution A.920(22) - Review of Safety Measures and Procedures for the Treatment of Persons Rescued at Sea.

<sup>23</sup> *Ibidem*.

<sup>24</sup> art. 98 para.1 UNCLOS.

<sup>25</sup> Regulation V33.3 and 4 SOLAS Convention.

<sup>26</sup> Regulation V33.1 SOLAS Convention.

<sup>27</sup> Regulation V33.1 of the SOLAS Convention seems to designate the shipmaster as the recipient of the obligation. However the Convention is addressed to States. See J.-P. GAUCI, [When private vessels rescue migrants and refugees. A Mapping of Legal Considerations](#), cit. p. 8: “The obligations above are directed towards the State through whose legislation it becomes binding on the shipmasters of vessels flagged in that jurisdiction, although the wording of both the SOLAS and Salvage Conventions refers directly to the shipmaster.”

<sup>28</sup> For example, art. 489 and 490 Codice italiano della navigazione (Italian Code of navigation). “Art. 489 - Obbligo di assistenza. L’assistenza a nave o ad aeromobile in mare o in acque interne, i quali siano in pericolo di perdersi, è obbligatoria, in quanto possibile senza grave rischio della nave soccorritrice, del suo equipaggio e dei suoi passeggeri, oltre che nel caso previsto nell’articolo 485, quando a bordo della nave o dell’aeromobile siano in pericolo persone.

accompanied with proper sanctions. For example, the *French Transportation Code* punishes the lack of assistance with a fine of 3750 euros and two years of imprisonment.<sup>29</sup> In practice, prosecutions on this ground by the authorities of the flag State are very rare: “[t]here are no records anywhere of shipmasters prosecuted for failing to rescue.”<sup>30</sup> Besides, although victims do have a civil claim, it is almost impossible to exercise it. They would have to “(a) survive the ship’s failure to pick them up (b) identify the ship that could have but did not pick them up and (c) establish jurisdiction over the shipmaster and/or the ship itself in the court of suit”.<sup>31</sup>

The obligation to render assistance at sea also requires flag States to ensure that vessels are equipped to face rescue situations. SAR and SOLAS Conventions list the equipment and resources that have to be available on a vessel.<sup>32</sup>

Even though the recipient of the obligation is the State, it cannot be held automatically responsible for the actions of Masters of vessels flying its flag, including if the Master fails to rescue persons in distress at sea. As recalled by ITLOS, “[t]he liability of the flag State does not arise from a failure of vessels flying its flag to comply with the laws and regulations [...], as the violation of such laws and regulations is not per se attributable to the flag State.”<sup>33</sup> However, the flag State will be held responsible if it fails to comply with its due diligence obligation,<sup>34</sup> namely if it fails to adopt “appropriate rules and measures,”<sup>35</sup> but also if it fails to exercise “a certain level of vigilance in their enforcement and [...] administrative control

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Il comandante di nave, in corso di viaggio o pronta a partire, che abbia notizia del pericolo corso da una nave o da un aeromobile, è tenuto nelle circostanze e nei limiti predetti ad accorrere per prestare assistenza, quando possa ragionevolmente prevedere un utile risultato, a meno che sia a conoscenza che l’assistenza è portata da altri in condizioni più idonee o simili a quelle in cui egli stesso potrebbe portarla.

Art. 490 - Obbligo di salvataggio- Quando la nave o l’aeromobile in pericolo sono del tutto incapaci, rispettivamente, di manovrare e di riprendere il volo, il comandante della nave soccorritrice è tenuto, nelle circostanze e nei limiti indicati dall’articolo precedente, a tentarne il salvataggio, ovvero, se ciò non sia possibile, a tentare il salvataggio delle persone che si trovano a bordo.

È del pari obbligatorio, negli stessi limiti, il tentativo di salvare persone che siano in mare o in acque interne in pericolo di perdersi.”

<sup>29</sup> Art. L.5262-5 Code des transports “Tout capitaine qui, alors qu’il peut le faire sans danger sérieux pour son navire, son équipage ou ses passagers, ne prête pas assistance à toute personne, même ennemie, trouvée en mer en danger de se perdre, est puni de 3 750 € d’amende et de deux ans d’emprisonnement.” For other examples of national legislations, see J.-P. GAUCI, *When private vessels rescue migrants and refugees. A Mapping of Legal Considerations*, cit. pp. 8-9 and F. ATTARD, *The Duty of the Shipmaster to Render Assistance at Sea under International Law*, BRILL, 2020.

<sup>30</sup> K.G. JURAS, E. FRANCKX, and L. B. SOHN, *Cases and Materials on the Law of the Sea*, 2014, Leiden, Brill.

<sup>31</sup> M. DAVIES, *Obligations and Implications for Ships Encountering Persons in Need of Assistance at Sea*, in *Pacific Rim Law and Policy Journal*, 2003, p. 115, cited by J.-P. GAUCI, *When private vessels rescue migrants and refugees. A Mapping of Legal Considerations*, cit. p. 10.

<sup>32</sup> Annexe SAR Convention, (as amended by MSC. 70(69) and SOLAS Convention).

<sup>33</sup> ITLOS, Advisory Opinion, 2 April 2015, Request for an advisory opinion submitted by the sub-regional fisheries commission (SRFC), para 146.

<sup>34</sup> *Ibidem*. “The liability of the flag State arises from its failure to comply with its due diligence obligations concerning [...] activities conducted by vessels flying its flag” para. 146.

<sup>35</sup> ICJ, Judgment, 20 April 2021, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, I.C.J. Reports 2010, p. 14, at p. 79, para. 197.



applicable to public and private operators, such as the monitoring of activities undertaken by such operators.”<sup>36</sup>

As a result, the obligation to render assistance at sea applies to private ships. However, the implementation of this obligation is challenging for the shipmasters and the crews. To address these concerns and difficulties, the IMO produced a significant number of instruments containing guidance for the shipmasters of private ships involved in SAR operations.

## 2.2. Specific Instruments and Guidelines

The IMO issued an important number of resolutions and circulars containing guidelines<sup>37</sup> as well as a Manual<sup>38</sup> to assist shipmasters in the conduct of delicate rescue operations. Following the *Tampa*<sup>39</sup> incident, the IMO Maritime Safety Committee (MSC) adopted amendments to chapter V of the SOLAS

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<sup>36</sup> *Ibidem*.

<sup>37</sup> *IMO Resolutions*: MSC.167(78) - Guidelines on the Treatment of Persons Rescued at Sea; MSC.346(91): Application of SOLAS Regulation III/17-1 to Ships to Which SOLAS Chapter III Does not Apply See Circular MSC.1/Circ.1447; A.919(22) - Acceptance and Implementation of the International Convention on Maritime Search and Rescue, 1979, as Amended; A.920(22) - Review of Safety Measures and Procedures for the Treatment of Persons Rescued at Sea; A.949(23) - Guidelines on Places of Refuge for Ships in Need of Assistance; A.1093(29) - Special recognition for merchant vessels involved in the rescue of mixed migrants at sea.

*IMO Circulars*: COMSAR/Circ.22 - Guidance on Data Fields for SAR Databases; COMSAR/Circ.23 - Guidance for Central Alerting Posts (CAPs); COMSAR/Circ.31 - Guidance for Mass Rescue Operations; MSC/Circ.1073 - Directives for Maritime Rescue Co-ordination Centres (MRCCs) on Acts of Violence Against Ships; MSC/Circ.1079 - Guidelines for Preparing Plans for Co-operation Between SAR Services and Passenger Ships - Revision 1; MSC.1/Circ.1182 - Guide to Recovery Techniques - Revision 1; MSC.1/Circ.1183 - Guidelines on the Provision of External Support as an Aid to Incident Containment for SAR Authorities and Others Concerned; MSC.1/Circ.1186 - Guidelines on the Training of SAR Service Personnel Working in Major Incidents; MSC.1/Circ.1338 - Guidance to SAR Services in Relation to Requesting and Receiving Long-Range Identification and Tracking (LRIT) Information - Revision 1; MSC.1/Circ.1447 - Guidelines for the Development of Plans and Procedures for Recovery of Persons from the Water; MSC.5-Circ.13-Rev.3 - Information on Maritime Assistance Services (MAS).

<sup>38</sup> IMO and ICAO International Aeronautical and Maritime Search and Rescue Manual (IAMSAR Manual), November 1999.

<sup>39</sup> “On 24 August 2001 the *Palapa*, a small Indonesian fishing boat overloaded with 433 mainly Hazara asylum-seekers from Afghanistan, became stranded in international waters about 140 kilometres north of Christmas Island.

The asylum-seekers were rescued by the Norwegian container ship, the *MV Tampa*, under direction by the Australian Maritime Safety Authority. The *Tampa*'s captain, Arne Rinnan, then set course for the Indonesian city of Merak, the closest port with facilities to dock such a large vessel. However, some of those rescued threatened to commit suicide if they were returned to Indonesia. Others entered the ship's bridge, and told Rinnan to take them to Christmas Island. However, the Australian Government refused to allow the *Tampa* to land any of the asylum-seekers. Prime Minister John Howard said, 'I believe it is in Australia's national interest that we draw a line on what is increasingly becoming an uncontrollable number of illegal arrivals in this country.' Many of the asylum-seekers on board the ship were in poor health. Over 48 hours Rinnan made repeated requests to Australian authorities for assistance. These requests were acknowledged but not acted on, so Rinnan decided to enter Australian waters. The ship crossed the Australian maritime boundary on 29 August, shortly before midday. Australian authorities advised Rinnan that he was in 'flagrant breach' of the law, and the Government dispatched 45 Special Air Service (SAS) troops to board the ship and prevent it from sailing any closer to Christmas Island. By 2 September the government had hastily secured agreements with Nauru and New Zealand. The Royal Australian Navy then took the *Tampa*'s asylum-seekers to Nauru from where 131 of them were sent to New Zealand. The remaining 302 were processed on Nauru over coming months” [Australian National Museum](#), (accessed April 2021). See also Jessica E. TAUMAN, *Rescued at Sea, but Nowhere to Go: the Cloudy Legal Waters of the Tampa Crisis*, in *Pacific Rim Law & Policy Journal*, 2002 p. 461.

Convention and to chapters 2, 3 and 4 of the Annex to the SAR Convention. At the same time, the MSC adopted new guidelines on the treatment of the persons rescued at sea, especially Resolution MSC.167(78).<sup>40</sup> This Resolution provides for specific guidelines for shipmasters of retrieving ships. The first set of guidelines<sup>41</sup> is merely general and specifies that the shipmaster has to understand its obligation under international law (see above). The second set of guidelines is linked to the IMASAR Manual and asks for its correct implementation<sup>42</sup> and urges for the use of reporting systems established for the purpose of facilitating SAR operations.<sup>43</sup> Finally, the third set of guidelines are specifically dedicated to the coordination with the SAR services in charge of the location where the survivors were found. The Resolution MSC.167(78) asks the shipmasters to keep the competent SAR services informed of their actions in relation to the rescue<sup>44</sup> and to comply with the instructions of the State in charge of the SAR region where the survivors were recovered.<sup>45</sup> However, two difficulties may arise and are addressed by the guidelines: first, the situation where the area is not covered by a designated SAR service or where they are not reachable. In that case, the IMO recommends the shipmaster to contact another RCC or any other Government that may be able to assist.<sup>46</sup> Second, and this is a crucial point, the shipmaster should “seek to ensure that survivors are not disembarked to a place where their safety would be further jeopardized.”<sup>47</sup> The Resolution is, however, silent on how to articulate the obligation to obey the instructions of the State responsible for the SAR zone and the prohibition to disembark the survivors in an “unsafe” place. These conflicting obligations have generated difficult situations in the past, especially for NGOs when asked to disembark survivors in Libya.<sup>48</sup>

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<sup>40</sup> MSC.167(78) - Guidelines on the Treatment of Persons Rescued at Sea; MSC.346(91), 20 May 2004.

<sup>41</sup> Points 5.1.1 and 5.1.2 of Resolution MSC.167(78).

<sup>42</sup> *Ibid.*, point 5.1.3.

<sup>43</sup> *Ibid.*, point 5.2.

<sup>44</sup> *Ibid.*, point 5.1.5 “keep the RCC informed about conditions, assistance needed, and actions taken or planned for the survivors.”

<sup>45</sup> *Ibid.*, point 5.1.7 “comply with any relevant requirements of the Government responsible for the SAR region where the survivors were recovered, or of another responding coastal State, and seek additional guidance from those authorities where difficulties arise in complying with such requirements.”

<sup>46</sup> *Ibid.*, point 5.1.4. “in a case where the RCC responsible for the area where the survivors are recovered cannot be contacted, attempt to contact another RCC, or if that is impractical, any other Government authority that may be able to assist, while recognizing that responsibility still rests with the RCC of the area in which the survivors are recovered.”

<sup>47</sup> *Ibid.*, point 5.1.6.

<sup>48</sup> See the decision of the Italian Tribunal of Ragusa, 16 April 2018, RG n. 1182/2018: the rescuing NGO (Open Arms) is not only responsible for the search and rescue operations but has a say in the assessment of the safety of disembarkation in line with the principle of non-refoulement. The Tribunal ordered the immediate release of the Open Arms ship considering that it conducted a reasonable assessment of the situation given that Libya could not be considered a place of safety and that Italy had already communicated an available one. For a short comment, see V. PASSALACQUA, *The ‘Open Arms’ case: Reconciling the notion of ‘place of safety’ with the human rights of migrants*, in Ejl Talks! May 21, 2018 or C. FOCARELLI, *International Law*, Edward Elgar Publishing 2019, 138.6. See also Amnesty International [website](#): M. DE BELLIS, *How Italy’s seizure of an NGO ship exposes Europe’s dangerous policy* (accessed April 2021).

Besides, the IAMSAR Manual, was adopted in 1999 by the IMO, to replace both the 1971 Merchant Ship Search and Rescue Manual (MERSAR) and the 1978 Search and Rescue Manual (IMOSAR). The 3-volumes Manual is a common aviation and maritime approach to organizing and providing search and rescue (SAR) services. The purpose of the Manual is to provide guidance to the master of any ship that might be called upon to participate in search and rescue operations, whether public or private. Although applicable to private ships, the Manual is mainly oriented towards SAR units. The volumes I and II are addressed to States and are not really relevant for private ships. They concern the organization and management of SAR services (SAR managers and policy makers) and the coordination of SAR operations by the rescue coordination centers (RCC). However, volume III (Mobile Facilities - SAR units, civil aircraft and vessels) is relevant for private ships participating in SAR missions. It contains relevant guidelines for private ships to prepare for a SAR mission, but also on-scene coordination, on board organization, and security and safety requirements. The Manual also calls upon private ships to adopt a reporting system and to send regular reports to the authority operating a ship reporting system for SAR and other safety-related services. These reporting systems, such as *Amver* are essential to identify vessels in the vicinity of a distress situation, to contact the vessels, to reduce the response time and avoid calling numerous ships for help, but also to get information about the vessel such as the presence of a doctor on board.<sup>49</sup>

The procedures for responding to emergencies, including rescue operations at sea can also be found in the International Safety Management (ISM) Code<sup>50</sup>, the International Ship and Port Facility (ISPS) Code<sup>51</sup>, the International Medical Guide for Ships<sup>52</sup> and the Guide to Ship Sanitation.<sup>53</sup> These instruments require the Company and the ship to have a specific plan in case of an emergency: the company's Safety Management System (SMS) and the Ship Security Plan (SSP).

Taken together, these IMO instruments, give practical instructions and recall the legal and operational framework applicable SAR operations at sea. However, the number of instruments, their complexity, and their lack of relevance to large-scale rescue missions have led the international shipping industry to issue its own guidelines, both trying to identify, in all these instruments, the principles applicable in the specific situation of a rescue of a large number of migrants and to take into account and address the issues and

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<sup>49</sup> IAMSAR Manual, Volume III Section 1, 1-3 and 1-4.

<sup>50</sup> The International Safety Management (ISM) Code was adopted by IMO's MSC in 1993 by resolution A.741(18) and entered into force, on 1 July 1998.

<sup>51</sup> The International Ship and Port Facility (ISPS) Code is part of the SOLAS Convention (chapter XI-2). It entered into force on 1 July 2004.

<sup>52</sup> [The Guide to Ship Sanitation](#) was published by the World Health Organization in 1967 (accessed April 2021- Third edition).

<sup>53</sup> *Ibid.*

challenges faced by the shipping industry.<sup>54</sup> The ICS *Large-Scale Rescue Operations at Sea Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons* gives guidance on how to best prepare the ship and the crew for a possible large-scale rescue operation (plans and procedures, training, life-saving equipment, food and water supplies, etc.). It also contains guidelines on how to conduct the rescue operation itself (answering the distress call, assessing and monitoring the situation, embarkation of rescued persons) and on how to manage the survivors once onboard (security of the crew and the ship, accommodation, infectious diseases, sanitation and hygiene, medical care). Lastly, the ICS guidance addresses the issue of disembarkation of survivors, recalling that the responsibility of finding a safe location lies with the authorities in charge of the SAR zone in which the rescue took place. But the ICS guidance goes beyond legal issues and gives practical advice on the management of personal effects, post disembarkation actions (search for stowaways, effective cleaning) or crew welfare considerations (stress, fatigue, psychological impact, etc.).

Despite all these instruments and guidelines, conducting a SAR operation remains very challenging for a private vessel.

### **3. The Challenges Faced by the Private Sector**

The main – but not only- challenges faced by the shipmaster of a private vessel and its crew when conducting a large-scale rescue operation are the lack of preparedness (3.1), the lack of coordination for disembarkation (3.2), and the management of security, safety and sanitary risks (3.3). Neither of which is properly addressed.

#### **3.1. The lack of preparedness**

The first challenge faced by private ships is the lack of preparedness, including the lack of training of the crew, but also the lack of preparedness of the ship itself in terms of equipment and procedures.

*Lack of training.* The IMSAR Manual recalls the need for Masters and officers of merchant ships to be properly trained.<sup>55</sup> The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STWC)<sup>56</sup> states that every seafarer must receive basic safety training (Regulation A-VI/1, chapter 2 of STWC), including communications; control of fatigue; teamwork; and

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<sup>54</sup> ICS, *Large Scale Rescue Operations at Sea Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons*, second Edition 2015, supported by European Community Shipowners' Associations; Asian Shipowners' Forum ; International Transport Workers' Federation ; European Transport Workers' Federation ; Cruise Lines International Association ; International Association of Dry Cargo Owners ; International Association of Independent Tanker Owners ; International Parcel Tankers Association ; International Ship Managers' Association.

<sup>55</sup> IAMSAR Manual, Volume III, 2.63.

<sup>56</sup> International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STWC), 7 July 1978, entered into force 28 April 1984.

marine environmental issues. The basic knowledge on how to conduct a rescue operation is thus not included in the requirements for the crew. As a result, very few crew members<sup>57</sup> -if any- are trained for this particular mission. Section A-VI/2 of the Convention is dedicated to mandatory minimum requirements for the issue of certificates of proficiency in survival craft, rescue boats and fast rescue boats. It is mainly dedicated to the security of the ship itself and the ways of escaping it if needed, however, being trained with towing procedures using a rescue boat is essential to conduct a large-scale rescue operation.<sup>58</sup> In the framework of the STWC Convention, the model courses 1.23 and 1.24 do recommend one hour of training, which is generally not performed.<sup>59</sup>

*Lack of equipment and precise security procedures on board the ship.* The applicable procedures are supposed to be planned by the Ships Security plans.<sup>60</sup> However, a large number of small private ships do not have such a Plan on board. Besides, the equipment of the ship, regardless of its size is often not sufficient to conduct a large scale SAR operation, especially in terms of security, sanitation, food and water supplies. The International Chamber of Shipping's guide on *Large-Scale rescue operation at sea* can provide for practical solutions on these particular issues.

### **3.2. The lack of coordination for disembarkation**

“The obligation of the master to render assistance should complement 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 retrieved at sea to a place of safety.”<sup>61</sup> Resolution MSC.167(78) could not be clearer: in order for the SAR system to work properly and fulfill its mission of saving human lives at sea, both shipmasters and States need to comply with their obligations, especially in terms of disembarkation.

The SAR Convention is based on a network of search and rescue regions, for which each Party is responsible (SAR zones). In terms of disembarkation, the Convention obliges the State responsible for the SAR zone to find a safe location as soon as reasonably possible. Indeed, the 2004 amendments provide: “The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the Organization. In these

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<sup>57</sup> Shipmasters, Security officers, and every person designated to provide medical first aid on board a vessel are supposed to receive appropriate training (STWC Convention).

<sup>58</sup> See *infra*.

<sup>59</sup> L. IUSSICH and L. MAGLIC, *Search and rescue operations of Immigrants at sea*, cit., p. 55.

<sup>60</sup> Such a Plan is mandatory for the ships in international trade according to the ISPS Code.

<sup>61</sup> Resolution MSC.167(78), cit.

cases, the relevant Parties shall arrange for such disembarkation to be effected as soon as reasonably practicable.”<sup>62</sup>

In addition, the Convention aims at ensuring that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the vessel’s initial route. This provision is extremely important if a merchant ship is involved in the rescue mission.

As a result, the State responsible for the SAR zone has the primary responsibility to find a safe location, with minimum further deviation for the merchant ship.<sup>63</sup> However, the SAR Convention does not require that this location be in that State’s own territory or port.<sup>64</sup> Besides, this obligation does not exist either for the flag State or for the rescuing ships. In 2009 the IMO Facilitation Committee promulgated a document entitled ‘Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea’ providing further guidance on the issue. It recommends: “If disembarkation from the rescuing ship cannot be arranged swiftly elsewhere, the Government responsible for the SAR area should accept the disembarkation of the persons rescued in accordance with immigration laws and regulations of each Member State into a place of safety under its control in which the persons rescued can have timely access to post rescue support.”<sup>65</sup>

This is only a recommendation. Therefore, situations in which people rescued at sea have had to wait off the coasts of Australia, Italy or Malta for several days or weeks before being told where to disembark is certainly a violation of the obligation to provide a safe location “as soon as reasonably possible” but not a violation of the “missing” obligation to grant access to rescued persons in a State’s ports.<sup>66</sup>

According to Resolution MSC.167(78), one of the priorities is “[r]elieving masters of obligations after assisting persons.”<sup>67</sup> Indeed, Flag and coastal States “should have effective arrangements in place for timely assistance to shipmasters in relieving them of persons recovered by ships at sea”.<sup>68</sup>

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<sup>62</sup> Resolution MSC.155(78), Amendments to the international convention on maritime search and rescue, 1979, 20 May 2004. Malta has not accepted these Amendments.

<sup>63</sup> See for instance K. GOMBEER and M. FINK, *Non-Governmental Organisations and Search and Rescue at Sea*, in *Marsafelaw Journal*, 4/2018, p. 1-25; J. VAN BERCKEL SMIT, *Taking Onboard the Issue of Disembarkation. The Mediterranean Need for Responsibility-Sharing after the Malta Declaration*, in *European Journal of Migration and Law*, 2020, pp. 492-517 or K. NERI, *The missing obligation to disembark persons rescued at sea*, *Italian Yearbook of International Law*, 2018, pp. 47-62.

<sup>64</sup> *Contra*, see: P. TURRINI, *Between a ‘Go Back!’ and a Hard (to Find) Place (of Safety): On the Rules and Standards of Disembarkation of People Rescued at Sea*, *Italian Yearbook of International Law*, 2019, pp. 29–46.

<sup>65</sup> IMO, Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea FAL.3/Circ.194 (22 January 2009).

<sup>66</sup> K. NERI, *The missing obligation to disembark persons rescued at sea*, cit.

<sup>67</sup> Resolution MSC.167(78), cit., Priorities, point 3.1.

<sup>68</sup> *Ibidem*.

The lack of coordination between the Mediterranean States has severe consequences on both the private ship participating to a SAR mission and the survivors, as highlighted dramatically by the *Cap Anamur*,<sup>69</sup> *Pinar*<sup>70</sup> or *Maersk Etienne* incidents. In the *Pinar* case for instance, a Turkish merchant vessel rescued 153 persons off the Coast of Lampedusa, in the Maltese SAR zone. Both Italy and Malta then denied the *Pinar* access to their territorial waters and their ports. The survivors were finally disembarked in Porto Empedocle, in Sicily, but this incident (not the first nor the last) reveals the consequences of a lack of coordination among Mediterranean States.<sup>71</sup>

European States are still unable to adopt a clear common strategy for disembarkation.<sup>72</sup> Yet, it is precisely to find a solution to disembarkation issues that the SAR Convention itself and its 2004 amendments were adopted, following respectively the South East Asia crisis and the *Tampa* incident off the coast of Australia. As a reminder, when the neighboring countries of former Indochina decided, in the late 1970's to close their frontiers and not accept disembarkation of migrants anymore, merchant ships consequently failed to perform rescue operations leading to a massive humanitarian crisis.<sup>73</sup> In the 1979 the UNHCR was already raising the issue of disembarkation in the first port of call or resettlement guarantees by flag States.<sup>74</sup> The plan of action suggested by the Secretary General included the following calls to both private ships and governments:

“(q) Many thousands of boat cases have perished at sea. Those in distress *must be rescued* before they die and *masters of vessels in the area must scrupulously observe the law of the sea in this regard*. [...]

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<sup>69</sup> S. TREVISANUT, *Le Cap Anamur. Profils de droit international et de droit de la mer*, Annuaire du Droit de la Mer, 2004, pp. 49-64.

<sup>70</sup> See *Pinar. Alta tensione con Malta, Larmatore: "Situazione tragica"*, La Repubblica, 18 April 2009; *I migranti del Pinar in Sicilia*, in Corriere della Sera, 19 April 2009; *Maroni Claims Malta Sent 40,000 Migrants to Italy*, Times of Malta, 21 April 2009.

<sup>71</sup> S. TREVISANUT, *Search and rescue operations in the Mediterranean*, cit.: “Leaving aside issues of immigration, the *Pinar* incident demonstrated the lack of coordination among Mediterranean States with regard to the implementation of their duty to render assistance at sea”. See also R. L. KILPATRICK *Why Evolving European SAR Policies threaten Merchant Shipping*, cit., p. 53: “On the one hand, they are morally and legally obliged to respond to requests for assistance at sea and to coordinate with state RCCs to deliver survivors to a place of safety. If they fail to comply with these obligations, people in need of assistance could die, and the shipmaster could also face criminal prosecution. But on the other hand, if merchant ship operators do honour their legal obligations, they depend on states to quickly determine a safe place for disembarkation. If states abrogate these responsibilities, private shipmasters cannot fulfil their own duties without putting lives at risk and suffering substantial economic harm.”

<sup>72</sup> The COVID-19 crisis has also been used as a pretext for further delay to disembarkation. As Gauci noted, “[i]t must be highlighted however that State emergency measures to limit the pace of contagion cannot derogate the obligation of non-refoulement” J.-P. GAUCI, *When private vessels rescue migrants and refugees. A Mapping of Legal Considerations*, cit. p. 25.

<sup>73</sup> UN General Assembly, Meeting on Refugees and Displaced Persons in South-East Asia, convened by the Secretary-General of the United Nations at Geneva, on 20 and 21 July 1979, and subsequent developments: Report of the Secretary-General, 7 November 1979, A/34/627 and *Opening Statement by Mr. Poul Hartling, United Nations High Commissioner for Refugees, at the Consultative Meeting with Interested Governments on Refugees and Displaced Persons in South-East Asia, Geneva, 11 December 1978*,

<sup>74</sup> Report of the Secretary-General, 7 November 1979, A/34/627 para. 35.

(r) Within the framework of the over-all solutions envisaged, *Governments of the first port of call must allow the disembarkation* of all those rescued. [...] <sup>75</sup>

More than 40 years later, and despite the adoption of the SAR Convention and its amendments, the issue is still unresolved.

### 3.3. Security, safety and sanitary issues

A modern merchant vessel is unsuited to perform SAR operation in general, especially when they involve a large number of persons at the same time, significantly more numerous than the crew. The following challenges are not legal ones, but more practical. Nevertheless, they are essential. For instance, in October 2016, the *Okyroe*, an oil-tanker with a crew of 21 seafarers rescued over 1500 people from rubber dinghies. <sup>76</sup> They offer inadequate shelter, medical care or sanitation, and have limited food and water supplies on board.

But beyond living conditions onboard, a SAR operation is also a great challenge for the crew in terms of security and safety.

*The risks linked to the recovery.* The recovery operation in itself is very dangerous, both because of technical issues and because of human risks. For instance, in April 2015 a Portuguese-flagged container vessel, the *M/V King Jacob* responded to a distress call of a migrant vessel carrying more than 800 people. During the rescue operation, the migrant vessel collided with the *M/V King Jacob* causing the death of hundreds of people. <sup>77</sup>

Two main methods can be used for the recovery, both delicate. The *ship-to-ship* method: berthing the vessel in distress alongside the merchant ship and use the ships gangway. This method is only possible with good weather conditions. If the first method is not practicable, the crew will use the *rescue boat* method: either use a rescue boat to tow the distress vessel (or life raft) or transfer people in smaller groups to the rescue boat. Both techniques imply serious risks and are delicate, but the use of a rescue boat is especially tricky because it is -in general- significantly smaller and lighter than the vessel in distress and therefore vulnerable in case of panic reactions of desperate people jumping to the rescue boat.

*The risks onboard.* Security issues can also arise if criminals are present among the persons in distress. This possibility is often put forward by the shipping industry <sup>78</sup> or some scholars. <sup>79</sup> However, it is so seldom

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<sup>75</sup> *Ibid.*, para. 37q) and r)

<sup>76</sup> IMO [Media Center](#): (accessed April 2021).

<sup>77</sup> M. MESCO, *How Migrants' Ordeal Turned Into Tragedy at Sea*, in *The Wall Street Journal*, 21 April 2015 (Accessed April 2021).

<sup>78</sup> A. ADAMOPOULOS, *Shipowners Worried for Crew After Vessel Hijacked by Migrants*, in *Lloyd's List*, 28 March 2019 (Accessed April 2021); L. TONDO and J. RANKIN, *Rescued Migrants Hijack Merchant Ship Off Libya*, in *The Guardian*, 27 March 2019 (Accessed April 2021).

<sup>79</sup> L. IUSSICH and L. MAGLIC, *Search and rescue operations of Immigrants at sea*, cit., p. 55.



that the practice is close to zero. To address this risk, some are advocating for the information of the persons before boarding the ship that weapons or drugs are not allowed onboard, for a rough personal search when entering the ship and for a systematic use of hand metal detectors to search the survivors for weapons.<sup>80</sup>

In practice, security issues and acts of violence arise from the despair of the survivors, for instance when no place for disembarkation can be found quickly or when they realize that they are being returned to the country of departure. For instance, when the survivors on board the *Elbiblu 1* realized that the vessel which had just rescued them was heading back to Libya, they used violence to force the shipmaster and the crew to change their route and to take them to Malta. On 28 March 2019, the Maltese forces stopped the vessel before entering the Maltese waters and took control of the ship. Three young men were arrested and are prosecuted in Malta. Similarly, in July 2018, it was reported that the migrants rescued by an Italian-flagged platform supply vessel, the *Vos Thalassa*, threatened to kill the crew when they discovered that they were being returned to Libya.<sup>81</sup> The Italian coast guard intervened and transferred the migrants onto a coast guard vessel at sea.<sup>82</sup>

*Sanitary issues.* The Master of the rescuing vessel also need to take into consideration the risks for the crew in terms of health, both physiological and psychological. The more direct risk arises when one of the survivors suffers from an infectious disease. The Covid-19 crisis has aggravated the situation. After a year of pandemic, the International Maritime rescue Federation issued guidelines<sup>83</sup> on how to proceed with a rescue operation in this context. The key priorities are to minimize the risk of infection for the crew, while continue to provide effective SAR and lifesaving services. The Guidelines are intended to SAR services and not private ships, but they contain relevant general principles to be applied in any SAR operation during a pandemic. For instance, drafting a response plan for suspected infection containing the identification of a room/area where the person can be safely isolated and monitored, the requirement to deep clean any areas which the infected person has been in, and indications on who should be contacted for assistance and how to call for help.

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<sup>80</sup> *Ibidem*, p. 55.

<sup>81</sup> T. KINGTON and D. CHARTER, *Mutinous migrants threaten to kill Italian crew after rescue*, in *The Times*, 11 July 2018 (accessed April 2021). Two men were prosecuted for violent and intimidating actions against the crew of the *Vos Thalassa*. However, the Tribunal of Trapani acquitted both defendants on the grounds of self-defence (well-founded fear of return to Libya). Tribunal of Trapani, Office of the Judge for Preliminary Investigations (Piero Grillo), 23-05-2019. [To read a summary of the decision.](#)

<sup>82</sup> Similarly, in November 2018, 77 survivors refused to leave a Panamanian-flagged cargo ship, the *Nivin*, when arriving in Misrata (Libya) after being rescued off the Libyan coast: “Rescued migrants refuse to leave ship taking them to Libya”, BBC, 18 November 2018 (accessed April 2021).

<sup>83</sup> International Maritime Rescue Federation, [Pandemic Response Guidance for Maritime Search and Rescue Organisations](#) February 2021 (accessed April 2021).

#### 4. Conclusion

The difficulties faced by the private ships and the shipping industry when involved in a rescue operation in the context of migration are plentiful and not properly addressed by the international law of the sea, leading to detrimental consequences on the implementation of the obligation to render assistance at sea. European policies on migration by sea, especially the lack of a clear rule regarding disembarkation are putting the shipping industry in an inextricable situation and threatening the life-saving mission of SAR. It is doubtless that most of the shipmasters continue to take their part in the implementation of the obligation to render assistance, sometimes even with bravery.<sup>84</sup> However, NGOs and seafarers have also pointed out a rare but growing tendency for merchant vessels to avoid getting involved in rescues altogether.<sup>85</sup>

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<sup>84</sup> IMO, Assembly, resolution A.1093(29) Special recognition for merchant vessels and their crew involved in the rescue of mixed migrants at sea. the IMO Assembly delivers certificates for the bravery, professionalism and compassion displayed by crews of merchant vessels in the rescue of migrants at sea. For instance, the IMO awarded the Captain and the crew of the *Okyroe*, who rescued 1,536 people from rubber dinghies in 2016.

<sup>85</sup> R. L. KILPATRICK, Jr, *Why Evolving European SAR Policies threaten Merchant Shipping*, cit. See also: F. D'EMILIO, *Aid Groups: Ships Not Willing to Save Mediterranean Migrants*, in Associated Press, 12 August 2018 (accessed April 2021); T. KINGTON, *Captains Hide Ship Locations in Med to Avoid Migrant Rescues*, in The Times, 1 August 2018 (accessed April 2021).