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Migrants at Sea



PEOPLE

Migrants at Sea

CONTENTS

Introduction.....	01
A Growing Problem.....	02
Main Areas.....	02
Mediterranean.....	02
Horn of Africa.....	02
Southeast Asia.....	03
Caribbean.....	03
No Let Up.....	04
Legal Position.....	04
P&I Club Cover.....	05
Be Prepared!.....	05
Rescue - Practices & Procedures.....	06
Further Information & Developments.....	07

Introduction

Wars, famine, poverty, political and religious persecution, have resulted in many thousands of people travelling in unseaworthy boats across large distances in an effort to find better conditions of living. The boats in which these migrants travel are often not properly manned, equipped or licensed to carry passengers on international voyages. The journeys undertaken sometimes take several days in very difficult and, regularly, dangerous conditions. Many suffer great hardship enroute. Many die.



Refugees and migrants risk their lives travelling from Africa to Europe in over-crowded and unseaworthy vessels to escape persecution and violence, or simply to find a better life. Copyright © UNHCR / A DiLoreto, July 2007

On 4 March 2015, Volker Turk, Assistant High Commissioner for Protection at the United Nations High Commissioner for Refugees (UNHCR) addressed a high-level meeting at the IMO in London. The purpose of the meeting was to discuss unsafe mixed migration by sea. The term 'mixed migration' originated in the 1990s, to draw a clearer line between refugees and asylum-seekers that are protected by International Refugee Law and migrants who are not. Migrants, refugees and asylum seekers increasingly make use of the same routes and means of transport. 'Mixed migration' is therefore defined as complex population movements including all three groups, or

alternatively, different groups of people travelling in an irregular manner along similar routes, using similar means of travel, but for different reasons.

Mr. Turk began his address as follows:

"When we talk about 'unsafe mixed migration by sea' we are talking about many thousands of people, who driven by their desperate circumstances, are thrust into one of the most harrowing experiences one can imagine. For a great many of those people, the dangers, wretched conditions, trauma, exploitation and abuse they encounter at sea are only one part of a long, bewildering journey that begins in the midst of armed conflict, persecution, poverty and despair, and whose difficulties continue long after they disembark in new shores".



Migrants cling desperately to their upturned boat.

This briefing will consider the issue of migrants at sea; from the perspective of the master of a ship faced with dealing with large numbers of migrants rescued from the water or from sinking boats. We will look at:

Nature of the problem

- Geographical locations
- Numbers of people
- Becoming a crisis

Law

- IMO resolutions
- Master's obligations
- Coastal state's obligations

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Migrants at Sea (cont.)

Cover

- P&I rules
- Status of migrants on board & disembarkation
- Deviation

Practicalities

- Planning & Training
- Rescue
- Health, safety, accommodation, security

A Growing Problem

On 10 December 2014, the UNHCR warned that the international community was losing focus on saving lives, amid confusion among coastal nations and regional blocs over how to respond to the growing number of people making risky sea journeys in search of asylum or migration. The warning was issued towards the end of a year when the number of sea-crossings made by refugees and asylum seekers reached record levels. The clandestine nature of these sea crossings makes reliable comparisons with previous years difficult, but estimates suggest that more than 348,000 people risked such journeys worldwide between January and December 2014.



An Italian Navy vessel rescuing a boat full of refugees and migrants in the Mediterranean, June 2014.
CUNHCR/A. D'Amato

Main Areas

The statistics provided in the following sections are all provided by the UNHCR. The figures, particularly for the numbers of dead and missing are estimates. Tragically, the real figures may be many times higher than those estimates. The arrows on the following maps give approximate indications of the main flows of migrants.

Mediterranean



The Mediterranean currently experiences the largest number of migrants travelling by sea. Conflicts in the southern (particularly Libya and Eritrea) and eastern (Syria and Iraq) parts of the region meant that around 219,000 people crossed the Mediterranean in 2014. This is almost three times the previous known high of about 70,000 in 2011. Approximately 3,500 of those people died or went missing at sea in 2014. There were approximately 600 who died in 2013.



A Syrian girl sleeps on her father's arm on board the Italian Navy ship 'San Giorgio', June 2014
CUNHCR/A. D'Amato

Horn of Africa



Migrants at Sea (cont.)

In 2014, around 91,600 persons crossed the Gulf of Aden and Red Sea from Ethiopia and Somalia to Yemen and beyond, with 250 reported to be dead or missing, which is more than the combined total for the previous three years. The year 2015, with increasing conflict in Yemen, saw a reversal of the flow of migrants and refugees - with people attempting to escape from the fighting in Yemen to Djibouti, Puntland and Somalia.

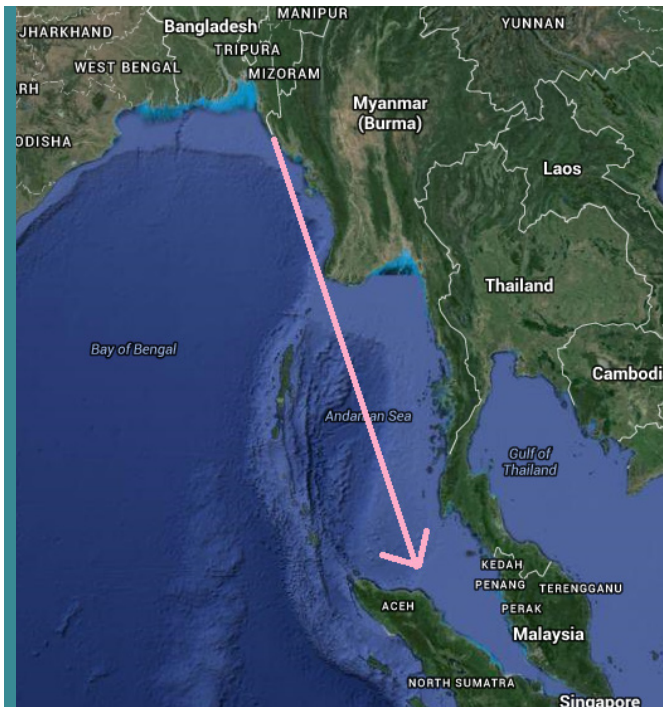


Yemeni soldiers guard a group of Ethiopian refugees beside the tiny fishing boat that brought them across the Gulf of Aden from Somalia.
Copyright © UNHCR/A Fazzina, 2007



162 Vietnamese refugees land on the Malaysian coast from their small boat which sank just a few metres from the shore.
Copyright © UNHCR/K Gaugler

Southeast Asia



Some 63,000 people migrated by sea in 2014 in south east Asia, overwhelmingly in the Bay of Bengal - from Bangladesh or Myanmar and heading to Thailand, Malaysia or Indonesia. An estimated 750 people died in the attempt.

Caribbean



Nationals of Colombia, Cuba, the Dominican Republic and Haiti comprise the majority of migrations by sea across the Caribbean. Apart from the USA, many of the migrants head for the Bahamas, Jamaica, the Cayman Islands and Turks and Caicos Islands. More than 5,000 migrants and refugees crossed the Caribbean in 2014, with over 70 reported deaths.



Turks & Caicos residents assist passengers on a sloop overcrowded with 139 people that had just arrived from Haiti.
UNHCR Photo

Migrants at Sea (cont.)

No Let Up

The situation in the Caribbean remains a cause for concern.

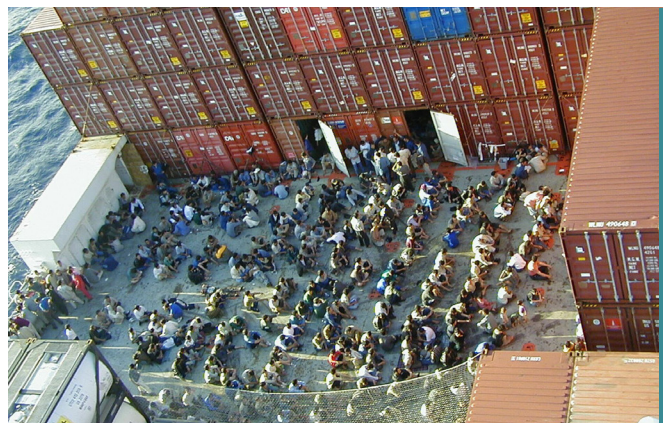
In the Bay of Bengal the migrant crisis has escalated, with Rohingya Muslims fleeing persecution in Myanmar and Bangladeshis trying to escape poverty at home. UNHCR estimates 88,000 people have made the dangerous voyage by sea since 2014, with 25,000 crossing in the first quarter of 2015 alone. Nearly 1,000 are estimated to have died at sea, with an equal number dying due to mistreatment and privation at the hands of traffickers and abusive smugglers. Also, the war in Yemen has given rise to an escalation in the exodus from that country. In the last week in March and first three weeks in April 2015, an estimated 10,000 refugees had crossed by boat from Yemen to Djibouti, Somalia and Puntland.

However, it is in the Mediterranean, most particularly from Libya to Sicily and from Turkey and Syria to the Greek islands in the Eastern Aegean that has seen the most dramatic increases. UNHCR estimates that, as of end May, 46,500 people had landed in Italy and 42,000 in Greece in 2015. 1,850 refugees or migrants had died in the attempt. This has led to the European Union taking the decision to create a naval force named EUNAVFOR Med, to disrupt human smugglers in the southern central Mediterranean. Additional funding to provide more ships and aircraft in search and rescue operations was also provided.



Migrants rescued from the Mediterranean by the Italian Navy landing on Lampedusa Island, March 2015.
Copyright © UNHCR/F. Fossi

Legal Position



438 Afghan asylum seekers on board the Norwegian ship 'Tampa' after being rescued from a 20 metre Indonesian fishing vessel about 140km north of Christmas Island in the Indian Ocean in August 2001.

After the "Tampa" incident in 2001 the IMO and other organisations recommended that measures and procedures for the treatment of rescued persons should be reviewed, with the aim of ensuring that the life of persons on board ships was safeguarded and that coastal states should deal with such rescued persons in a satisfactory manner. The recommendations led to amendments to the relevant sections of the SOLAS and SAR Conventions, concerning the treatment of persons rescued at sea, and/or asylum seekers, refugees and stowaways:

- SOLAS Chapter V, Safety of Navigation, obligates the master to provide assistance to any person in distress at sea, regardless of nationality or status of that person, and mandates Contracting Governments to co-ordinate and co-operate in assisting the ship's master to deliver persons rescued at sea to a place of safety. A section is also added on the master's discretion.
- SAR, Annex to the Convention, obligate parties to assist the master in delivering persons rescued at sea to a place of safety and requires appropriate operating procedures for maritime rescue co-ordination centres to initiate the process of identifying the most suitable places for disembarking persons found in distress at sea.
- **Guidelines on the treatment of persons rescued at sea** provide guidance to shipmasters and Governments on their obligations towards people rescued at sea from both humanitarian and legal perspectives.

Legal issues arising from the involvement of rescue of migrants at sea are complex and subject to different areas of international law. Apart from maritime obligations as discussed above, international refugee, criminal, humanitarian and human rights laws come into play. In this regard, the UNHCR has compiled a useful on-line set of reference materials: **Rescue at sea, stowaways and maritime interception**

Migrants at Sea (cont.)

P&I Club Cover

The Master of the vessel is under a duty to proceed to the assistance of persons in distress and must take all steps to save life and deliver them safely to port. This of course cannot be done without expense to the ship-owner.

Club Rules cover the net additional costs of proceeding to the assistance of persons in distress and where appropriate, searching for them, along with the expenses of taking reasonable steps to look after them and land them (Rule 19(8)). Also, the net additional costs of diversion are covered where they are solely for the purpose of landing refugees (Rule 19(6)).

In addition to these specific rules, the migrants would also be "third parties" on board and therefore any liabilities of the owners for personal injury, illness or death of a migrant whilst on board the vessel, would be reimbursable under the terms of the vessel's entry (Rule 19(4)).

Again, net additional diversion expenses would be covered if solely for the purpose of securing treatment for sick or injured persons (Rule 19(6)). On arrival in port, the ship-owner may face immigration issues and this will require assistance from the Club. Although it is likely that most migrants would claim asylum from the first port in which they arrive, the local immigration authorities may seek to impose fines or penalties on the vessel for bringing migrants to their jurisdiction (Rule 19(19)). Alternatively, as the migrants are unlikely to carry adequate documentation, fines may be imposed for this. In addition, some Port State authorities require suitable health documentation to be provided by all persons arriving in their ports and obviously, it is quite likely that migrants would not possess such documentation. In such a situation, any fines or penalties arising from breach of immigration or health regulations may be reimbursed by the Club on a discretionary basis (Rule 19(19)).

It is also equally possible that the migrants may be suffering from or carrying infectious diseases and this may result in the quarantining of the vessel. In that situation, the expenses arising from that would be covered as detailed in the Club Rules (Rule 19(9)).

With respect to cargo liabilities, when an entered vessel:

- is proceeding to the rescue of persons in distress
- is engaged in searching for and/or picking up those persons
- is proceeding towards a place of disembarkation and/or engaged in disembarking those persons

This would generally fall within the definition of a 'reasonable deviation' and Club cover under Rule 19(17) is unlikely to be affected, although it is always prudent to check with the Club directly.

Be Prepared!

Merchant ships transiting areas where migration of large numbers of people by sea is common need to be aware that their services may be called upon at short notice to go to the aid of migrant boats in distress. It is unlikely that many ships' crews will have had previous experience of performing large-scale rescue operations that they might be expected to encounter in the Strait of Sicily. Lack of preparedness for such operations could lead to a myriad of difficulties, dangers and costs for those involved.

It makes sense, therefore, that ships navigating in these waters should have contingency plans in place that ensure the risks associated with such large scale rescue operations are minimised. Considering that ships involved in large-scale rescue missions will need to utilise all of the resources at their disposal, it follows that the managers and operators of these ships also need to be fully prepared and engaged to deal with the multiple issues that could arise and to provide the ship's staff with round-the-clock support.



820 single men, rescued by the Italian Navy in the Mediterranean in June 2014, sleep in a crowded, partitioned section of the naval ship 'San Giorgio'
Copyright © UNHCR/A. D'Amato

Large scale rescues at sea involve many non-routine operations, with consequent risks. Apart from the perhaps obvious ship-handling and seamanship issues that are encountered when large merchant ships are tasked with rescue operations at sea; security, legal, health and safety issues; of the ships' crews as well those rescued, need to be considered and planned for. There are several commercial organisations, including some of the larger providers of maritime security services, who can provide Members with additional, more comprehensive, advice. Also see the section on 'Further Information & Developments' at the end of this Briefing.

Migrants at Sea (cont.)



Syrian families taste their first meal since leaving Libya on board the Italian Navy ship 'San Giorgio'. June 2014. Copyright © UNHCR/A. D'Amato

Rescue – Practices & Procedures

The following tables list some of the areas that need to be taken into account when normal merchant ships are faced with the task of rescuing large numbers of migrants at sea; together with some of the measures that Members may consider adopting to control the associated risks; but they are not exhaustive.

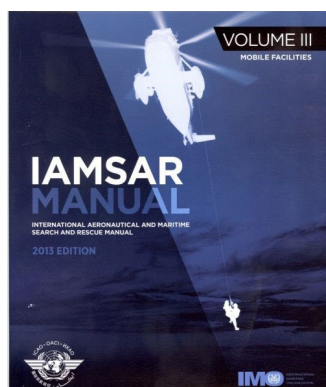


Migrants board a merchant ship from the sea

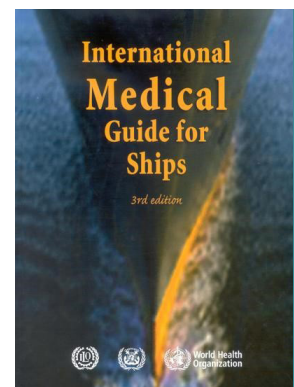
Planning	<ul style="list-style-type: none"> ○ Consider: likely scenarios including 'what-if' situations. ○ Safety Management System: Review and adapt as necessary. ○ Legal: Check & confirm legal and compliance issues. ○ Checklists: Consider implementation of appropriate checklists to cover each stage of rescue operation
Roles & Responsibilities	<ul style="list-style-type: none"> ○ Shore staff: DPA, CSO, operations, purchasing, crewing, insurance, legal ○ Ship's staff: Master, SSO, safety officer, deck officers, deck crew etc. ○ Third parties: P&I, H&M, class, flag, charterer, port agents, media consultants, port state, other ships ○ Communications: agreed and effective lines of communication between all of the above and with those rescued.
Training	<ul style="list-style-type: none"> ○ Specialised: Consider additional training in crisis response etc. for ship & shore staff. ○ Drills: Have regular, realistic drills covering large scale rescue ○ Exercises: Consider annual or semi-annual large scale exercises involving all of likely stakeholders
Pre-rescue	<ul style="list-style-type: none"> ○ Approach: day/night, weather, people in water, in boats, condition of people/craft to be rescued ○ Manoeuvring: speed, distance, use ship's boats as alternative approach method ○ Contingencies: security (potential terrorism, criminal activity), pollution (oil in water, sewage, garbage, chemicals), floating objects, unmanageable influx of personnel
Embarkation	<ul style="list-style-type: none"> ○ Means of access: pilot/accommodation ladders, scramble nets, cranes/'Billy Pugh' ○ Condition of rescued: able-bodied, infants, elderly, ill, injured, fatigued, stressed, panicked, violent ○ Safety Equipment: life-lines, life-buoys, life-jackets, rescue craft

Migrants at Sea (cont.)

Accommodation	<ul style="list-style-type: none"> ○ Space: Depending on numbers, maybe only possible on deck ○ Security: restricting access, potential criminal (violence, theft, vandalism) or terrorist acts, smuggling ○ Safety: life-saving equipment, injury potential (slips, trips, etc.), inadvertent un-safe acts (fire hazards etc) ○ Health: food, water, shelter, illness, injury, toilets
Crew	<ul style="list-style-type: none"> ○ Health & safety: PPE, risk of infection, injury, fatigue, risk of disregarding own health & safety ○ Security & welfare: personal effects, violence, privacy, feeding, disruption, stress, psychological issues (short & long term)
Disembarkation	<ul style="list-style-type: none"> ○ Method: ship to ship, ship to land, (also see Embarkation, above) ○ Effect on rescued: potential non-compliance, over-exuberance



International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual Volume III, 2013 Edition, published by IMO/ICAO



International Medical Guide for Ships, 3rd Edition, published by ILO/IMO/WHO

For latest updates on immigration into the European Union:

<https://frontex.europa.eu/>

Frontex also publish a detailed **European migratory routes map**

Disclaimer

The purpose of this publication is to provide a source of information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available no warranty of accuracy is given and users of that information are to be responsible for satisfying themselves that the information is relevant and suitable for the purposes to which it is applied. In no circumstances whatsoever shall North be liable to any person whatsoever for any loss or damage whatsoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information.

Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members should contact North for specific advice on particular matters.

Published July 2015.

Further Information & Developments

The International Chamber of Shipping (ICS) has published guidance for ship operators and ship masters:

Large Scale Rescue Operations at Sea, Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons

The guidance includes a checklist for company preparations to support masters and a checklist for masters involved in rescue operations. Developments in the Mediterranean in the spring of 2015, where unprecedented numbers of refugees and migrants, including many women (some heavily pregnant) and children have attempted to cross from Africa to Europe, have led the ICS to consider updating their 'Large Scale Rescue' guidance, incorporating lessons learned from actual rescue operations. The update is provisionally expected to be incorporated into the guidance in the summer of 2015.

Additional useful advice and information may be obtained from:

Recovery of Persons from the Water, guidelines for the development of plans and procedures, ICS

Guide to Ship Sanitation, World Health Organisation (WHO)

Rescue at Sea, a Guide to Principles and Practice as Applied to Refugees and Migrants, IMO, UNHCR, ICS

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