

ANNEX 34

**RESOLUTION MSC.167(78)
(adopted on 20 May 2004)**

GUIDELINES ON THE TREATMENT OF PERSONS RESCUED AT SEA

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

NOTING resolution A.920(22) entitled "Review of safety measures and procedures for the treatment of persons rescued at sea",

RECALLING ALSO the provisions of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended relating to the obligation of:

- shipmasters to proceed with all speed to the assistance of persons in distress at sea; and
- Governments to ensure arrangements for coast watching and for the rescue of persons in distress at sea round their coasts,

RECALLING FURTHER the provisions of the International Convention on Maritime Search and Rescue (SAR), 1979, as amended relating to the provision of assistance to any person in distress at sea regardless of the nationality or status of such person or the circumstances in which that person is found,

NOTING ALSO article 98 of the United Nations Convention on the Law of the Sea, 1982, regarding the duty to render assistance,

NOTING FURTHER the initiative taken by the Secretary-General to involve competent United Nations specialized agencies and programmes in the consideration of the issues addressed in this resolution, for the purpose of agreeing on a common approach which will resolve them in an efficient and consistent manner,

REALIZING the need for clarification of existing procedures to guarantee that persons rescued at sea will be provided a place of safety regardless of their nationality, status or the circumstances in which they are found,

HAVING ADOPTED, as its [seventy-eighth session], by resolution MSC.153(78) amendments to the SOLAS Convention, proposed and circulated in accordance with article VIII(b)(i) thereof, and by resolution MSC.155(78) amendments to the SAR Convention proposed and circulated in accordance with article III(2)(a) thereof,

REALIZING FURTHER that the intent of the new paragraph 1-1 of SOLAS regulation V/33, as adopted by resolution MSC.153(78) and paragraph 3.1.9 of the Annex to the SAR Convention as adopted by resolution MSC.155(78), is to ensure that in every case a place of safety is provided within a reasonable time. It is further intended that the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Contracting Government/Party responsible for the SAR region in which the survivors were recovered,

1. ADOPTS Guidelines on the treatment of persons rescued at sea the text of which is set out in the Annex to the present resolution;
2. INVITES Governments, rescue co-ordination centres and masters to establish procedures consistent with the annexed Guidelines as soon as possible;
3. INVITES Governments to bring the annexed Guidelines to the attention of authorities concerned and to ship owners, operators and masters;
4. REQUESTS the Secretary-General to take appropriate action in further pursuing his inter-agency initiative, informing the Maritime Safety Committee of developments, in particular with respect to procedures to assist in the provision of places of safety for persons in distress at sea, for action as the Committee may deem appropriate;
5. DECIDES to keep this resolution under review.

ANNEX

GUIDELINES ON THE TREATMENT OF PERSONS RESCUED AT SEA

1 PURPOSE

1.1 The purpose of these Guidelines are to provide guidance to Governments¹ and to shipmasters with regard to humanitarian obligations and obligations under the relevant international law relating to treatment of persons rescued at sea.

1.2 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. These Guidelines are intended to help Governments and masters better understand their obligations under international law and provide helpful guidance with regard to carrying out these obligations.

2 BACKGROUND

IMO Assembly resolution A.920(22)

2.1 The IMO Assembly, at its twenty-second session, adopted resolution A.920(22) on the review of safety measures and procedures for the treatment of persons rescued at sea. That resolution requested various IMO bodies to review selected IMO Conventions to identify any gaps, inconsistencies, ambiguities, vagueness or other inadequacies associated with the treatment of persons rescued at sea. The objectives were to help ensure that:

- .1 survivors of distress incidents are provided assistance regardless of nationality or status or the circumstances in which they are found;
- .2 ships, which have retrieved persons in distress at sea, are able to deliver the survivors to a place of safety; and
- .3 survivors, regardless of nationality or status, including undocumented migrants, asylum seekers and refugees, and stowaways, are treated, while on board, in the manner prescribed in the relevant IMO instruments and in accordance with relevant international agreements and long-standing humanitarian maritime traditions.

2.2 Pursuant to resolution A.920(22), the 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 within the scope of their respective mandates. Such an inter-agency effort focusing on State responsibilities for non-rescue issues, such as immigration and asylum that are beyond the competence of IMO, is an essential complement to IMO efforts.

¹ Where the term Government is used in these Guidelines, it should be read to mean Contracting Government to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, or Party to the International Convention on Maritime Search and Rescue, 1979, as amended, respectively.

SOLAS and SAR Convention amendments

2.3 At its seventy-eighth session, the Maritime Safety Committee (MSC) adopted pertinent amendments to chapter V of the International Convention for the Safety of Life at Sea (SOLAS) and to chapters 2, 3 and 4 of the Annex to the International Convention on Maritime Search and Rescue Convention (SAR Convention). These amendments are expected to enter into force on 1 July 2006. At the same session the MSC adopted the current guidelines; these amendments provide for the development of such guidelines. The purpose of these amendments and the current guidelines is to help ensure that persons in distress are assisted, while minimizing the inconvenience to assisting ships and ensuring the continued integrity of SAR services.

2.4 Specifically, paragraph 1-1 of SOLAS regulation V/33 and paragraph 3.1.9 of the Annex to the SAR Convention, as amended, impose upon Governments an obligation to co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage.

2.5 As realized by the MSC in adopting the amendments, the intent of new paragraph 1-1 of SOLAS regulation V/33 and paragraph 3.1.9 of the Annex to the International Convention on Maritime Search and Rescue, 1979, as amended, is to ensure that in every case a place of safety is provided within a reasonable time. The responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Government responsible for the SAR region in which the survivors were recovered.

2.6 Each case, however, can involve different circumstances. These amendments give the responsible Government the flexibility to address each situation on a case-by-case basis, while assuring that the masters of ships providing assistance are relieved of their responsibility within a reasonable time and with as little impact on the ship as possible.

2.7 Some comments on relevant international law are set out at the appendix.

3 PRIORITIES

3.1 When ships assist persons in distress at sea, co-ordination will be needed among all concerned to ensure that all of the following priorities are met in a manner that takes due account of border control, sovereignty and security concerns consistent with international law:

Lifesaving

All persons in distress at sea should be assisted without delay.

Preservation of the integrity and effectiveness of SAR services

Prompt assistance provided by ships at sea is an essential element of global SAR services; therefore it must remain a top priority for shipmasters, shipping companies and flag States.

Relieving masters of obligations after assisting persons

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.

4 INTERNATIONAL AERONAUTICAL AND MARITIME SEARCH AND RESCUE MANUAL

4.1 The three-volume *International Aeronautical and Maritime Search and Rescue Manual* (IAMSAR Manual) has been developed and is maintained to assist Governments in meeting their SAR needs, and the obligations they have accepted under the SOLAS Convention, the SAR Convention and the Convention on International Civil Aviation. Governments are encouraged to develop and improve their SAR services, co operate with neighbouring States and to consider SAR services to be part of a global system.

4.2 Each volume of the IAMSAR Manual is written with specific SAR system duties in mind and can be used as a stand-alone document, or, in conjunction with the other guidance documents, as a means to attain a full view of the SAR system.

4.3 Volume I – *Organization and Management* discusses the global SAR system concept, establishment of national and regional SAR systems and co-operation with neighbouring States to provide effective and economical SAR services.

4.4 Volume II – *Mission Co-ordination* assists personnel who plan and co-ordinate SAR operations and exercises.

4.5 Volume III – *Mobile Facilities* – is intended to be carried aboard ships, aircraft and rescue units to help with performance of search, rescue or on-scene co-ordinator functions and with aspects of SAR that pertain to their own emergencies.

5 SHIPMASTERS

General guidance

5.1 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. Shipmasters have certain duties that must be carried out in order to provide for safety of life at sea, preserve the integrity of global SAR services of which they are part, and to comply with humanitarian and legal obligations. In this regard, shipmasters should:

- .1 understand and heed obligations under international law to assist persons in distress at sea (such assistance should always be carried out without regard to the nationality or status of the persons in distress, or to the circumstances in which they are found);
- .2 do everything possible, within the capabilities and limitations of the ship, to treat the survivors humanely and to meet their immediate needs;
- .3 carry out SAR duties in accordance with the provisions of Volume III of the IAMSAR Manual;

- .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;
- .5 keep the RCC informed about conditions, assistance needed, and actions taken or planned for the survivors (see paragraph 6.10 regarding other information the RCC may wish to obtain);
- .6 seek to ensure that survivors are not disembarked to a place where their safety would be further jeopardized; and
- .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.

5.2 In order to more effectively contribute to safety of life at sea, ships are urged to participate in ship reporting systems established for the purpose of facilitating SAR operations.

6 GOVERNMENTS AND RESCUE CO-ORDINATION CENTRES

Responsibilities and preparedness

6.1 Governments should ensure that their respective rescue co-ordination centres (RCCs) and other national authorities concerned have sufficient guidance and authority to fulfil their duties consistent with their treaty obligations and the current guidelines contained in this resolution.

6.2 Governments should ensure that their RCCs and rescue units are operating in accordance with the standards and procedures in the IAMSAR Manual and that all ships operating under their flag have on board Volume III of the IAMSAR Manual.

6.3 A ship should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable.

6.4 Normally, any SAR co-ordination that takes place between an assisting ship and any coastal State(s) should be handled via the responsible RCC. States may delegate to their respective RCCs the authority to handle such co-ordination on a 24-hour basis, or may task other national authorities to promptly assist the RCC with these duties. RCCs should be prepared to act quickly on their own, or have processes in place, as necessary, to involve other authorities, so that timely decisions can be reached with regard to handling survivors.

6.5 Each RCC should have effective plans of operation and arrangements (interagency or international plans and agreements if appropriate) in place for responding to all types of SAR situations. Such plans and arrangements should cover incidents that occur within its associated SAR region, and should also cover incidents outside its own SAR region if necessary until the RCC responsible for the region in which assistance is being rendered (see paragraph 6.7)

or another RCC better situated to handle the case accept responsibility. These plans and arrangements should cover how the RCC could co-ordinate:

- .1 a recovery operation;
- .2 disembarkation of survivors from a ship;
- .3 delivery of survivors to a place of safety; and
- .4 its efforts with other entities (such as customs and immigration authorities, or the ship owner or flag State), should non-SAR issues arise while survivors are still aboard the assisting ship with regard to nationalities, status or circumstances of the survivors; and quickly address initial border control or immigration issues to minimize delays that might negatively impact the assisting ship, including temporary provisions for hosting survivors while such issues are being resolved.

6.6 Plans of operation, liaison activities and communications arrangements should provide for proper co-ordination in advance of and during a rescue operation with shipping companies and with national or international authorities that may need to be involved in response or disembarkation efforts.

6.7 When appropriate, the first RCC contacted should immediately begin efforts to transfer the case to the RCC responsible for the region in which the assistance is being rendered. When the RCC responsible for the SAR region in which assistance is needed is informed about the situation, that RCC should immediately accept responsibility for co-ordinating the rescue efforts, since related responsibilities, including arrangements for a place of safety for survivors, fall primarily on the Government responsible for that region. The first RCC, however, is responsible for co-ordinating the case until the responsible RCC or other competent authority assumes responsibility.

6.8 Governments and the responsible RCC should make every effort to minimize the time survivors remain aboard the assisting ship.

6.9 Responsible State authorities should make every effort to expedite arrangements to disembark survivors from the ship; however, the master should understand that in some cases necessary co-ordination may result in unavoidable delays.

6.10 The RCC should seek to obtain the following information from the master of the assisting ship:

- .1 information about the survivors, including name, age, gender, apparent health and medical condition and any special medical needs;
- .2 the master's judgment about the continuing safety of the assisting ship;
- .3 actions completed or intended to be taken by the master;
- .4 assisting ship's current endurance with the additional persons on board;
- .5 assisting ship's next intended port of call;

- .6 the master's preferred arrangements for disembarking the survivors;
- .7 any help that the assisting ship may need during or after the recovery operation;
and
- .8 any special factors (e.g., prevailing weather, time sensitive cargo).

6.11 Potential health and safety concerns aboard a ship that has recovered persons in distress include insufficient lifesaving equipment, water, provisions, medical care, and accommodations for the number of persons on board, and the safety of the crew and passengers if persons on board might become aggressive or violent. In some cases it may be advisable for the RCC to arrange for SAR or other personnel to visit the assisting ship to better assess the situation onboard, to help meet needs on board, or to facilitate safe and secure disembarkation of the survivors.

Place of safety

6.12 A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) is a location where rescue operations are considered to terminate. It is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors' next or final destination.

6.13 An assisting ship should not be considered a place of safety based solely on the fact that the survivors are no longer in immediate danger once aboard the ship. An assisting ship may not have appropriate facilities and equipment to sustain additional persons on board without endangering its own safety or to properly care for the survivors. Even if the ship is capable of safely accommodating the survivors and may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made.

6.14 A place of safety may be on land, or it may be aboard a rescue unit or other suitable vessel or facility at sea that can serve as a place of safety until the survivors are disembarked to their next destination.

6.15 The Conventions, as amended, indicate that delivery to a place of safety should take into account the particular circumstances of the case. These circumstances may include factors such as the situation on board the assisting ship, on scene conditions, medical needs, and availability of transportation or other rescue units. Each case is unique, and selection of a place of safety may need to account for a variety of important factors.

6.16 Governments should co-operate with each other with regard to providing suitable places of safety for survivors after considering relevant factors and risks.

6.17 The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea.

6.18 Often the assisting ship or another ship may be able to transport the survivors to a place of safety. However, if performing this function would be a hardship for the ship, RCCs should attempt to arrange use of other reasonable alternatives for this purpose.

Non-SAR considerations

6.19 If survivor status or other non-SAR matters need to be resolved, the appropriate authorities can often handle these matters once the survivors have been delivered to a place of safety. Until then, RCCs are responsible for co-operation with any national or international authorities or others involved in the situation. Examples of non-SAR considerations that may require attention include oil spills, onscene investigations, salvage, survivors who are migrants or asylum seekers, needs of survivors once they have been delivered to a place of safety, or security or law enforcement concerns. National authorities other than the RCC typically have primary responsibility for such efforts.

6.20 Any operations and procedures such as screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress should not be allowed to hinder the provision of such assistance or unduly delay disembarkation of survivors from the assisting ship(s).

6.21 Although issues other than rescue relating to asylum seekers, refugees and migratory status are beyond the remit of IMO, and beyond the scope of the SOLAS and SAR Conventions, Governments should be aware of assistance that international organizations or authorities of other countries might be able to provide in such cases, be able to contact them rapidly, and provide any instructions that their RCCs may need in this regard, including how to alert and involve appropriate national authorities. States should ensure that their response mechanisms are sufficiently broad to account for the full range of State responsibilities.

6.22 Authorities responsible for such matters may request that RCCs obtain from the assisting ship certain information about a ship or other vessel in distress, or certain information about the persons assisted. Relevant national authorities should also be made aware of what they need to do to co-operate with the RCC (especially with regard to contacting ships), and to respond as a matter of urgency to situations involving assisted persons aboard ships.

APPENDIX

SOME COMMENTS ON RELEVANT INTERNATIONAL LAW

1 A shipmaster's obligation to render assistance at sea is a longstanding maritime tradition. It is an obligation that is recognized by international law. Article 98 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) codifies this obligation in that 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 ... to render assistance to any person found at sea in danger of being lost ...". in addition to imposing an obligation on States to "promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea ...".

2 The SAR Convention defines *rescue* as "an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety." SAR services are defined as "the performance of distress monitoring, communication, co-ordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including co-operating aircraft, vessels and other craft and installations." SAR services include making arrangements for disembarkation of survivors from assisting ships. The SAR Convention establishes the principle that States delegate to their rescue co-ordination centres (RCCs) the responsibility and authority to be the main point of contact for ships, rescue units, other RCCs, and other authorities for co-ordination of SAR operations. The SAR Convention also discusses, with regard to obligations of States, the need for making arrangements for SAR services, establishment of RCCs, international co-operation, RCC operating procedures, and use of ship reporting systems for SAR.

3 The SAR Convention does not define "place of safety". However, it would be inconsistent with the intent of the SAR Convention to define a place of safety solely by reference to geographical location. For example, a place of safety may not necessarily be on land. Rather, a place of safety should be determined by reference to its characteristics and by what it can provide for the survivors. It is a location where the rescue operation is considered to terminate. It is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors' next or final destination.

4 The SOLAS Convention regulation V/33.1 provides that the "master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, 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." Comparable obligations are contained in other international instruments. Nothing in these guidelines is intended in any way to affect those obligations. Compliance with this obligation is essential in order to preserve the integrity of search and rescue services. The SOLAS Convention, Article IV (cases of *force majeure*) protects the shipmaster insofar as the existence of persons on board the ship by reason of *force majeure* or due to the obligation for the master to carry shipwrecked or other persons, will not be a basis for determining application of the Convention's provisions to the ship. The SOLAS Convention also addresses in chapter V, regulation 7, the responsibility of Governments to arrange rescue services.

5 As a general principle of international law, a State's sovereignty allows that State to control its borders, to exclude aliens from its territory and to prescribe laws governing the entry

of aliens into its territory. A State's sovereignty extends beyond its land territory and internal waters to the territorial sea, subject to the provisions of UNCLOS and other rules of international law. Further, as provided in Article 21 of UNCLOS, a coastal State may adopt laws and regulations relating to innocent passage in the territorial sea to prevent, among other things, the infringement of that coastal State's immigration laws.

6 Pursuant to Article 18 of UNCLOS, a ship exercising innocent passage may stop or anchor in the coastal State's territorial sea "only in so far as the same are incidental to ordinary navigation or are rendered by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress." UNCLOS does not specifically address the question of whether there exists a right to enter a port in cases of distress, although under customary international law, there may be a universal, albeit not absolute, right for a ship in distress to enter a port or harbour when there exists a clear threat to safety of persons aboard the ship. Such threats often worsen with time and immediate port entry is needed to ensure the safety of the vessel and those onboard. Nevertheless, the right of the ship in distress to enter a port involves a balancing of the nature and immediacy of the threat to the ship's safety against the risks to the port that such entry may pose. Thus, a coastal State might refuse access to its ports where the ship poses a serious and unacceptable safety, environmental, health or security threat to that coastal State after the safety of persons onboard is assured.

7 The Refugee Convention's prohibition of expulsion or return "refoulement" contained in Article 33.1 prohibits Contracting States from expelling or returning a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of the person's race, religion, nationality, membership of a particular social group or political opinion. Other relevant international law also contains prohibition on return to a place where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

8 Other relevant provisions, not all of which are under the competence of IMO, *inter alia*, include the following:

International Convention on Maritime Search and Rescue, 1979, as amended, in entirety

Resolution A.773(18) on Enhancement of safety of life at sea by the prevention and suppression of unsafe practices associated with alien smuggling by ships

International Convention for the Safety of Life at Sea, 1974, as amended, chapter V, regulation 33

Resolution A.871(20) on Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases

Convention on Facilitation of International Maritime Traffic, 1965, in particular Section 6.C, Standards 6.8-6.10
International Convention on Salvage, 1983, Article 11

Resolution A.867(20) on Combating unsafe practices associated with the trafficking or transport of migrants by sea
IMO Global SAR Plan – SAR.8/Circ.1 and addenda addresses (the Admiralty List of Radio Signals, Volume 5, is a practical alternative)

United Nations Convention on the Law of the Sea, 1982, Article 98

United Nations Convention relating to the Status of Refugees, 1951 and its 1967 Protocol

UN Convention against Transnational Organized Crime, 2000 and its Protocols, Protocol against the smuggling of migrants by land, sea and air; and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

MSC/Circ.896/Rev.1 on Interim measures for combating unsafe practices associated with the trafficking or transport of immigrants by sea
