

## **Workshop on**

### **Search and rescue of refugees and migrants in the Mediterranean: Practitioners' perspectives**

Sanremo, 7-9 March 2016

#### **Introduction**

1. The International Institute of Humanitarian Law (IIHL), with the support of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), convened a Workshop on 'Rescue of refugees and migrants in the Mediterranean Sea: Practitioners' perspectives' in Sanremo, Italy, from 7 to 9 March, 2016.
2. The Workshop brought together 40 practitioners and experts representing state search-and-rescue (SAR) services; naval, coastguard and other state authorities; the shipping industry; international organizations; regional and intergovernmental bodies; non-governmental organizations; and academic experts. Discussions took place under the Chatham House Rule, to enable participants to explore challenging questions without having their individual views attributed outside the Workshop. The summary that follows does not necessarily represent the views of individual participants, nor those of IIHL, IOM, or UNHCR. Rather, it reflects broadly a number of the themes, issues and understandings emerging from discussions during the Workshop.
3. The Workshop aimed to examine evolving practices concerning search, rescue and disembarkation of refugees and migrants crossing the Mediterranean toward Europe. During the Workshop, participants explored the intersection between law, policy and practical/operational concerns, including those raised by large-scale rescues, in order to identify and share good practices, lessons learned and gaps. The Workshop was structured around panel presentations, plenary discussions, and group work, to allow for open exchanges from the full range of perspectives represented.

#### **Background**

4. During 2014-2015, an unprecedented number of people attempted to reach Europe by sea. The vast majority of those making these journeys was and continues to be refugees fleeing armed conflict and persecution, who travel alongside migrants in so-called 'mixed migration' flows. Travelling in unseaworthy, overcrowded boats, with no professional crew on board, these refugees and migrants—a substantial number of whom are women and children—are typically at serious risk of becoming stranded at sea, with their vessels unable to navigate further, or of capsizing, and so can often be considered to be in need of assistance and in many cases 'in distress' from the moment they depart from the coast. This, along with a number of other aspects of the current situation in the Mediterranean, has posed serious challenges for SAR actors. Nonetheless, strong commitment was expressed by the Workshop participants to fulfilling the obligation to assist any person in distress at sea, a longstanding maritime tradition expressed in several international law instruments, including under the law of the sea and international maritime law, regardless of the nationality or status of persons in distress.

5. The Workshop took place on the basis of broad acknowledgement that risky Mediterranean crossings by refugees and migrants are likely to continue for some time given the significant ongoing conflict-related, socio-economic, and other causes of these perilous journeys. A number of participants remarked that SAR could not, by itself, be considered a ‘solution’ to the current situation in the Mediterranean, and noted that SAR efforts must form part of a comprehensive approach. This includes: efforts to address smuggling and trafficking; access to safe and regular pathways to international protection and migration opportunities; access to reliable information on the risks involved in sea journeys; cooperation among countries of departure, transit and destination; resolution of ongoing conflicts; and more effective international cooperation to address the needs of those arriving by sea and to share responsibilities among states for providing international protection to those who need it. Nonetheless, as long as refugees and migrants feel compelled to undertake dangerous sea journeys, effective lifesaving rescue measures remain imperative. Against the backdrop of these considerations, the Workshop focused primarily on the challenges faced by SAR actors and lessons learned from current SAR practices, rather than the wider dimensions of the current Mediterranean situation. Participants acknowledged early in the Workshop that minimizing loss of life at sea and ensuring adequate SAR capacity and responses is a collective responsibility, which should not fall upon coastal states alone. It requires close cooperation and coordination between a wide range of actors and stakeholders with varying mandates and capacities.

#### **A. Current good practices and areas of concern**

6. During panel sessions, plenary discussions and breakout groups, a number of good practices as well as practices indicating potential needs for improved cooperation and coordination were identified, including those below.
7. In general, it was noted that SAR capacity, coordination, and effectiveness has been enhanced significantly in response to the recent emergency, with important contributions from key coastal states, Frontex-led joint sea operations and EU-sponsored joint naval operations, non-governmental SAR actors, and international shipping. Some participants expressed concern over the longer-term sustainability of current SAR arrangements, in particular as regards to reliance on non-state actors, while others voiced related concerns that the SAR regime is being exploited by migrant-smuggling networks. Nevertheless, it was acknowledged that these concerns should not have any bearing on respect for the obligation to provide lifesaving assistance to refugees and migrants in distress at sea.
8. Participants commended the widespread practice of considering vessels that are apparently unseaworthy, overcrowded, or lacking a professional crew on board, to be in ‘distress’ from the moment they depart from the coast. For many participants, this ‘precautionary’ approach was understood to reflect the common sense of experienced and competent seafarers, and to increase the chances of survival of those on board by allowing timely SAR responses without waiting for an evident and often inevitable risk of loss of the vessel to materialise.
9. A number of participants cited *EU Regulation 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* (which applies directly only to Frontex-led operations at sea) as a source of potential inspiration and reference for aligned approaches on identifying and responding to distress situations, facilitating disembarkation, and taking into account *non-refoulement* obligations and other refugee and human rights safeguards.

10. Another good practice identified was the readiness of some Rescue Coordination Centres (RCCs) to take on the responsibility for coordinating rescue operations outside their own Search and Rescue Region (SRR) and for providing a place of safety for disembarkation, in circumstances where information is received about distress incidents or at-risk vessels in a location where there is no declared SRR and/or no functioning RCC.
11. A number of areas of concern were raised by participants. These included cases where responsible RCCs have proved hard to reach or have not provided the necessary support in coordinating SAR operations. Some participants also indicated that, while seafarers on the whole take their SAR responsibilities very seriously, there have been occasional reports of vessels which fail to respond to the distress signals or switch off their Automatic Identification System (AIS) tracking to avoid being requested to assist with SAR operations.
12. The imperative to respond to the increasing need of saving lives at sea has brought new actors—particularly non-governmental SAR actors—onto the scene, in the Mediterranean generally and the Aegean in particular. Civil society participants noted that the role increasingly played by NGOs reflects a growing awareness, which transcends national boundaries, of the urgency of action to save lives of refugees and migrants at sea, and the important role that can be played by a variety of actors to support coastal states. The additional capacity these new actors contribute has resulted in much needed assistance to existing state SAR services. At the same time, some participants highlighted that the lack of proper integration of ancillary SAR actors within existing coordination mechanisms under the responsibility of coastal-state SAR authorities could constitute a risk for safe, efficient and effective SAR. It is crucial that new actors are able to operate effectively within existing SAR coordination systems.

## **B. Gaps identified**

13. Participants generally shared the view that the existing international SAR regime, though challenged by the current situation in the Mediterranean, is well designed to meet its purpose. Nonetheless, discussion during the Workshop identified a number of possible gaps in implementation or in the capacity of the system to prevent loss of life among refugees and migrants crossing the Mediterranean, some of which are outlined below.
14. It was noted that while there is broad agreement among seafarers and SAR actors on what constitutes a distress situation and that the existing legal framework does not require reform, there were still some cases of RCCs in neighboring states using diverging approaches to assessing the existence of a distress situation, which has created inconsistencies in SAR responses and sometimes unwarranted delays in responding. It was suggested that, in order to work towards more harmonized regional approaches, further practical guidance on how the concept of distress should be applied would be beneficial.
15. A number of participants further noted that, for some areas characterized by significant refugee and migrant movements and large numbers of distress incidents, there is no declared SRR and no functioning RCC. As indicated above, other coastal states have in part taken on the responsibility of filling this gap. The role played by Frontex-led joint operations and multilateral naval missions in supporting responses to SAR needs in such cases was acknowledged. In addition, the ongoing work of the International Maritime Organization (IMO) to build the SAR capacity of coastal states over the longer term was noted. However, concerns around the sustainability of current arrangements were raised, in view notably of: the burden placed on key coastal states; the undesirability of relying heavily on naval missions with non-SAR core mandates; the large scale of current refugee and migrant movements; and unabated conflicts and governance challenges in some coastal states of departure.

16. Some participants suggested that, to ensure a predictable SAR response in the most affected maritime regions, it may be necessary to create an international SAR mission which could fill the gap and meet SAR needs in the immediate term. In this connection it was noted by some that any such international mission with a specific SAR mandate may require a force-protection or military-support component so as to avert security risks and allow dedicated SAR assets to concentrate on core tasks. Examples of this sort of arrangement in the context of bilateral SAR and anti-smuggling cooperation were cited. Other participants pointed to the important ongoing role to be played by naval forces present in areas where large numbers of refugees and migrants are in need of assistance, particularly in exceptional circumstances where the existing SAR regime and institutions are not able to address the high level of SAR needs.
17. Some participants pointed to the possibility of difficulties arising in cases where refugees and migrants travelling in an unseaworthy or overcrowded vessel, which is moving but clearly at risk of foundering, refuse assistance. Participants highlighted a range of concerns that need to be taken into account in these circumstances, including:
  - the safety of passengers during any rescue operation;
  - the need to ensure that people on board an unseaworthy vessel without a qualified crew are not abandoned to continue unassisted when their safety is clearly at risk;
  - the concern of some coastal states that adopting a ‘wait-and-see’ monitoring approach may be interpreted by neighbouring states as escorting or assisting smuggling ventures; and
  - relevant rights under international and regional human rights and refugee law, including the right to seek and enjoy asylum, and the right to leave any country including one’s own.
18. Participants noted that existing SAR coordination systems mainly function well and that there is effective communication among the stakeholders, but also recognized that cooperation on contingency planning and preparedness could be improved; communication between states needs to be enhanced in some cases; and that forums for free exchange of views and concerns and for communication among states, NGOs and private shipping could be further developed.
19. Participants noted that improved clarity on disembarkation arrangements would be helpful, in particular on identifying a place of safety taking into account the requirements of international refugee and human rights law, notably *non-refoulement*. In cases where, for example, commercial vessels rescue people who claim international protection and the RCC concerned either does not provide the necessary support or belongs to a state in which protection risks are claimed to exist, shipmasters may benefit from further guidance or arrangements for accessing reliable advice on disembarkation arrangements consistent with *non-refoulement*.
20. Some civil society participants expressed concern at the possibility of SAR efforts conflicting with domestic or regional regulations on the facilitation of irregular migration, and described difficulties related to navigating this concern at the same time as seeking to ensure that their rescue and assistance activities were consistent with the requirements of refugee and human rights law principles.
21. Participants highlighted that several challenges remain in providing basic needs for refugees and migrants immediately following their arrival at a place of disembarkation. In particular:

- The capacity of actors and existing infrastructure to deal with the large numbers of people arriving is insufficient.<sup>1</sup> First-reception conditions need considerable enhancement. Referral to appropriate services and procedures needs to be on the basis of real protection and other needs, rather than inadequate and possibly discriminatory proxies such as nationality.
- The psychological effects of traumatic experiences before, during and after the sea journey are often not adequately taken into account during post-disembarkation and first-reception processes. The immediate mental health response at arrival points needs to be improved for those fleeing conflict or persecution as well as for others who may have suffered trauma for other reasons.
- Family unity and reunification should be considered a priority. Particularly in the Aegean Sea, instances were cited of families becoming separated before the journey or during SAR operations, sometimes resulting in families being disembarked in different states or disembarkation points and thus facing additional hurdles to reuniting. Clear procedures should be established among neighbouring states on modalities, procedures and time frames for enabling speedy family reunification.

22. Participants expressed strong concerns over the wellbeing of rescuers and those working on first assistance and reception. Due to the high risks, stress and long hours of service endured, especially in circumstances of large-scale movements, there is a significant risk of burnout. Psychological support services should be available to assist first responders. In this context, it was noted that recent guidance materials for merchant vessels include relevant recommendations and checklists for debriefing following SAR operations, to ensure that shipmasters have tools to support crew members involved in stressful or traumatic situations.<sup>2</sup>

---

<sup>1</sup> Some participants additionally suggested that current EU rules (notably the Dublin Regulation), combined with limited implementation to date of the EU relocation scheme, have the effect of disproportionately placing responsibility for assessing asylum claims and providing international protection on already overburdened states of arrival, which may in turn affect their capacity to meet the needs of traumatized persons, or even impact on willingness to accept disembarkation of rescued persons.

<sup>2</sup> See, for example, International Chamber of Shipping, *Large Scale Rescue Operations at Sea: Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons* (second edition), 2015; and Norwegian Shipowners' Association, *Migrants at sea: Large scale SAR operations*, 2015.