

“The concept of *place of safety* under international law and the respect of the rights of migrants and refugees rescued at sea by all States”

May 2022

The below statement was jointly issued by a group of UN entities to call on States to adopt measures ensuring that refugees and migrants retrieved at sea are disembarked in places where their lives and human rights are safeguarded.

Migrants and refugees take to the seas in search of dignity and safety, refuge, or otherwise across all regions worldwide. The drivers of this mobility are complex and without safe and legal alternatives people are increasingly compelled to turn to smugglers and traffickers who facilitate this irregular migration across the seas without any regard for human life. Migrants and refugees are often exploited, abused or beaten by traffickers and smugglers. Thousands have died, washing up on shorelines or disappearing into the sea unidentified. This phenomenon raises serious humanitarian and policy issues related to the protection of migrants and refugees and their families and the responsibilities of relevant stakeholders

The below-mentioned member organizations of the Inter-Agency Group on Protection of Refugees and Migrants moving by Sea recall that the States’ obligation to protect people at sea continues after their rescue. They may face disembarkation in places where guarantees to protect their lives, safety and other human rights – such as access to asylum and the prohibition of cruel, inhumane or degrading treatment or arbitrary detention - are not provided and where their needs cannot be met.

International law requires that everyone rescued at sea be promptly disembarked and delivered to a ‘place of safety’. The International Maritime Organization’s MSC.167(78) - Guidelines on the Treatment of Persons Rescued at Sea (hereafter MSC.167(78)) define a place of safety as a location where rescue operations are considered to terminate; 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, taking into account the particular circumstances of each individual (MSC.167(78), paras. 6.12 and 6.15). The below-mentioned organizations underscore that:

- Saving lives and preventing deaths and injuries must remain States' collective priority. The law of the sea requires that persons in distress at sea be rescued and assisted.
- While recognizing that the State responsible for the Search and Rescue (SAR) region in which the rescued persons were recovered is primarily responsible for providing a 'place of safety' or ensuring that such a 'place of safety' is provided, the 'place of safety' concept should be interpreted in light of international law, so that when migrants and refugees are rescued at sea, international human rights and refugee law and transnational criminal law norms are to be taken into account in identifying and deciding where they may be disembarked;¹ and
- All States' proactive engagement is paramount to create conditions which can ensure respect for human rights principles including access to relevant procedures, the prohibition of refoulement, and avoiding serious harm or other risks, to ensure that persons rescued at sea, including on the high seas, are quickly disembarked in a place of safety and afforded safe and humane treatment irrespective of their legal status and in line with the law of the sea and other international law obligations.²

With this in mind, the below-mentioned organizations:

- Encourage States to consider the need to further develop, in line with international law, the requirement to deliver the persons retrieved at sea to

¹ *International Law Commission, Principle of Complementarity of International Law Rules, United Nations (UN), Yearbook of the International Law Commission 2006 Volume II Part Two, UN New York and Geneva 2013, p. 175*

² *IOM-UNHCR Proposal for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea, 27 June 2018.*

a place of safety as elaborated upon through the Guidelines contained in resolution MSC 167(78).

- Encourage States to enhance efforts to strengthen international and multilateral cooperation to dismantle organized criminal networks facilitating irregular migration.
- Call upon States to effectively investigate and prosecute abuses committed against smuggled migrants, including in transit and destination countries, through the prosecution of offences related to aggravated forms of smuggling.
- Call upon all States, including all coastal States, to create the conditions for the respect of the human rights of persons rescued at sea on their territories, including inter alia freedom from persecution, torture, cruel, inhumane or degrading treatment, arbitrary detention, human trafficking, sexual violence and exploitation, slavery, extortion, forced labour, forced conscription and other ill-treatment, while protecting the rights and best interests of children including unaccompanied minors and ensuring access to economic, social and cultural rights, including health, housing, food, water and decent work; in line with their obligations under international law;
- Call on States that have established a SAR region under the SAR Convention to ensure respect for law of the sea, international refugee and human rights law and transnational criminal law norms in identifying a place of safety for disembarkation of persons rescued at sea;
- Encourage States to give special attention to the recovery of dead bodies as well as efforts directed at determining their identity, providing their families with information—on their fate and whereabouts and preventing them from becoming missing persons;
- Encourage States to take measures to prevent family separation during rescue operations at sea and disembarkation procedures, in line with international human rights law;
- Encourage States to ensure the swift identification of all persons in vulnerable situations, in particular children and adopt child-sensitive disembarkation procedures including assessment of children's best interests and provision of adequate non-custodial care and reception. For

unaccompanied children, immediate initiation of family tracing and unification with family must be prioritized. They should be provided safe, temporary alternative care and protection while family tracing is ongoing, preferably with extended family or in a family-based setting and

- Call upon States to work together, guided by the spirit of responsibility-sharing and solidarity, to ensure that longer-term solutions consistent with international law can be found for rescued refugees and migrants post-disembarkation

- United Nations High Commissioner for Refugees
- International Organization for Migration
- Office of the High Commissioner for Human Rights
- United Nations Office on Drugs and Crime
- United Nations Children's Emergency Fund
- United Nations Special Rapporteur on the Rights of Migrants