
Distress at sea: a call for a humanitarian and precautionary approach

A joint statement by the United Nations High Commissioner for Refugees, the International Organization for Migration, the United Nations Office of the High Commissioner for Human Rights, the United Nations Special Rapporteur on trafficking in persons, especially Women and Children, the United Nations Special Rapporteur on the Human Rights of Migrants and the Centre for Humanitarian Action at Sea

This statement emphasizes the critical importance of adopting a humanitarian and precautionary approach in identifying and responding to possible situations of “distress”, as enshrined in relevant instruments relating to the law of the sea and compliant with international human rights and refugee law. Such humanitarian and precautionary approach is essential to ensuring the effectiveness of Search and Rescue (SAR) operations and to upholding the fundamental duty to render assistance to any person found in distress at sea. It emphasizes the importance of preventing and addressing distress situations, while maintaining full respect for other SAR-related principles, such as disembarking individuals in a place of safety. The statement does not affect any existing obligations, including those related to international refugee law, human rights law and transnational criminal law. The obligation to save lives at sea and to guarantee protection for those rescued further imposes on States obligations to conduct effective investigations to prosecute and ensure accountability for the serious crimes and serious human rights violations, such as trafficking in persons and aggravated smuggling, as well as for other human right violations that occur at sea. It also requires that States ensure effective access to remedies for the victims of those crimes and human rights violations as well as effective access to international protection, including asylum. These obligations must be upheld during SAR operations to ensure full protection for individuals rescued or intercepted at sea.

Thousands of refugees and migrants undertake dangerous sea crossings in search of safety and dignity, driven by complex and interlinked factors. Insecurity, persecution, lack of access to safe environments, gender inequality, human rights violations as well as social inequalities and the absence of economic opportunities all contribute to irregular and unsafe movements by sea. The situation is further exacerbated by the absence of sufficient and accessible safe and regular pathways for migrants and refugees. The threat to life and safety is acute and affects all people moving on dangerous sea routes regardless the reasons for leaving their homes and countries.

These journeys are often made on overcrowded, unseaworthy vessels, lacking essential safety equipment such as life jackets and emergency communication devices to issue distress signals. In addition, these boats are most of the time piloted by a refugee or a migrant, forced to maneuver without sailing competency and adequate equipment, which exacerbates the risks and places passengers in life threatening situations. Meanwhile, limited State-led rescue operations as well as increasing obstructions to humanitarian rescue efforts contribute to make distress at sea common, leaving many at risk of drifting, drowning, or disappearing. Estimating the exact number of deaths is challenging, but recent figures on fatalities¹ highlight the urgent need for enhanced monitoring, preventive measures, and effective and coordinated search and rescue operations in line with the SAR Convention² and other international law standards.

Saving lives at sea is a long-standing tradition among seafarers, and it is a well-established rule under international law of the sea.³

Preventing the loss of lives and disappearances at sea by rescuing people through effective rescue operations is a humanitarian imperative and an international legal obligation grounded in the law of the sea and international human rights law. States bear the primary responsibility to ensure that these rights are respected, protected and fulfilled. States must ensure the effectiveness of Search and Rescue (SAR) services, including by promptly identifying situations of distress operating under a broad understanding of distress, and swiftly activating search and rescue operations. Situations of distress that are identified and addressed without delay can prevent the tragic loss of lives at sea.

It is crucial to emphasize that responding to instances of distress at sea is also a civic and legal responsibility for any individual or entity witnessing a situation of distress. In accordance with the principles of solidarity and the international law of the sea, action must thus be taken by different stakeholders, and those engaged in rescue operations should not face criminalization for fulfilling such duty and responsibility.

Swiftly identifying and adequately responding to situations of distress

The concept of "distress" is central to the execution and effectiveness of SAR operations and plays a pivotal role in determining when and how SAR missions are initiated and conducted. However, some restrictive interpretations of what constitutes a distress situation pose

¹ At least 39,319 fatalities due to drowning have been recorded so far: <https://missingmigrants.iom.int/data>

² International Convention on Maritime Search and Rescue, 1979, 1405 U.N.T.S. 97.

³ The duty to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress is enshrined in Article 98 of the United Nations Convention on Law of the Sea 1982 (UNCLOS), Regulation 33 of the International Convention for the Safety of Life at Sea 1972 (SOLAS), Para. 2.1.10 of the International Convention on Maritime Search and Rescue 1979 (SAR Convention).

significant challenges, and have led to inconsistent responses, thereby affecting the safety and lives of individuals at sea.

The SAR Convention 1979 defines a “distress phase” as:

“A situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.”⁴

A “distress phase” shall always trigger a Search and Rescue operation⁵, when information received “indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a situation of distress is likely”.

The 2004 amendments of both the SOLAS Convention and the SAR Convention⁶ further highlighted the central role of the notion of distress and reinforced the responsibilities of maritime parties to assist individuals in distress at sea, including by reiterating the obligations of States regarding their duty of coordination and cooperation. However, many coastal States have not accepted the amendments, which constitutes a challenge in ensuring a globally uniform response to maritime distress situations.

Furthermore, despite the legal instruments in place, restrictive interpretations of what qualifies as a distress situation at sea, coupled with varying approaches to what constitutes appropriate rescue responses, have often resulted in delays or denial of assistance to vessels in distress, exacerbating the risk of deaths and disappearance of migrants and refugees at sea. The lack of a unified humanitarian approach to distress situations at sea raises inconsistencies with the duty to render assistance to any person in distress at sea and threatens the safety and lives of countless individuals, thereby jeopardizing the right to life of all persons, a non-derogable right that must be protected without discrimination or exception.

From a prevention perspective and to uphold the international law obligations to protect the right to life, States’ obligations entail acting in the case of foreseeable threats to the right to life and in life-threatening situations, and this requires interpreting the notion of distress in a broad way, rescuing all persons from unseaworthy boats in a timely manner before it is too late.

⁴ SAR Convention 1979, Annex 1.3(13).

⁵ SAR Convention 1979, Annex 4.4(3).

⁶ SOLAS Convention 1974, Regulation 33 and SAR Convention 1979, Chapter 3.1.9. See also Resolution MSC.153(78).

The right to life must be ensured, as a fundamental and non-derogable human right set out in the International Covenant on Civil and Political Rights and other international human rights treaties.⁷ Effective protection of the right to life imposes procedural obligations under international human rights law, including obligations to conduct effective investigations and to ensure accountability for alleged failures of protection.⁸ Moreover, under international law, an act of omission - that is, not acting appropriately, including when failing to recognize an apparent situation of distress - could amount to an internationally wrongful act of a State.⁹

Thus, the efforts of Coastal States in engaging in SAR operations are welcome and the collaboration with the private and humanitarian sector supporting States' capacities to fulfil their obligations and enhancing collective actions should be commended. To further enhance these efforts, it is crucial to adopt an international law compliant predictable search and rescue system premised on the rule of law, and a common humanitarian and precautionary approach to the concept of notion of distress and to uphold the right to life in line with international human rights law. By establishing a common understanding and response framework, we can ensure timelier and more efficient assistance to those in distress at sea, ultimately saving more lives and reinforcing the commitment to maritime safety and humanitarian principles, and international law.

Recommendations

In light of the considerations outlined above, the undersigned call on States to:

- adopt a broad interpretation of distress, resulting in a humanitarian and precautionary approach¹⁰ to identifying and responding to distress situations. This will be consistent with good-faith implementation of relevant obligations under international law and with

⁷ See General Comment No. 36: Article 6 (Right to Life), 2019, CCPR/C/GC/36. The Human Rights Committee reaffirmed the need for an expansive interpretation by stipulating that the right to life is a right that should not be interpreted narrowly (para. 3). The Committee further noted that a State's obligation to respect the right to life includes an obligation to take action in the case of foreseeable threats to the right to life and in life-threatening situations, even in situations in which those threats and situations are not caused directly by the State (para. 18). The Committee also recalled that States are required to respect and protect the lives of individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea (para 63). Furthermore, the Committee recalled that States must respect and protect the lives of individuals located in places that are under their effective control (para 63).

⁸ See *A.S. et al. v. Italy*, CCPR/C/130/D/3042/2017. The Human Rights Committee found a violation of the due diligence obligations arising under article 6 (1) of the International Covenant on Civil and Political Rights due to a failure to respond promptly to a distress call, in the absence of a clear explanation for that failure.

⁹ See Article 1, 2 and 3, *Responsibility, of States for Internationally Wrongful Acts*, 2001, International Law Commission.

¹⁰ United Nations High Commissioner for Refugees (UNHCR), *Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum*, 1 December 2022, <https://www.refworld.org/policy/legalguidance/unhcr/2022/en/124184>.

the humanitarian recommendations contained in the UN Secretary-General's Report on the implementation of the Global Compact for Migration.¹¹

- Ensure that the following elements are considered to qualify a situation of distress at sea and to activate timely and effective SAR operations:
 - persons aboard are in danger and in need of immediate assistance; or
 - unsuccessful attempts to contact the vessel indicate the probability that a distress situation exists; or
 - the vessel is:
 - unseaworthy (even if not in an immediate danger of capsizing) and not suitable to navigate in open sea; and/or
 - uncrewed or crewed by persons without necessary expertise; and/or
 - overcrowded in relation to the type and condition of the vessel; and/or
 - without necessary safety, navigation and communication equipment; and/or
 - without necessary supplies, such as fuel, water, and food to reach its intended destination; and/or
 - drifting without engine power; and/or
 - children, persons with disabilities, pregnant women, victims of trafficking, persons in urgent need of medical assistance as well as other persons in a situation of vulnerability, or deceased are aboard; and/or
 - the existence of a request for assistance; and/or
 - adverse weather conditions; and/or
 - the length of time the vessel has been at sea, in light of the above factors.
- Facilitate dialogue to achieve mutual understanding on legal obligations and respective responsibilities relevant to SAR and participate in collective efforts to support the establishment or enhancement on Search and Rescue policies.
- Enhance the current capacity for Search and Rescue by fostering partnerships with the different parties represented in the private and humanitarian sector to ensure that situations of distress are identified, acknowledged and addressed promptly.
- Strengthen or establish effective SAR regional agreements tailored to their context to improve the ability of Maritime Rescue Coordination Centres (MRCCs) to detect, assess, and respond to distress signals in a timely manner and coordinate rescue responses without undue delay with the support of all actors involved in SAR. These

¹¹ The UN Secretary-General's biennial report to the UNGA on the implementation of the Global Compact for Safe, Orderly and Regular Migration (A/79/590) contains [recommendations on strengthening cooperation on missing migrants and providing humanitarian assistance to migrants](#).

agreements must comply with maritime and human rights obligations, ensuring that rescues are conducted in line with human rights principles and that the rescued are disembarked at a place of safety.

- Establish protocols to ensure that both rescue and interception operations are conducted in ways that, prioritize human rights protection, and do not expose refugees and migrants to further risks or harm.
- Take measures to establish mechanisms to monitor practices and compliance with the Law of the Sea, International Human Rights Law and International Refugee Law, to ensure consistency in rescue approaches, thereby enhancing the safety and security of those at sea;
- Undertake transparent investigations, when necessary, into allegations of failure to assist refugees and migrants in distress in order to hold perpetrators accountable.

Further, the undersigned:

- Encourage all stakeholders active at sea to promptly communicate and respond to potential situations of distress, including by applying the criteria set forth in this statement,
- Urge and support shipping companies to adopt comprehensive safety protocols that include availability of essential supplies and clear guidelines for handling medical emergencies and other situations of distress at sea,
- Call on ship owners and shipmasters to implement training programs for crew members to recognize the elements of distress set forth in this statement and to activate the emergency response procedures accordingly.

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