Duty to Rescue at Sea in International Law

Lund University, Faculty of Law

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Dr Daria Davitti

Note: The content of these slides is adapted from I Papanicoloopulu (2016) and D Ghezelsbash et al (2018)
Search and Rescue (SAR) at Sea

✓ Duty to rescue people in distress at sea is...
  ✓ A fundamental rule of international law
  ✓ Enshrined in customary international law (no doubts on status of Art 98(1) UNCLOS)
  ✓ And incorporated in various international treaties
    ✓ Article 98 of the 1982 UN Convention on the Law of the Sea (UNCLOS)
    ✓ Convention for the Safety of Life at Sea (SOLAS)
    ✓ International Convention of Maritime Search and Rescue (SAR Convention)
    ✓ International Convention on Salvage
Art 98 UNCLOS

1. 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:
   - (a) to render assistance to any person found at sea in danger of being lost;
   - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
   - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
Art 98 UNCLOS (cont’d)

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.
2 separate obligations, 2 sets of States

- Flag States
  - To oblige masters of vessels flying their flag to rescue people in distress
  - This duty has a long history in IL

- Coastal States
  - To put in place and maintain Search and Rescue services
Scope of the Duty

- **Territorial Scope**
  - Includes all maritime zones (Art 98 is in Part VII on High Seas, but also applicable to exclusive economic zone because of Art 58(2))

- **In which situations?**
  - Both in case of collisions/accident AND
  - When receiving information that a vessel is endangered or has sank

- **To whom it applies (beneficiaries)?**
  - To all persons in distress without distinction
  - Nationality (of vessel or people on it), legal status and activities in which they are engaged (lawful/unlawful) are **irrelevant** to applicability of the duty
Clarifying Duty Bearers…

- Applicable to States (as clear in UNCLOS)
  - Applicable to all State-owned vessels (military and civilian) AND
  - Specific State obligations to set up and maintain SAR services
- But also masters of ships individually (for duty to provide assistance)
  - Art 10(1) International Convention of Salvage
  - Reg 33.1 SOLAS Convention
  - So applicable to all ships, incl. private vessels
Exception(s)

- UNCLOS contemplates only one exception
  - Not to endanger the rescuing vessel, its crew and its passenger
- But SOLAS Reg 33.1 is slightly broader
  - ‘If the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress and, taking into account the recommendation of the Organization, to inform the appropriate search and rescue service accordingly’
Exception(s) (cont’d)

So SOLAS envisages three exceptions

- **Unable**: a totally objective impossibility
- **Unreasonable**: (both subjective and objective), it might be objectively possible but, because of specific circumstance of vessel involved and e.g. weather conditions, it would be unreasonable to expect the master to proceed
  - Unreasonable is similar to exception in UNCLOS, as it consider threat to rescuing vessel/crew/passengers
- **Unnecessary** for the vessel to proceed, either because another vessel has already taken the duty to rescue, or because the distance is such that the rescuing vessel would not reach the endangered vessel in time
  - NB: Commercial consideration should not play a role in determining the rescue capacity of the vessel
Duties deriving from rescue

- Duties vested upon the master of the ship
  - Treat rescued people humanely
    - According to all relevant international human rights instruments (based on practical limitations on-board)
  - To deliver them to a ‘place of safety’ - thorny issue of disembarkation, predicated on two general principles
    - State sovereignty over their territory, so there is no right of entry into a State’s ports
    - Non-refoulement, whereby people cannot be returned to the boundaries of States where their life would be endangered or might be subject to torture or other inhuman or degrading treatment (absolute prohibition, strictly linked to the prohibition against torture)
  - In practice, disembarkation raises many issues (*Tampa* case and more recently *Aquarius* and *Diciotti* cases, to name just a few)
Disembarkation...where?

- SAR Convention amendments of 2004 aimed at clarifying the duties of States
  - ‘Parties shall co-ordinate the 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 ships’ intended voyage, provided that releasing the master of the ship from the obligations does not further endanger the safety of life at sea.'
Disembarkation...where? (cont’d)

- The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety...relevant Parties shall arrange for such disembarkation to be effective as soon as reasonably practicable’

- So, where should people be disembarked, after rescue?