

Call for Compliance with Maritime Law and Support of Vessels involved in Sea Rescue

**Dear Commission president von der Leyen,
dear Commissioner for Home Affairs Johansson,
dear Heads of European Member States,**

The undersigned organisations are writing to you in order to call for your compliance with maritime law, and to urge you to ensure the full and unconditional support for vessels which fulfill their duty to rescue people in distress at sea.

The European Union and its Member States have been breaking applicable law in the Mediterranean Sea for several years. Meanwhile, vessels that comply with their duty to render assistance to people in distress at sea are largely left alone by European authorities or even criminalized.

The following Open Letter recalls the legal obligations of actors at sea that witness people in distress, as enshrined in the UNCLOS, SOLAS and SAR conventions, the IMO Guidelines on the treatment of persons rescued at sea, as well as in international human rights and refugee law principles such as the principle on non-refoulement.

The undersigned remind the European Commission and Heads of European Member States that actors at sea are bound by those legal principles and reaffirm their commitment to respect them. The undersigned equally expect the European Commission and Heads of European Member States to fulfill their obligations, respecting and implementing international law accordingly.

The signatories urge the European Commission and Governments of European Member States to ensure that:

- **all rescue operations are coordinated**
- **ports for disembarkation are assigned without delay in a place of safety and in compliance with the principle of non-refoulement**
- **European support units are deployed in the case that a ship is incapable of rescuing**
- **no master of a ship is criminalized for rescuing people in distress**

Europe, 2020

1. Emergency Phase

The signatories remind the Heads of European Member States as well as the European Commission that a distress condition is qualified when a grave and imminent danger threatens a vessel or a person which/who consequently requires immediate assistance (point 3.3.4 IAMSAR vol. II; point 1.3.11, Annex to the SAR Convention) in consideration with other factors (humanitarian and navigational criteria) according to article 9 of EU Regulation 656/2014 of the European Parliament and the Council of 15 May 2014.

A master of a ship aware of a distress situation is obliged to contact the appropriate Rescue Coordination Center (RCC): the RCC in charge of the Search and Rescue Region (SRR), the nearest RCC, or any RCC which can be reached (point 3.1, IAMSAR vol. III) in order to share evaluated and classified information about the circumstances (point 3.2.1, b), IAMSAR vol. II).

A master of a ship is obligated to respond to an alert and deviate from course to go to the position of the distress case in order to rescue as quickly as possible, provided that the ship is capable of giving assistance (Regulation 33/V, Annex to the SOLAS Convention). In case the ship is not able to assist, the ship master is bound by the duty to alert an appropriate unit about the distress situation. The decision on whether or not to assist is subject to the discretion of the ship master, taking the safety of their crew and ship into consideration.

Consequently, the signatories urge the European Commission and the Heads of European Member States to ensure that rescue operations are coordinated, rescue units are deployed and captains of ships in the vicinity of people in distress are assisted in carrying out their duties.

The signatories demand the dispatch of appropriate European rescue units without any delay, particularly in the case that a ship is not able to render assistance in a distress situation.

2. Rescue operation

The signatories remind the Heads of European Member States as well as the European Commission that actors at sea are bound by the duty to render assistance to anyone in distress without any delay according to the general obligation of article 98 (1) (a) of UNCLOS and regulation 33/V in the Annex of the SOLAS Convention.

The master of a ship is obligated to maintain communications with the RCC during the entire rescue operation, including information about conditions, assistance needed and actions undertaken (point 5.1.5, Annex to the IMO Resolution 167(78)), information about survivors, the overall progress of the operation, or any help that the rescuing ship may need (point 6.10, Annex to the IMO Resolution 167(78)).

The ship master has the duty to do everything possible within the capabilities and limitations of the ship to treat survivors humanely and meet their immediate needs, as stated in point 5.1.2 of the Annex to the IMO Resolution MSC. 167(78).

The master of a ship has the duty not to discriminate. They are obligated to provide the names, ages, genders, apparent health and medical conditions, as well as any special medical needs of the rescued people to the responsible authorities, as stated by the Principles relating to administrative procedures for disembarking persons rescued at sea of the IMO (point 2.2, FAL.3/Circ.194).

Consequently, the signatories urge the European Commission and the Heads of European Member States to ensure that the responsible European RCCs actually fulfill their duties in terms of responding to calls and supporting rescue operations through their coordination. The signatories demand that the European Commission and the Heads of European Member States ensure that no distinction between people is made when a rescue is coordinated.

The signatories urge that they are supported in their humane treatment of survivors, meaning the provision of assistance and first aid for people in need of special care and medical attention.

Furthermore, the undersigned appeal to the European RCCs for the deployment of support units and the coordination and implementation of medical evacuation and assistance if required by the situation.

3. Disembarkation

The signatories reiterate that the Heads of European Member States as well as the European Commission are bound by the duty to respect the principle of non-refoulement, meaning that a ship shall not return an asylum seeker rescued at sea to a country in which he or she may suffer from persecution based on race, religion, nationality, membership of a particular social group or political opinion (article 33 (1), Convention Relating to the Status of Refugees) or of inhuman and degrading treatment (point 7, Annex to the IMO Resolution MSC. 167(78)).

The Heads of European Member States as well as the ship master must ensure that the shipwrecked people are disembarked in a place of safety, as enshrined in point 3.1.9, Annex to the SAR Convention. According to the IMO Resolution MSC.167 (78), a place of safety is a place in which the safety of life of the survivors is no longer threatened, and where their basic human needs (such as food, shelter and medical needs) can be met. The ship master must seek to ensure that survivors are not disembarked in a place where their safety would be further jeopardized (point 5.1.6 of the Annex to the IMO Resolution MSC. 167(78)).

Consequently, the signatories urge the European Commission as well as the Heads of European Member States to ensure that a port for the disembarkation of rescued people is assigned without delay and that this port, following the principle of non-refoulement, can only be in Europe.

In addition, the signatories demand that the European Commission and the Heads of European Member States guarantee their full assistance, and the enablement of shipwrecked people to be disembarked in a place of safety.

Last but not least, the signatories demand that the captains of ships are not prevented from carrying out their duties and that they should not suffer any disadvantages as a result.

This document was drafted by Sea-Watch e.V. in collaboration with The Lighthouse – Clinique Juridique of the University of Angers.

Signatories: