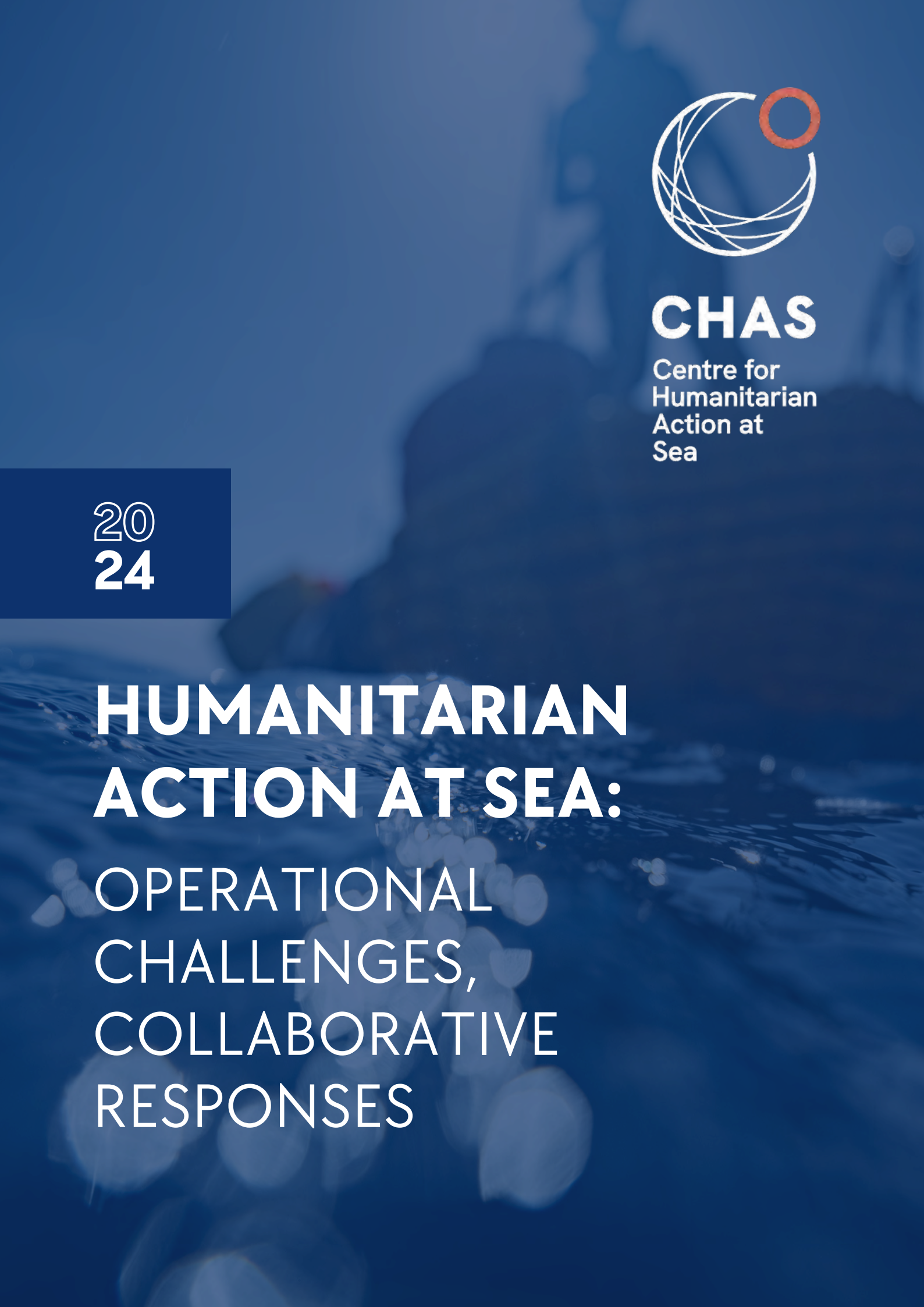

CHAS
Centre for Humanitarian Action at Sea

2024

HUMANITARIAN ACTION AT SEA:

OPERATIONAL CHALLENGES, COLLABORATIVE RESPONSES

ABOUT THE CENTRE FOR HUMANITARIAN ACTION AT SEA

The Centre for Humanitarian Action at Sea supports dialogue, innovation and collaboration to improve the safety of life at sea. Its dialogue platform brings together a range of stakeholders, including states, the commercial maritime sector, professional maritime rescue organizations, and humanitarian organizations, to hold confidential discussions on key issues. The Centre also serves as a hub for research and lessons on maritime rescue law, policy, training and practice. Facilitating connections between the diverse array of maritime actors, the Centre supports pragmatic solutions grounded in the daily realities faced by seafarers, refugees and migrants around the world. Based in Geneva, the Centre leverages the city's position as an international hub for refugees, maritime, and humanitarian organizations. The Centre for Humanitarian Action at Sea was created and incubated within the Creative Spark division of the Geneva Centre for Security Policy (GCSP).

This report was prepared by Ralph Mamiya, Senior Researcher for the Centre for Humanitarian Action at Sea, with assistance from Carine Fauchs and oversight from the Centre's founder and director, Caroline Abu Sa'Da, and founder and board president Richard Watts.

Special thanks for comments on this report go to the International Federation of the Red Cross and Red Crescent Societies, the UN High Commissioner for Refugees, the International Organization for Migration, and the Royal National Lifeboat Institute. Special thanks are also due to several private organizations for their assistance in data analysis.

Disclaimer: The views, information and opinions expressed in this publication are the authors' own and do not necessarily reflect those of the Geneva Centre for Security Policy (GCSP) or the members of its Foundation Council. The GCSP is not responsible for the accuracy of the information.

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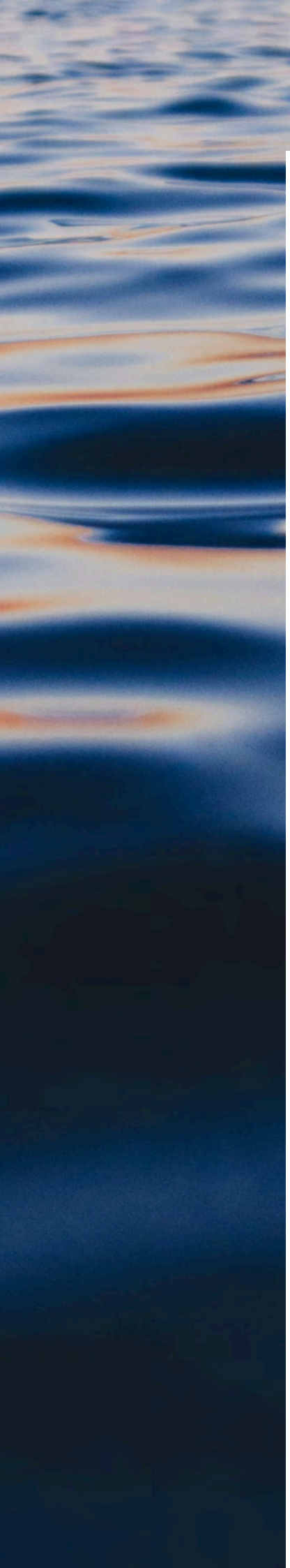

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LIST OF ACRONYMS

GMDSS	Global maritime distress and safety system
ICS	International Chamber of Shipping
IMO	International Maritime Organisation
IMRF	International Maritime Rescue Federation
IOM	International Organisation for Migration
NGO	Non-governmental organisation
RCC	Rescue coordination centre
RNLI	Royal National Lifeboat Institution
SAR	Search and rescue
SOLAS	Safety of life at sea
SRR	Search and rescue region
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office for the High Commissioner of Human Rights

Photo credit: SOS MEDITERRANEE / Camille Martin Juan

EXECUTIVE SUMMARY

Each day across the globe, hundreds of merchant ships share crowded sea lanes with migrants and refugees who attempt to transit the seas in search of protection and a better life. From the Central Mediterranean to the Andaman Sea, a reality of modern seafaring is encounters with migrants and refugees aboard overcrowded and unseaworthy vessels. From the seafarers' point of view, there is a long-standing duty to rescue anyone in distress at sea, undisputed in international law and seafaring practice, but when and how this duty should be carried out still raises questions. Captains and crews are often forced to make life-and-death decisions with little clear guidance from the relevant authorities. Some ship captains in the Mediterranean have been prosecuted for bringing migrants and refugees to European ports, others have been prosecuted for bringing those in distress back to Libya. This leaves the men and women of the international maritime community in a very difficult position and puts lives in jeopardy.

To strengthen the safety of life at sea, the Centre for Humanitarian Action at Sea has been created to support dialogue, outreach, research, and practical action on challenging issues concerning maritime movement of migrants and refugees. It recognizes and considers the diverse array of stakeholders, positions, and interests on this issue, seeking to develop consensus where possible. It remains focused on addressing the operational challenges faced by seafarers and, above all, to save the lives of people in distress at sea. In 2023, the Centre launched its first annual conference, bringing together states, the shipping industry, international organisations, civil society, and maritime rescue actors to discuss this topic and explore practical solutions. This dialogue platform is confidential and completely devoid of media exposure, serving as a safe space for frank and pragmatic discussion, identifying and addressing issues that fall outside the focus of other forums.

The Centre prepared and distributed a survey to seafarers and ship managers/owners around the world found to better understand their perspectives, finding that maritime migration remains an important issue. More than 70% of respondents reported being 'very concerned' or 'concerned' about maritime migration. At the same time, nearly half of respondents reported feeling insufficiently trained or equipped to assist migrants in need of rescue. These seafarers called for greater cooperation between states to clarify the law and policy around rescue and disembarkation. They also called for more training on the operational context and a platform where they can share best practices and challenges. These findings, and data on the number of distress calls received by the shipping industry, is addressed in the first chapter, 'An operational snapshot of rescue-at-sea and the maritime sector.' The Centre seeks to listen to these voices, identify the required areas to focus on, build a policy discussion, and develop practical operational steps.

This report, prepared in support of the Centre's second annual conference, sets out the legal, policy, and operational landscape. It also recommends five key areas for discussion in 2024:

1. Clarifying legal and policy terms related to rescue, such as 'place of safety' and 'distress';
2. Expanding maritime domain awareness of maritime incidents;
3. Supporting flag state and coastal states to fulfil their important roles;
4. Improving training and guidance for the maritime sector to play a role in rescue at sea;
5. Developing operational support for seafarers related to mass rescue; and
6. Strengthening data collection and reporting. It is based on interviews and discussions with experts in search-and-rescue, maritime policy, and shipping.

Each of these areas, described briefly below, receive a dedicated chapter in this report.

Photo credit: SOS MEDITERRANEE / Anthony Jean

EXECUTIVE SUMMARY

Clarifying legal and policy terms: 'place of safety' and 'distress'

There is a robust legal and policy framework for rescue at sea. While the duty to rescue vessels in distress and bring them to a place of safety is widely agreed upon and acted upon daily, debates remain. Terms like 'place of safety' and 'situation of distress' remain contested, which has real world implications for seafarers, migrants and refugees, and for states that are ultimately responsible for their protection and assistance.

These are more than academic discussions. In the Mediterranean context, commercial seafarers have been prosecuted for bringing migrants and refugees departing North Africa to safety on European shores, as in the case of Tunisian fishermen in 2018. Yet seafarers have also been prosecuted for bringing migrants and refuges back to Libya rather than Europe, as in the case of the ship Asso28, also in 2018. Cases like these highlight how important it is to clarify legal and policy frameworks which govern the actions of seafarers and to engage states' responsibilities in this area. Translating these frameworks into workable and clear operational guidance is vital for all those concerned. The Centre's dialogue platform offers a forum in which to have such discussions, bridging the legal, policy and operational spheres.

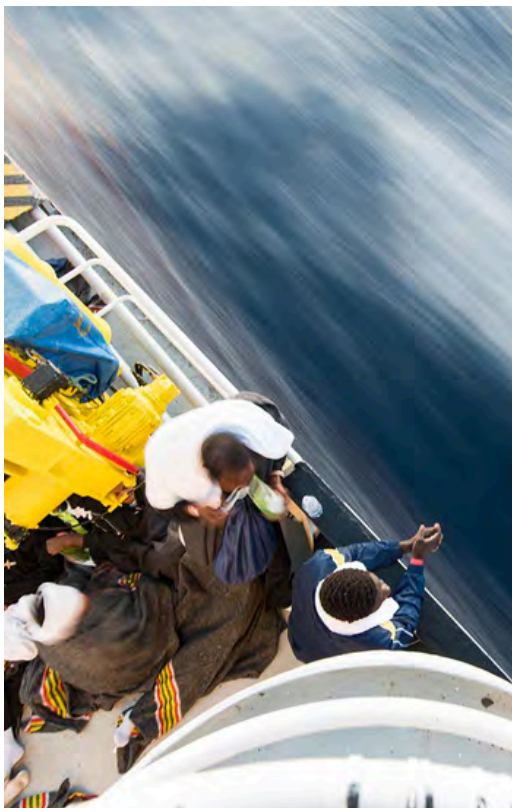

Photo credit: SOS MEDITERRANEE / Laurin Schmid

Expanding maritime domain awareness and improving rescue coordination

Maritime domain awareness is defined by IMO as 'the effective understanding of any activity associated with the maritime environment that could impact upon the security, safety, economy or environment.'[1] It is an essential element for detecting vessels used by migrants and refugees before they sink. Too often, these vessels become 'invisible shipwrecks' because they are rarely integrated into the Global Maritime Distress and Safety System (GMDSS). It's important to ensure that the first link in the chain of maritime awareness—a broadcasted distress call—is heard, relayed, and responded to. Third-party NGO alarm phone systems, as used in the Mediterranean, are one option for this. The rescue community should also explore ways to leverage maritime domain awareness or rescue centres. The Centre can work to identify existing systems and bring together the diverse set of expert actors in developing such mechanisms and facilitate solution-oriented discussions.

Supporting flag states and coastal states

Flag states and coastal states are crucial actors in addressing issues of rescue at sea and maritime population movements. Flag states hold jurisdiction over vessels flying their flags, even in international waters. This unique position gives them the authority and legitimacy to provide clarity to their ships in complying with international laws and conventions, such as the duty to assist vessels in distress. Flag states are also pivotal in monitoring and enforcing safety and rescue standards, exercising due diligence, and reporting and sharing data related to maritime incidents. Coastal states are essential 'front line' actors in maritime search and rescue. Fulfilling all of these responsibilities across the world's oceans is inherently challenging, however, and even the best resourced states may be stretched thin. The Centre can support both flag states and coastal states by facilitating discussions on areas of uncertainty and serving as an advisory hub for flag states and coastal states and serve to connect them with partners and peers.

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[1] International Civil Aviation Organization (ICAO) and IMO, International Aeronautical and Maritime Search and Rescue Manual: Volume 1, Organization and Management (ICAO and IMO, 2022) p xiii ('IAMSAR Manual') news.mcaa.gov.mn/uploads/bookSubject/2022-11/637b02e0c30d7.pdf.

EXECUTIVE SUMMARY

Improving training and guidance for mass rescue

Effective rescue further requires preparedness and training for a wide range of maritime actors, especially within the commercial shipping industry. Organizations like the International Maritime Rescue Federation (IMRF), International Chamber of Shipping (ICS), and International Maritime Organization (IMO) support general training materials that shipping companies can use, however these are not always widely known in the industry. Preparedness for rescue is also a constant, iterative process. The Centre supports the dissemination of existing training materials, the production of new training materials and facilitates dialogue between actors to ensure that evolving needs are addressed.

Developing operational support for seafarers

Operational support for seafarers is a crucial element that complements, but differs from, traditional training. Both Seafarers at sea and ship management offices on land regularly undergo extensive training on a wide range of critical areas but can also benefit from real-time assistance when facing crises. From identifying distress situations to managing rescued people onboard and ensuring safe disembarkation, seafarers require practical, responsive support. This can include tools like instructional posters, online resources, or even chatbots for immediate guidance. Understanding and addressing these operational needs is key to ensuring effective maritime rescue, and the Centre is well positioned to help facilitate this process.

Strengthening data collection and reporting

Data on maritime population movements is critical for understanding and addressing the challenges faced by migrants, refugees, and seafarers, but collecting this information is inherently difficult. Migrants and refugees, or those organising the embarkation, often avoid official channels, seeking to be as undetected as possible as they move. This means that when migrants and refugees perish on the open sea it requires significant work to reconstruct their voyage and establish their identity, not to mention estimating the numbers of people travelling on a maritime route each year. Organizations like the International Organization for Migration (IOM), the UN High Commissioner for Refugees (UNHCR), and the Mixed Migration Centre attempt to undertake this task. These organisations assemble the most complete picture we have of maritime routes, yet they fully admit the limitations of the data they produce.

Improving data on maritime population movements is critical. States and coast guards could report maritime movements more transparently to global data custodians like IOM and UNHCR. In 2015, for example the International Maritime Organization established an Interagency platform for information sharing on migrant smuggling in collaboration with IOM and the UN Office on Drugs and Crime (UNODC). Currently, however, only two states, the Republic of Marshall Islands and Saudi Arabia, regularly submit data to the platform. Increasing awareness of mechanisms like the IMO platform and developing agreed standards for incident reporting are both ways to improve our understanding of maritime migration dynamics.

EXECUTIVE SUMMARY

The remainder of the report is dedicated to understanding the specific dynamics of maritime routes across the world is integral to tackling the challenge of maritime movements. This report reviews five groups of maritime routes:

- Maritime routes to and within Europe, including the three Mediterranean routes (central, eastern and western), the Western African Atlantic route, and the English Channel;
- The Caribbean Sea, with transit between Latin America and Caribbean countries to the United States;
- The two-way route across the Gulf of Aden, between the Horn of Africa and the Arabian Peninsula;
- The Australasian route between Australia and its Southeast Asian neighbours to the north; and
- The Southeast Asian route across the Andaman Sea and Bay of Bengal.

An in-depth examination of each of these routes is beyond the scope of this report, but we use the movement of Rohingya refugees across the Bay of Bengal and Andaman Sea as a case study for many facets of the challenge of maritime movements.

Dialogue on each of these issues is essential for making the world's seas safer. In 2024, the annual conference will include focused discussion on questions of operational perspectives, policy, training, maritime domain awareness, flag state and coastal state roles, and data collection. The Centre for Humanitarian Action at Sea hopes that advancing understanding on these issues can strengthen the foundations of rescue practice globally. As it continues to build on these initiatives, the Centre remains committed to its core mission: facilitating the development of practices that prioritize human life and dignity in the context of maritime population movements. While significant progress has been made, continued support and funding are essential to sustain these efforts and to expand the Centre's capacity to address these challenges.

The Centre's dialogue platform and its broader efforts represent a pivotal opportunity to create a more humane and effective response to the ongoing challenges of maritime population movements. By fostering collaboration, enhancing operational readiness, and ensuring that data is collected and shared transparently, the international community can better navigate the complexities of maritime migration, ultimately saving lives and upholding the rights of those most vulnerable at sea.

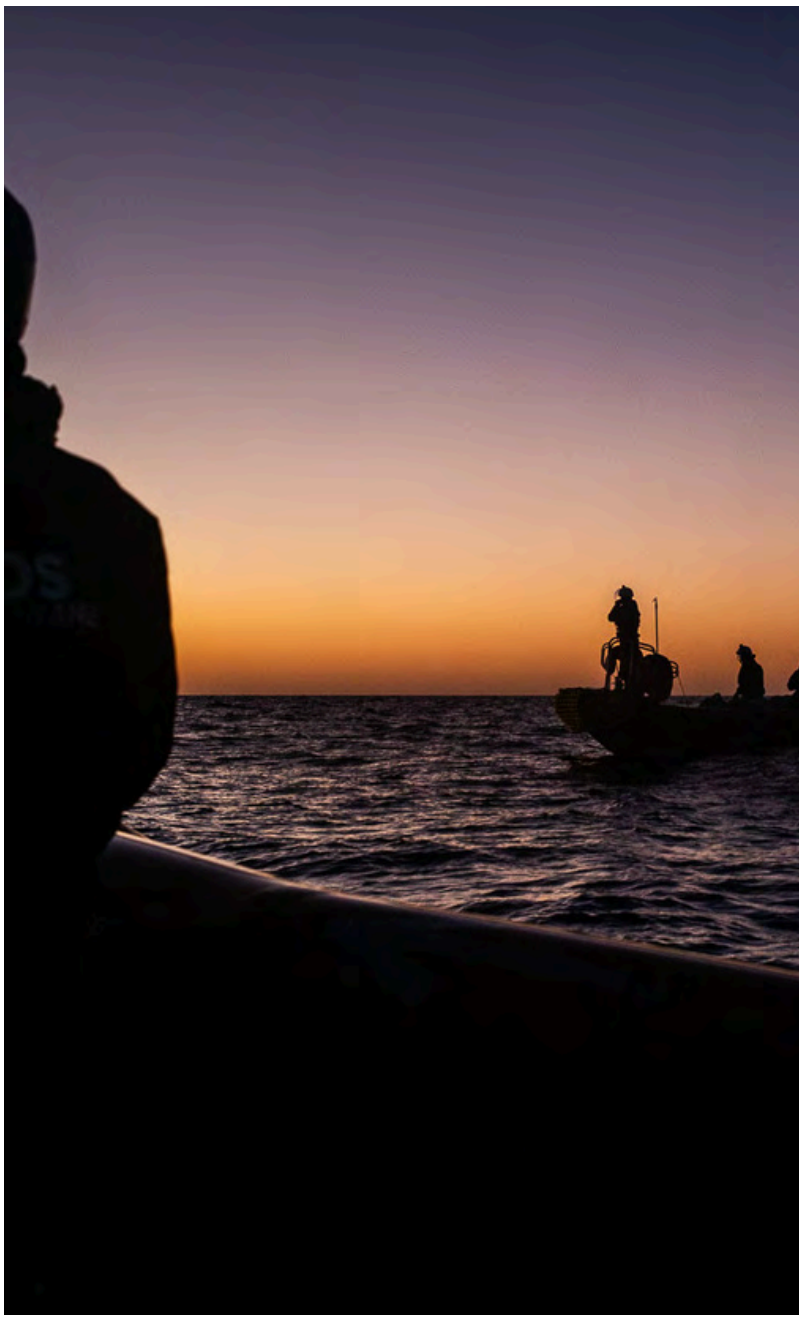


Photo credit: SOS MEDITERRANEE / Hippolyte

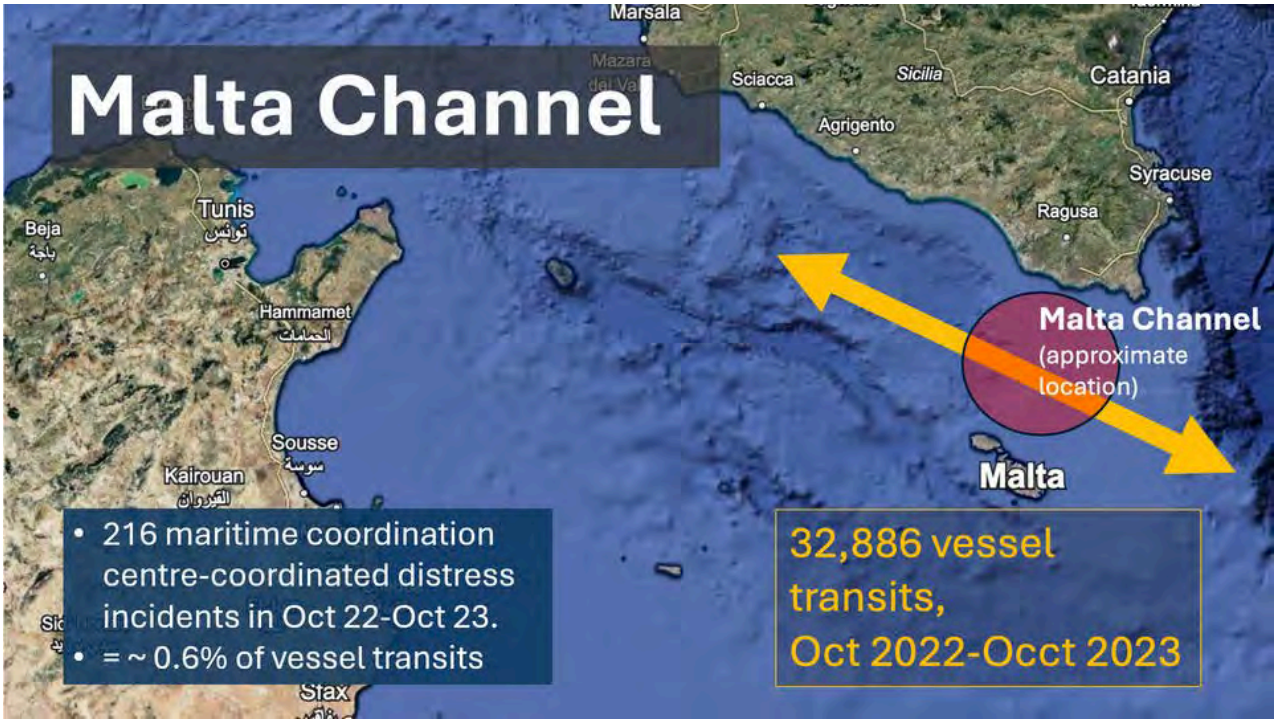
AN OPERATIONAL SNAPSHOT OF RESCUE-AT-SEA AND THE MARITIME SECTOR

Rescue-at-sea is not a theoretical question for the maritime sector, including all manner of commercial vessels large and small. This section reviews data gathered from one major shipping company, provided to the Centre for Humanitarian Action at Sea anonymously, and a survey conducted by the Centre on seafarer perspectives on rescue. The data illustrates the frequency and nature of rescue calls in critical regions like the Central Mediterranean, while seafarers' voices offer insights into the concerns, challenges, and support systems they face when assisting migrants at sea. Together, these sections provide an important overview of the operational and human elements involved in maritime rescue operations within the commercial shipping industry.

AN OPERATIONAL SNAPSHOT OF COMMERCIAL SHIPPING AND RESCUE

General data on the rescue or assistance activities of commercial vessels is difficult to gather, as discussed in other sections of this report. One major commercial ship owner shared information with the Centre for Humanitarian Action at Sea, however, providing an important snapshot of the assistance provided by its ships in the waters of the Malta Channel (between Malta and Sicily) from 15 October 2022 to 15 October 2023.

This data shows that requests for assistance to commercial shipping occur regularly. Over this period, a maritime rescue coordination centre called upon ships to assist in a rescue situation 216 times. This amounts to an average of 18 times per month. Certain months of the year see far more migrant and refugee vessels due to weather conditions, and thus the average in peak months such as July-September was likely nearly double this average, or at least once per day. [2] At the same time, ships made more than 32,000 transits across the Malta Channel over the course of the year. Thus, each ship entering the Malta Channel had only a 0.6% chance of being called upon to provide assistance.



Map showing approximate location of the Malta Channel

[2] Based on UNHCR data, the third quarter of 2023 saw a 75% increase over the annual average. See United Nations High Commissioner for Refugees (UNHCR), Operational Data Portal: Europe Sea Arrivals, https://data.unhcr.org/en/situations/europe-sea-arrivals/location/24521.

AN OPERATIONAL SNAPSHOT OF RESCUE-AT-SEA AND THE MARITIME SECTOR

The data also sheds light on the different forms that requests for assistance can take. The rescue coordination centre's requests to commercial ships in the vicinity of distressed vessels broadly fell into three categories: moving closer to the distressed vessel and standing by to wait for professional rescuers; directly rescuing people by taking them onboard; and escorting a migrant or refugee vessel to a specified destination. In 5% of cases, the shipowner was requested to escort the migrant or refugee vessel to a designated port. (The shipping company did not disaggregate requests for waiting on standby v. taking people onboard, but the latter situations are likely rare).

Assisting vessels in distress can be a significant investment of company resources. The ships that responded to requests for assistance were diverted for a median of 18 hours from their planned journeys, although the longest a ship participated in a rescue operation was 145 hours. The shipping company reported that when ships picked up migrants without coordination with the appropriate rescue coordination centre, finding a location for the disembarkation can be very lengthy and complex.

Migrants and refugees sit in a boat alongside the Maersk Etienne tanker off the coast of Malta, in this handout image provided 19 August, 2020, Maersk Tankers

Commercial vessels face significant logistical challenges when undertaking mass rescue operations, as they are not designed to carry large numbers of additional people. Different ships have varying freeboard heights (the distance between the waterline and the deck), which can make bringing people safely aboard difficult, especially without specialized equipment. Ships typically carry a limited number of life jackets. Food and water supplies, intended to last the crew for a month, can be quickly depleted; accommodating 100 rescued individuals, for example, would reduce these provisions to just one week. These logistical realities highlight the strain on resources that ship crews must manage during mass rescue events.

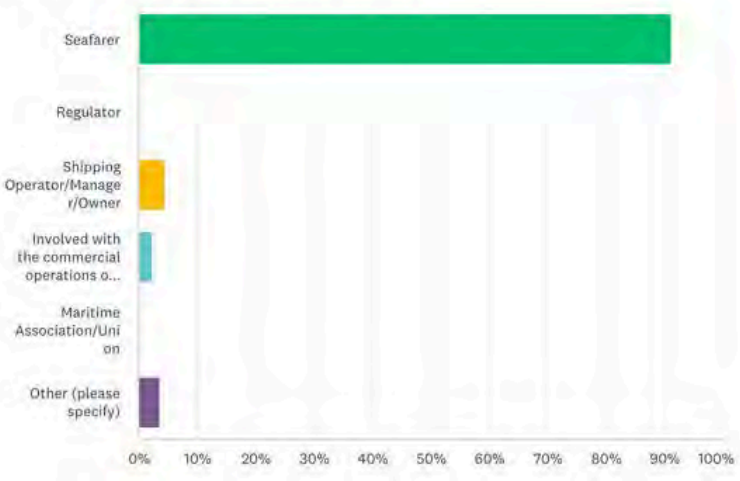
Beyond resource challenges, there are also significant safety risks involved. Beyond resource challenges, there are also significant safety risks involved. Many ships carry inherently dangerous cargo, such as chemicals or petroleum. Bringing large numbers of people on board, particularly if they do not share a language with the captain or crew, presents an immense security risk. Such practical and safety concerns are often overlooked in public discussions about maritime rescue, underscoring the complexity and danger faced by commercial ships that must respond to distress calls at sea.

SEAFARERS' PERSPECTIVES

The Centre for Humanitarian Action at Sea initiated a survey of seafarers in 2024, gathering views from seafarers, ship managers/owners, and members of seafarer welfare networks, including port chaplains. More than 95% of respondents come from the commercial shipping sector, with more than 80% of that group seafarers. Most respondents worked on tankers, dry bulk carriers, or container ships. The respondent group as a whole worked extensively across all major maritime migration routes covered in this paper.

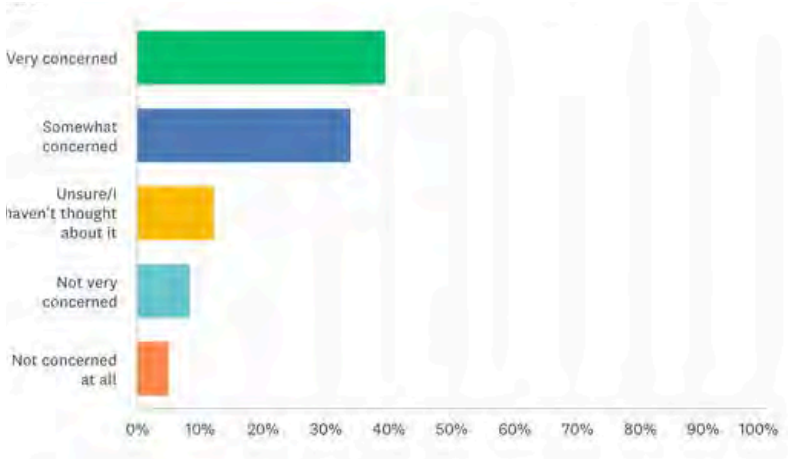
The survey highlights that maritime migration is an issue of significant concern for commercial seafarers: 40% of respondents reported being 'very concerned' by maritime migration and an additional 34% reported being 'concerned'. A substantial minority of respondents, 11.5%, reported being involved with assisting migrants at sea, with one quarter of that group having taken migrants on board their vessel. The vast majority of respondents (87%) felt that the work of coast guards and search-and-rescue professionals, including NGOs, provided a 'humanitarian necessity'.

What is your role in the maritime industry?



Survey question showing respondents' role

How concerned are you about the possibility of encountering migrants at sea?



Survey question showing concern regarding migrant encounters

Nearly half of respondents, however, did not feel sufficiently trained or equip to assist maritime migrants and refugees. Nearly half of respondents (44%) called for more training for seafarers on the legal and operational context, with 24% calling for more training on search-and-rescue operations. Many seafarers also called for more protections, with 63% seeking greater protection from criminalisation when assisting migrants and refugees, 28% recommending more psychological support, and 34% seeking more support from captains and shipping companies.

This survey was anonymous, permitting respondents to share their views freely. It served as a follow-up to its 2023 survey, resulting in a 75% increase in the number of respondents. While not serving as scientific sample size with only 251 responses, it serves as an important step that the Centre will build upon. The Centre continues to call upon interested actors in the maritime sector to gather seafarer perspectives on rescue through this and similar surveys.

CLARIFYING LEGAL AND POLICY TERMS: 'PLACE OF SAFETY' AND 'DISTRESS'

The practice of maritime rescue is as old as seafaring itself. Many of the earliest international agreements on maritime commercial practice codified a legal duty to assist vessels in distress.[3] These first efforts to codify the rules of maritime rescue were spearheaded by commercial business, not by state diplomats or humanitarians.[4] Today, the duty to assist vessels in distress is clearly articulated in a set of interlocking international conventions: the UN Convention of the Law of the Sea (UNCLOS, 1982), the International Convention for the Safety of Life at Sea (SOLAS Convention, 1974), and the International Convention on Maritime Search and Rescue (SAR Convention, 1979).

As stated in the SOLAS Convention, 'The master of a ship at sea, on receiving a signal from any source that a ship or air craft or survival craft thereof is in distress, is bound to proceed with all speed to the assistance of the persons in distress informing them if possible that he is doing so.'[5] This duty, first stated in the 1914 SOLAS Convention[6] and reiterated in its modern (1974) incarnation, was again codified in the UN Convention on the Law of the Sea, ratified by almost every country in the world.[7]

The SOLAS Convention also required governments to establish maritime rescue facilities to support rescue efforts. The SAR Convention further refined these duties, establishing requirements for rescue coordination centres (RCCs), which would have responsibility for a defined search and rescue region (SRR).[8] These agreed rescue zones continue to play an important role in maritime migration, creating presumptive responsibility for rescue even for countries that seek to avoid admitting migrants and refugees on their shores.

The foundations for the duty to rescue in international law—UNCLOS, the SOLAS Convention and SAR Convention—are complementary to but distinct from the treaties regarding refugees and human rights that create the framework for the modern system of protection for refugees and enshrine the rights of migrants. This does not make the rights and duties of refugee and migrant protection any less binding on states, but it does create the opportunity to address questions of rescue at sea distinct from questions of immigration and asylum.

At the same time, maritime law must engage with refugee, human rights, and transnational criminal law to ensure the protection of refugees and migrants along maritime routes. These legal frameworks provide essential safeguards for individuals fleeing persecution or insecurity or seeking better lives by sea. Refugee and human rights laws guarantee protection from forced return and ensure basic human dignity, while transnational criminal law addresses human trafficking and smuggling, including for those moving via maritime routes. Interpreting maritime law standards in line of these separate requirements of international law is crucial for managing rescue operations, determining the treatment of people at sea, and clarifying jurisdictional responsibilities, ensuring safety and rights protection along migration routes.

One area where these two bodies of law come into direct contact is the concept of a 'place of safety' for disembarking maritime migrants and refugees. A second area is the concept of 'distress', which can be defined narrowly or broadly with a potential result of increasing or decreasing the likelihood that a state will be called upon to disembark migrants and refugees on its territory. The debate surrounding these two concepts is discussed in the following sections.

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[3] See, for example, discussion of the 1885 Antwerp Convention on International Commercial Law, in Irini Papanicolopulu, 'The Historical Origins of the Duty to Save Life at Sea under International Law' Journal of the History of International Law 24:149 (2022), p. 170-173.
[4] Id.
[5] International Convention for the Safety of Life at Sea (1974) 1184 UNTS 273, ch V, reg 10(a) (SOLAS Convention).
[6] Convention Internationale pour la Sauvegarde de la Vie Humaine en Mer (1914), art 37 www.archive.org/stream/textofconvention00inte#page/n5/mode/2up.
[7] UN Convention on the Law of the Sea (1982) 1833 UNTS 397, art 98 (UNCLOS).
[8] International Convention on Maritime Search and Rescue (1979) 1405 UNTS 119, ch 2 (SAR Convention).

CLARIFYING LEGAL AND POLICY TERMS: 'PLACE OF SAFETY' AND 'DISTRESS'

DEFINING 'PLACE OF SAFETY'

The SAR Convention defines 'rescue' as '[a]n operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety' (emphasis added).[9] The SAR Convention originally did not define 'place of safety' but the IMO Maritime Safety Committee (MSC) addressed the question in its 2004 resolution: a 'place of safety' is 'a place 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... The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea.'[10] These remarks reaffirm the general protections against non-refoulement contained in international refugee and human rights law.

Governments and international law experts have examined the concept of 'place of safety' after the disembarkation of refugees and migrants in their countries of origin or maritime departure, which led to subsequent abuses and human rights violations. In the case of the Central Mediterranean, for example, many migrants and refugees depart from Libya.[11] The United Nations and courts of some European countries agree that Libya does not constitute a 'place of safety' for maritime rescue,[12] posing the question as to whether past and existing policies of 'push back' that return migrants and refugees to Libya should be ended. However, returns and disembarkations in Libya continue as of the time of writing.[13] In addition, a variety of programs to support the Libyan coast guards and other actors to interdict migrants and refugees, sometimes in coordination with European actors, are ongoing.

There are also many other countries of departure, such as Tunisia and Turkey, for which there is less consensus on 'place of safety' designation. These countries have not reached the levels of instability or danger that have led to significant agreement on Libya's status, but their asylum policies and treatment of migrants and refugees have drawn concern and criticism from human rights organizations.[14]

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[9] SAR Convention, 1.3.
[10] International Maritime Organization, Maritime Safety Committee Resolution 167(78) MSC 78/26/Add.2, para 6.12 wwwcdn.imo.org/localresources/en/OurWork/Facilitation/Documents/MSC.167(78).pdf.
[11] See, for example, UNHCR, IOM, UN Office of the High Commissioner for Human Rights (OHCHR), UNODC, UN Children's Emergency Fund, and UN Special Rapporteur on the Rights of Migrants, Press Release: 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 (Joint Statement, Vienna, 18 May 2022) www.unodc.org/unodc/press/releases/2022/May/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.html. ; OHCHR, Nowhere but back: Assisted return, reintegration and the human rights protection of migrants in Libya (United Nations, 2022) www.ohchr.org/en/documents/reports/nowhere-back-assisted-return-reintegration-and-human-rights-protection-migrants.
[12] Corte suprema di Cassazione, V sez. penale, sentenza 4557724, 10 September 2023 - dep. 17 February 2024 canestrinilex.com/risorse/asso28-libia-non-e-porto-sicuro-cass-455724; UNHCR position on Libya.
[13] Feedback from UN official.
[14] See, for example, Anuscheh Farahat and Nora Markard, Places of Safety in the Mediterranean: The EU's Policy of Outsourcing Responsibility (Heinrich Böll Siftung, 2020) eu.boell.org/sites/default/files/2020-02/HBS-POS%20brochure%20web.pdf; Human Rights Watch, 'Tunisia: No Safe Haven for Black African Migrants, Refugees' (Human Rights Watch, 19 July 2023) www.hrw.org/news/2023/07/19/tunisia-no-safe-haven-black-african-migrants-refugees.

CLARIFYING LEGAL AND POLICY TERMS: 'PLACE OF SAFETY' AND 'DISTRESS'

The concept of a place of safety has real world implications. In 2018, the Italian-flagged supply ship Asso28 rescued 101 migrants off the coast of Libya and returned them to Libyan Coast Guard despite warnings that it may be illegal. An Italian Court found the ship's master criminally liable for abandonment under Italian law, effectively enforcing the international prohibition on refoulement.[15] The lack of clarity over legal terms and operational guidance can thus create concrete dilemmas for seafarers.[16] This confusion creates obstacles to rescue and hinders efforts to strengthen the safety of life at sea.

DEFINING 'DISTRESS'

A similar debate around legal definition concerns the term 'distress', which defines the situation when the duty to rescue applies.[17] Some actors view a 'situation of distress' as a prerequisite for rescue and that conducting a rescue before there is a distress situation can become a kind of migrant smuggling, trafficking, or similarly illegal activity. A clear definition of distress is thus critical for non-state rescue actors.

The SOLAS Convention defines the '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.'[18] This language may appear straightforward but has given rise to debate in the context of maritime migration.

Part of this debate arises from changes in vessel reliability. The duty to rescue draws on hundreds of years of seafaring practice, when sturdy ships could take hours to sink after sustaining damage. In these cases, a 'grave and imminent danger' could still provide significant time to arrange a rescue. Today, however, migrants and refugees are often forced to travel in overcrowded rafts that were never designed for the rigours of the open ocean. They are arguably at risk from the moment they set out from shore, and hundreds of people can die in a moment. Moreover, no international convention specifies the condition of the vessel as dispositive of a situation of distress.

Photo credit: UNHCR / Alfredo D'Amato

[15] Stefano Zirulia, 'Refoulement as a Crime: Insights from the Asso28 Push-Back Case' (Electronic Immigration Network, 8 April 2024) www.ein.org.uk/blog/refoulement-crime-insights-asso28-push-back-case.
[16] See, for example, Joint Statement from UNHCR, IOM, UN Office for the High Commissioner of Human Rights, UN Office on Drugs and Crime, UN Children's Emergency Fund, and UN Special Rapporteur on the Rights of Migrants, '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' (Mary 2022) www.unhcr.org/sites/default/files/legacy-pdf/62824f564.pdf.
[17] Notably, UNCLOS, the most widely ratified convention concerning the duty to rescue, does not reference 'distress' but rather the duty 'to render assistance to any person found at sea in danger of being lost'. (Article 98.1(a), emphasis added). For purposes of this section, however, these terms and phrases centre on the same issue, namely under what circumstances it is permissible to rescue a migrant vessel.
[18] SOLAS Convention, Annex, art 1.3.

CLARIFYING LEGAL AND POLICY TERMS: 'PLACE OF SAFETY' AND 'DISTRESS'

This raises the question: if such watercraft, despite being woefully unsuited for their task, are not damaged when they are sighted by another ship, is the migrant vessel really 'in distress'? Or does 'distress' require some level of damage to the vessel or person? The International Maritime Rescue Federation notes that 'some lawyers' do indeed argue that intact migrant vessels fail to meet this definition, and thus other ships are not obligated to assist them.[19] On the other hand, organizations such as SOS Méditerranée draw on European Union guidelines to supplement the general language of the SOLAS Convention.[20] The European Union Parliament specified elements to consider when determining whether a vessel is in distress, including:

i.the existence of a request for assistance, although such a request shall not be the sole factor for determining the existence of a distress situation;

ii.the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination;

iii.the number of persons on board in relation to the type and condition of the vessel;

iv.the availability of necessary supplies such as fuel, water and food to reach a shore.[21]

These and other elements argue, in the view of some, that many poorly equipped migrant rafts should be considered cases of distress even if there no clear damage to the vessel at the time of sighting. The UN and NGOs have similarly called for a 'humanitarian and precautionary approach' to interpreting the notion of distress.[22]

As with 'place of safety', the definition of 'distress' is more than an academic matter. In the case of the vessel Adriana, for example, more than 500 migrants and refugees drowned off the coast of Greece in 2023 when Greek authorities and Frontex failed to declare a distress situation despite surveillance having identified an overcrowded vessel without visible life jackets onboard.[23] Clear guidance on which situations constitute 'distress' is thus essential for the safety of life at sea.

Italian Navy rescues boat filled with refugees and migrants in the Mediterranean last year.
Photo credit: Massimo Sestini / Italian Navy

[19] International Maritime Rescue Federation (IMRF), 'What is "distress"?' Lifeline (IMRF, August 2017) www.international-maritime-rescue.org/Handlers/Download.ashx?IDMF=1c21fa79-05e1-4cd1-94ac-be72617d39b6.
[20] SOS Méditerranée, 'Frequently asked questions: What is a distress situation?' (SOS Méditerranée, accessed 15 October 2024) https://www.sosmediterranee.org/faq/?_gl=1*1f9v27t*_up*MQ..*_ga*NDM1NjkxODg5LjE3Mjg5OTE5OTk.*_ga_6CV7WMPKQB*MTcyODk5MTk5OC4xLjAuMTcyODk5MTk5OC4wLjAuMA...
[21] European Parliament and European Council, Regulation No 656/14 (15 May 2014) eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0656.
[22] Draft joint statement on distress, on file with author.
[23] European Union Ombudsman, *Decision on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations with regard to search and rescue in the context of its maritime surveillance activities, in particular the Adriana shipwreck*, OI/3/2023/MHZ(26 February 2024) https://www.ombudsman.europa.eu/en/decision/en/182665.

EXPANDING MARITIME DOMAIN AWARENESS AND IMPROVING RESCUE COORDINATION

This section examines the critical components of modern maritime SAR operations, focusing on how each actor plays a vital role in maritime domain awareness. The IMO defines maritime domain awareness as 'the effective understanding of any activity associated with the maritime environment that could impact upon the security, safety, economy or environment.'[24] Strengthening search-and-rescue is grounded in this capacity.

The modern maritime search-and-rescue system is built on a set of interconnected actors: (1) vessels in distress and the distress calls that they transmit; (2) vessels in the vicinity of a vessel-in-distress; (3) dedicated search-and-rescue craft and maritime search-and-rescue coordination centres; (4) the maritime domain awareness architecture; (5) flag states; and (6) international organisations involved in monitoring maritime rescue, including the International Maritime Organisation.

Vessels-in-distress are the first and most important actors in a SAR situation. The IMO has established international standards for communications and communications equipment, the Global Maritime Distress and Safety System (GMDSS), applicable to large ships and recommended for most vessels.[25] Most migrant vessels, however, do not carry the equipment required to broadcast distress calls. Even when they do, such as the larger ships used in the Bay of Bengal and Andaman Sea, ship captains and crews are often reluctant to broadcast a conventional distress call that would attract the attention of authorities to potentially illegal activity, preferring to seek assistance from their smuggling network.

This reality of maritime mixed movements means that one of the first and most important elements in the search-and-rescue coordination framework—direct notification from the distressed vessel—rarely works as intended. It is essential that when migrants and refugees can issue distress calls, these calls are heard, relayed and responded to. In the Mediterranean, some migrant vessels use satellite phones to call local coast guards and organizations like Watch the Med Alarm Phone ('Alarm Phone'). Alarm Phone is not an operational rescue service but can follow up with SAR authorities and help facilitate rescue efforts.[26]

The major corridors of mixed maritime movements are also the world's busiest shipping lanes, and ships in the vicinity of a vessel-in-distress are also key actors. As the IMO Maritime Safety Committee Resolution 167(78) notes, 'It is impossible to arrange SAR services that depend totally upon dedicated shore-based rescue units to provide timely assistance to all persons in distress at sea.'[27] The SOLAS Convention generally requires all ships in the vicinity to assist a vessel in distress, but even where a passing ship is not required to aid directly (for instance, if doing so would pose a danger to the ship or its crew), that ship must still notify SAR authorities.[28] As highlighted by the anonymous data from a commercial shipping company discussed above, many migrant vessels will be within the proximity of commercial vessels at numerous points during their journeys, including moments of distress.

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[24] International Civil Aviation Organization (ICAO) and IMO, International Aeronautical and Maritime Search and Rescue Manual: Volume 1, Organization and Management (ICAO and IMO, 2022) p xiii ('IAMSAR Manual') news.mcaa.gov.mn/uploads/bookSubject/2022-11/637b02e0c30d7.pdf.
[25] IMO, 'Shipping Emergencies – Search and Rescue and the GMDSS' (March 1999) wwwcdn.imo.org/localresources/en/OurWork/Safety/Documents/GMDSSandSAR1999.pdf.
[26] Watch the Mediterranean Sea, 'About WTM' (accessed 23 August 2024) watchthemed.net/index.php/page/index/3.
[27] International Maritime Organization, Maritime Safety Committee Resolution 167(78) MSC 78/26/Add.2, para 5.1 wwwcdn.imo.org/localresources/en/OurWork/Facilitation/Documents/MSC.167(78).pdf.
[28] SOLAS Convention, ch V reg 33.

EXPANDING MARITIME DOMAIN AWARENESS AND IMPROVING RESCUE COORDINATION

The heart of SAR operations, however, lies in dedicated SAR operators and maritime SAR rescue coordination centres (RCCs). The SAR Convention directed states to establish search and rescue regions around the world, a process that the IMO Maritime Safety Committee pursued over the following decades. Today, provisional search and rescue regions exist for all the world's oceans and 130 countries have registered RCCs with the IMO.[29] This is an impressive system, but gaps remain. For example, even though Yemen and Somalia have search and rescue regions (SRRs) around their coastline, these countries do not have RCCs registered with the IMO.[30]

Maritime domain awareness centres also serve as potentially important nodes in the search-and-rescue network. Maritime domain awareness centres—sometimes called maritime security centres or maritime information centres—often focus on criminal activity at sea, such as trafficking, smuggling, terrorism and piracy. Most of the sea-lanes discussed in this report are important for commercial shipping as well as movements by migrants and refugees, and thus have also attracted the interest of maritime criminals, such as pirates in the Gulf of Aden in 2009. Currently, SAR functions and maritime awareness functions are kept distinct in most maritime centres, and there may be important reasons for keeping rescue separate from security. Yet maritime domain awareness centres' ability cast light on darkened waters may have an important role to play in preventing 'invisible shipwrecks'.

Flag states also have a role to play in the search-and-rescue architecture. While flag states, as flag states, are rarely operational actors, they are the custodians of the laws and norms of rescue. A ship's master who fails to assist a vessel in distress in international waters, for example, is generally accountable to the flag state, not to the country of the distressed seafarers or an international body like the IMO. As discussed further below, flag states also have a role to play in ensuring that ships flying their colors have the knowledge and training to uphold SAR responsibilities effectively.

While organizations like the IMO do not have a direct role in enforcing treaties, they do have an important role in establishing standards and in supporting monitoring and data gathering around search and rescue. The IMO's Inter-agency platform for information sharing on migrant smuggling by sea, for example, developed in collaboration with UNODC and IOM, serves as an important repository for migrant and refugee rescue data.[31]

Still image from a surveillance aircraft video shows rescuers arriving after a boat carrying refugees and migrants capsized north of Desecheo Island, Puerto Rico on 12 May, 2022. Copyright: United States Coast

[29] IMO, 'GSIS: Global SAR Plan' (IMO, accessed 23 July 2024) gisis.imo.org/Public/COMSAR/RCC.aspx.
[30] Note that Somalia maintains a SAR point of contact within the Civil Aviation Authority and the Air Force. See and compare IMO, 'GSIS: Global SAR Plan', id, and map of search and rescue regions, available at www.dco.uscg.mil/Portals/9/CG-5R/nsarc/IMO%20Maritime%20SAR%20Regions.pdf (note that IMO has deleted these maps from its website, indicating that they are outdated and in need of revision; nonetheless, there is no indication that the status of these search and rescue regions and rescue coordination centres has been addressed).
[31] See IMO, Inter-agency platform for information sharing on migrant smuggling by sea (accessed 23 July 2024, log-in required) gisis.imo.org/Public/MIGRANT/Default.aspx.

SUPPORTING FLAG STATES AND COASTAL STATES

Flag states and coastal are critical actors in understanding and supporting rescue-at-sea, with defined roles in international law. Flag states are critical authorities in international waters, where other nations lack jurisdiction. Coastal states are vital front-line rescue actors, responsible for operating rescue coordination centres. Both flag and coastal states require support in this myriad of essential rescue tasks.

FLAG STATES

Flag states are empowered and obligated to enforce adherence to international laws and regulations across a wide range of maritime activities. This includes ensuring that ships are prepared for, and capable of, providing assistance to other vessels in distress. A brief summary of flag state responsibilities includes:

- General jurisdiction and control: As stated in UNCLOS article 94, 'Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.'
- Ensure masters, officers and crew are prepared to support the safety of life at sea: UNCLOS goes into special detail regarding matters of SOLAS: 'Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea... [including] that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea...'
- Ship masters' duty to rescue: UNCLOS also directs the duty to rescue in article 98 toward flag states: 'Every State shall require the master of a ship flying its flag... 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...'
- Conduct and cooperate in investigations on maritime casualties: UNCLOS also requires flag states to conduct an inquiry or support others' inquiries into 'every marine casualty or incident... causing loss of life or serious injury.' (Article 94).
- Take steps to ensure that human rights and refugee law standards are followed: Human rights law applies to all persons, including refugees and migrants at sea. UNHCR finds that flag states must 'take appropriate regulatory and administrative-control measures to ensure that shipmasters of vessels flying their flags do not subject rescued persons to treatment contrary to refugee and human rights law standards—including non-refoulement, and to take appropriate investigatory and remedial or sanctioning measures as needed.'[32]

At the same time, it should be noted that flag states are generally NOT required to process asylum claims or disembark on their own territory. UNHCR finds that flag states 'could not ordinarily be said to come under a clear legal obligation... to assume responsibility in the first instance for receiving rescued persons, admitting them to an asylum procedure on their territory, and affording international protection.'[33] UNHCR notes, however, that this does not mean the flag state is excluded from any responsibility under the regular refugee regime, merely that there is no special responsibility that results from performing acts of rescue.

These extensive responsibilities can present difficulties, however, even for flag states with substantial resources, especially when policy matters are unresolved, and coordination is lacking. It is important to note that ship owners will make a choice of flag for their ships and this choice will be based on a wide range of criteria, one of which may be the stringency with which different regulations are enforced. Countries which provide flagging services mainly as a service to foreign ship owners must be conscious of the various reasons behind ship owners choices, especially when such services can represent a large income for the respective economy. It is essential for the maritime community to fully support flag states and establish a dedicated framework to address critical issues such as maritime rescue.

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[32] UNHCR, *Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum* (December 2022) www.refworld.org/policy/legalguidance/unhcr/2022/en/124184.
[33] Id.

SUPPORTING FLAG STATES AND COASTAL STATES

COASTAL STATES

Like flag states, coastal states have a set of responsibilities in international treaties. These are most clearly spelled out in UNCLOS:

- 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.[34]

These general obligations are elaborated in the SOLAS Convention regarding distress communications and coordination,[35] and the SAR Convention is devoted in significant part to detailing the operations of rescue coordination centres.

These key responsibilities make coastal states some of the most important 'front line' actors in SAR activities. This includes SAR for commercial shipping and pleasure craft as well as maritime migrants and refugees. Perhaps no other single group of actors represents so important a resource for rescue, and nearly all coastal states carry out these rescue responsibilities efficiently and effectively nearly all of the time. When there is a gap in coastal state effectiveness, however, tragedy can result. Supporting coastal states to understand their responsibilities, effectively engage in rescue, and coordinate with other global actors, is thus vital.

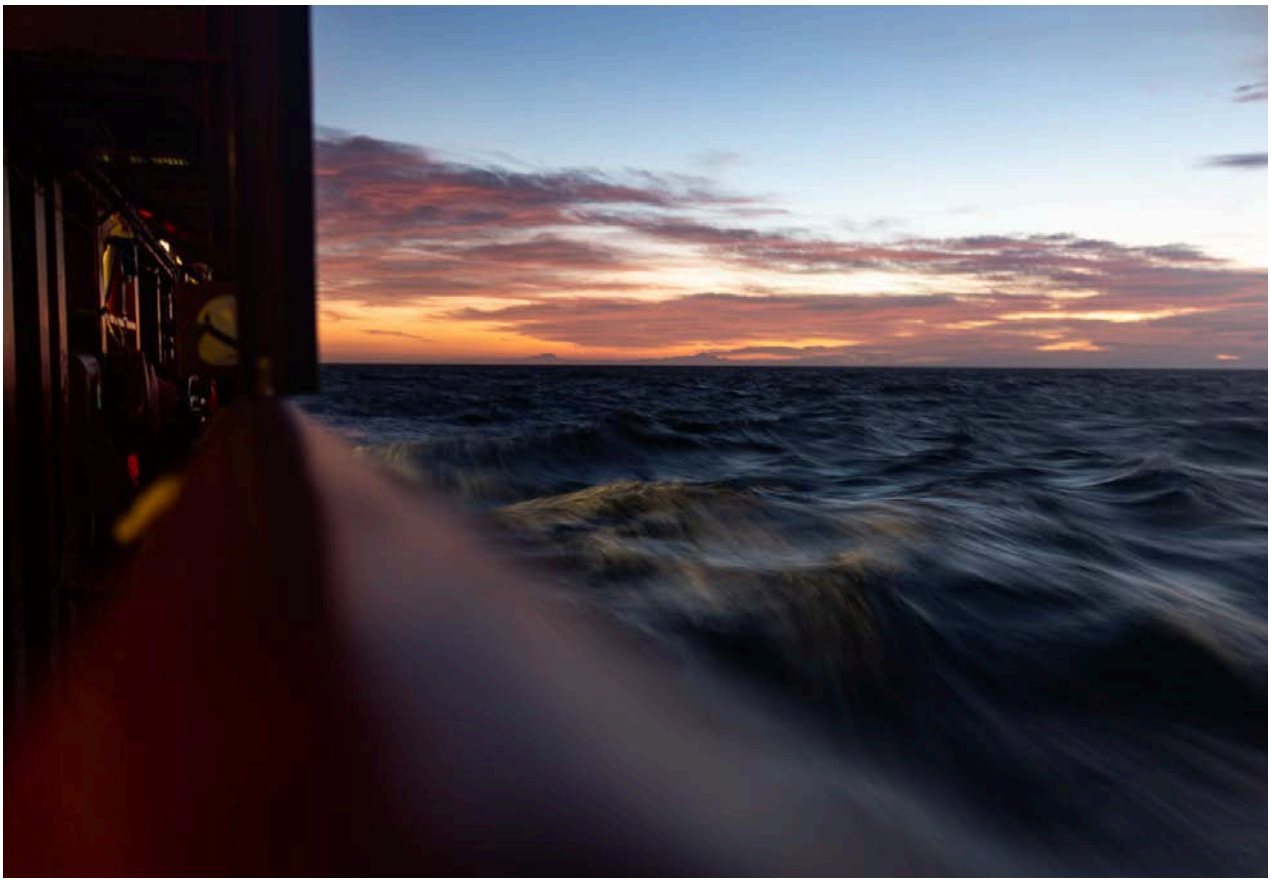


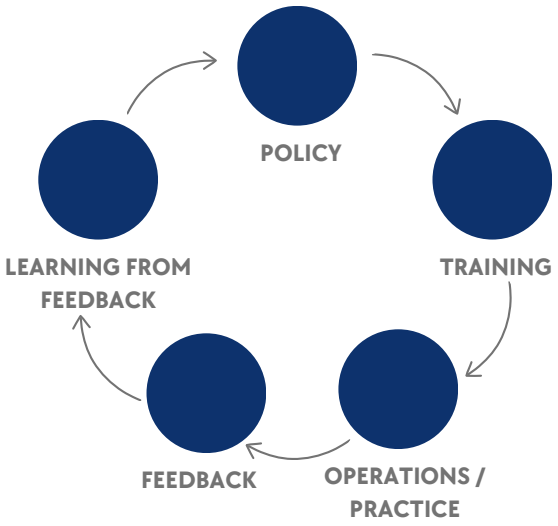
Photo credit: SOS MEDITERRANEE / Jérémie Lusseau

[34] UNCLOS, art 98(2).
[35] SOLAS Convention, ch V, reg 7.

IMPROVING TRAINING AND GUIDANCE FOR MASS RESCUE

This section highlights the importance of training and preparedness for all seafarers, as any vessel may be called upon to assist in a rescue operation, particularly during mass rescues involving migrants and refugees. Effective rescue efforts rely on continuous learning cycles, where policy, training, and implementation inform future improvements, with coordination forums playing a key role in maintaining preparedness across the maritime sector.

Training and preparedness are part of the learning cycle for any organization. This iterative, repeated process begins with policy that is disseminated through training, implemented on the seas, and from which lessons can be drawn to inform new policy.



A system as broad and diverse as international shipping can face challenges in maintaining the links between each phase of this learning cycle. Forums for coordination, such as the Centre, can support each link in this learning cycle to strengthen preparedness and training.

Some shipping companies have developed their own internal guidance and training materials for captains and crews on how to effect rescue at sea, however, this is far from universal or standardised. The International Chamber f Shipping, for example, has compiled guidance on large-scale rescue operations at sea.[36]
The International Maritime Rescue Federation (IMRF) has also compiled training materials on mass rescue and conducts workshops and trainings for maritime actors.[37] IMO has also developed model courses that can assist maritime training educators and training institutes.[38] UNHCR and IOM have also developed training modules on the protection of migrants an refugees moving by sea.[39] Organizations such as Médecins Sans Frontières have also conducted maritime rescue training for local fishermen in Tunisia, who are often the first to see migrant and refugee vessels.[40]

Rescue considerations can also be integrated into existing guidance mechanisms. As highlighted in the section on operational perspectives, however, direct involvement of commercial shipping in mass rescues is rare. Identifying efficient ways to expand awareness is thus critical for companies that may not see the value in investing in dedicated mass rescue courses. Currently, for example, shipmasters receive pre-voyage briefings on piracy when travelling through areas frequented by pirates. Similar briefings could be conducted on search-and-rescue when travelling through areas frequented by maritime migrants and refugees.

Readiness and training are key components in strengthening the safety of life at sea. The Centre will serve as a resource hub to support the assessment of training needs, bring training curriculum actors together, and amplify existing materials for dissemination.

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[36] International Chamber of Shipping (ICS), Large-scale rescue operations at sea: Guidance on ensuring the safety and security of seafarers and rescued persons (ICS, 2015) www.ics-shipping.org/resource/ large-scale-rescue-operations-at-sea-needs-more-compressing.
[37] International Maritime Rescue Federation, MRO Home (accessed 23 July 2024) www.international-maritime-rescue.org/mro-home.
[38] IMO, 'IMO Model Courses' (Undated, accessed 22 September 2024) www.imo.org/en/OurWork/HumanElement/Pages/ModelCourses.aspx.
[39] International Institute of Humanitarian Law, 'Protection at Sea E-learning' (Undated, accessed 22 September 2024) elearning.iihl.org/course/index.php?categoryid=14.
[40] Médecins Sans Frontières (MSF), MSF EU Migration Activities February 2016 (MSF, Mary 2016) reliefweb.int/report/world/msf-crisis-info-14-msf-european-migration-activities-4-may-2016.

DEVELOPING OPERATIONAL SUPPORT FOR SEAFARERS

Developing and disseminating operational support for both Seafarers at sea and ship management offices on land is a key element that is related to but distinct from training. In the modern maritime sector, with the huge range of subjects on which dedicated training is provided at all stages of a seafarer's career, there may be limited opportunity to focus on rare events like mass rescue. When an event occurs, it is vital to be aware of best practices, fully understand the legal implications and the various steps to be taken, while seafarers will often be on the front line, they will also be looking to the shore-based personnel to provide much needed support. Responsive operational support is required to respond to these needs.

Questions that both Seafarers at sea and ship management offices on land may encounter range from identification of a distress situation to the logistics of rescue, to managing the situation on board, to disembarkation. In one case, for example, rescued migrants and refugees attempted to light fires for cooking on the deck of a chemical tanker carrying highly flammable and dangerous materials, not realizing the hazard this created due to the ship, the crew and the rescued people themselves.

This operational support can take many forms. Concise instructions for good search-and-rescue practice, for example, can be printed on posters or bulletins for display in common crew areas, or through online professional development. Technological advances also create new opportunities, such as chatbots that can be trained to answer common operational questions.

Developing these tools requires understanding what both seafarers at sea and ship management offices on land need at the operational level and exploring different ways of providing support. The Centre, through its connections to the commercial maritime sector and the community of maritime rescue professionals, is well positioned to facilitate identifying operational needs and discussion on ways that these needs can be met.

Photo credit: SOS MEDITERRANEE / Tara Lambourne

STRENGTHENING DATA COLLECTION AND REPORTING

This section outlines challenges to collecting data on maritime migration and highlights the role of three key actors in strengthening such data: humanitarian organizations, states, and communities along migration routes. Numerous interlocutors interviewed for this report stressed the importance of improving data on maritime movements and the challenges associated with obtaining robust data. They also underlined the tragedy of unrecorded deaths and the impact that this lack of information has on migrants' and refugees' family members and communities.

Data on maritime migration is essential to understand the problem and develop appropriate solutions. Two key areas where data gaps create issues of concern are the numbers of people engaged in such movements (departures and arrivals), and the incidents of people rescued, dying or going missing at sea. Behind these numbers are additional, important questions of the situations driving their movement and the obstacles they face along the way.

CHALLENGES ON DATA

Data on maritime migration faces a series of interlocking challenges. Maritime migrants and refugees may seek to avoid detection by government authorities at all stages of their journey. Departing their country of origin, they may often be assisted (and abused or exploited) by smuggling or trafficking networks. Maritime departures are not formally notified or announced. In most parts of the world, care is taken to avoid the local coast guard and law enforcement. There are also no passenger manifests. If a vessel sinks before reaching shore, there may be no trace that the people aboard ever existed.

Organizations like IOM, UNHCR, and the Mixed Migration Centre seek to overcome these challenges, significant as they are. With thorough research, these organizations engage with people and data sources throughout the journey. This includes gathering information from communities from which migrants and refugees originate, communities along migration routes, contacts familiar with smuggling networks, and analysis of maritime domain data. The World Health Organization also leads a Global Alliance on Drowning Prevention, which could serve to support state-based reporting on deaths due to drowning.[41]

Despite the important work of compiling information on maritime movements, there are no generalized or centralized reporting mechanisms or requirements. Maritime migration can be a politically sensitive issue, and some government authorities may not be fully forthcoming or transparent. This weakness in official data for some migration routes is compounded by the many informal aspects of the irregular migrants' and refugees' journeys. When combined with the inherent challenge of 'invisible shipwrecks', this makes robust data on migration maritime a much more difficult proposition.

SOURCES OF DATA

Information on migrants, refugees, and maritime movements is spread across many different groups of actors. These include migrants and refugees and their families, governments, commercial shipping, smuggling networks, and communities in areas of reception or departure. Some of these data sources provide firsthand information, including the information provided by migrants and refugees themselves. Others provide concrete numbers, such as government immigration and border control services. Real-time, operational information can be provided by commercial shipping. And communities and smugglers can provide important context to better understand migrant and refugee journeys, even if these sources are not as formalized or as firsthand.

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[41] World Health Organization, 'Call for expressions of interest to join the Global Alliance for Drowning Prevention' (World Health Organization, 24 May 2023) www.who.int/news-room/articles-detail/call-for-expressions-of-interest-to-join-the-global-alliance-for-drowning-prevention.

STRENGTHENING DATA COLLECTION AND REPORTING

Survivors

The first and most important data source for maritime migration are migrants and refugees themselves, including those who reach shore in a third country or are pushed or turned back to the country of departure. People seeking to move or flee are naturally the best source of information on key migration trends, including reasons and motivations for migration and challenges along the way. Crucially, migrants and refugees are also key to understanding perceptions of the migration experience: how do migrants and refugees understand the risks of maritime migration and the likelihood of reaching a safe country?

Coast Guards and other maritime rescue services

Concrete data is also available from coast guards and other maritime rescue services, including NGOs. These organizations will often have good information on the number of rescues (or interdictions / pushbacks) performed. In some cases, these numbers are relatively easy to obtain, with transparent data portals and information sharing. In other cases, however, the political sensitivity surrounding migration create obstacles. In the Andaman Sea, for instance, coast guards may intercept a migrant vessel, provide basic humanitarian assistance, and then direct the vessel towards a third country, without providing any public report.[42] To date, moreover, there is no regularly used, centralized, global repository for such data. IMO maintains a database platform, discussed further below, but its focus is on reporting from flag state vessels, not maritime SAR authorities.

Government immigration or border control authorities, and related ministries

Government immigration or border control authorities are also important sources of data for migrants and refugees who complete their journey. Even if a migrant or refugee is ultimately repatriated (or in some cases refouled), a record of their arrival is an important piece of data for tracking maritime migration. Information on arrivals is generally better reported by most governments, although not always with details on journey that would contribute to analyses of maritime migration and policy.

Communities

Local communities in countries of origin, transit and destination. Coastal communities may know about maritime departures or arrivals, even if they are hidden from
authorities. Communities along land routes of migration to the coast may also have information on migrants and refugees who intend to embark on maritime journeys. The information held by these communities can be more challenging to aggregate but can also provide a richer picture of migrants and refugees. IOM and the Mixed Migration Centre, including through collaboration with local partners, carry out programs in coastal communities and along migration routes to gather information to better understand migration dynamics and details. The Mixed Migration Centre, for example, has more than 130 enumerators—many of whom are refugees or migrants themselves—across 14 countries, providing insight into drivers of migration and the migration experience.[43] IOM has similar programs in countries such as Senegal, where local community members assist in providing information regarding the numbers of maritime departures and passengers on board.[44]

Commercial shipping

Commercial vessels, from fishing boats to oil tankers, frequently travel along common migration routes and may serve to send a distress call or to undertake rescues themselves. They can be important actors in facilitating a real-time picture of migrant vessels, including vessels-in-distress. IMO has partnered with IOM and UNODC to compile a joint database of migrant smuggling by sea, which includes some notifications from commercial vessels routed through flag states, but this voluntary reporting system only receives a handful of reports each year. Data on rescue-related incidents from the shipping sector is an important gap in the current information landscape.

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[42] Interview with regional expert, 2 May 2024.
[43] Mixed Migration Centre, 4Mi: Innovative and global data collection with refugees and migrants on mixed migration routes (Mixed Migration Centre, 2021) mixedmigration.org/wp-content/uploads/2021/08/4Mi-Introduction.pdf.
[44] Interview with IOM personnel, 11 April 2024.

Flag States

In addition to the governments of states that are the destinations, departures, or origins of migrants and refugees, there are also the governments of flag states. These are the states with jurisdiction over vessels flying their flags, as provided for in the UN Convention of the Law of the Sea (see section above). They are particularly important in international waters, where no other state may have jurisdiction or authority over a ship. Flag states generally have no operational role in the conduct of ships flying their flag, but they serve as an important authority in ensuring that those ships comply with maritime regulations. In addition, as discussed further in the monitoring section below, flag states serve as an important link between privately owned vessels and the multilateral system. For organizations like the IMO, they are the natural conduit through which to channel data on rescue operations conducted by a ship.

Smuggling networks

Many, perhaps nearly all, maritime migrants and refugees rely on smuggling networks at some point in their journey, making these networks potentially important sources of information. There are inherent challenges in collecting data from these groups, who are often involved in a variety of illegal activities and may abuse and exploit migrants and refugees. Yet this secretive approach means that smugglers may have essential information available to no other actor in real time. For this reason, the Mixed Migration Centre interviews actors involved in smuggling where possible, to provide a greater and more granular understanding of migrants' and refugees' journeys.[45]

REPORTING

Beyond the inherent challenges to gathering data on maritime movements outlined above, the absence of clear, widespread reporting standards is a significant obstacle on its own. The reality is that there are no broadly accepted mechanisms for formal reporting of key facts around maritime migration.

Countries with transparent immigration systems may report arrivals, but the numbers of migrant vessel sightings, rescues, or interdiction is difficult to find in most cases. There is no widely accepted reporting process for communicating migration data to global leaders in compiling such data, like IOM or UNHCR. UN officials noted, for example, that their data on migrants differed substantially from state reports in one Western European country, while they received no data from Morocco, Yemen, or many Caribbean Island countries.[46] Even the Djibouti Coast Guard, which had good relations with UN actors, had little data to share.

Disembarkation of a new arrivals on two boats in the Hadramout district of Yemen
Photo credit: SHS / UNHCR

[45]See Mixed Migration Centre, 4Mi (accessed 23 July 2024) mixedmigration.org/4mi.
[46] Interview with two UN personnel, April 2024.

STRENGTHENING DATA COLLECTION AND REPORTING

In 2015, the IMO, in collaboration with UNODC and IOM, established the Interagency platform for information sharing on migrant smuggling. [47] This database provides an opportunity for states to log information regarding maritime migration, including sightings of migrant vessels and rescue operations. Unfortunately, this platform appears to be underutilized at best. For example, between July 2015 and July 2024, there were only 33 recorded incidents across the globe. All of these reports—and the vast majority in the database as a whole—were reported by two flag states, the Marshall Islands and Saudi Arabia. It is unclear why more flag states do not make better use of this mechanism.[48] It is possible that the platform is not well publicized and many flag states simply do not know about it. Regardless, clearer ownership and reporting guidelines are important in this regard.

The IMO platform is important proof of concept, however, that a comprehensive reporting database on maritime migration incidents is possible. Notably, the IMO platform has different levels of access for the public, UN and NGOs actors, and states. Politically sensitive data can thus be protected while enabling the greatest appropriate level of transparency.

In each of these cases, the challenges are multifaceted and often self-reinforcing. Data on maritime migration is often difficult to organize and collect. At the same time, if there is no internal demand for such information, no resources will be put to organizing and collecting it. Strengthening reporting thus requires both more work at lower levels to improve understanding of maritime dynamics and a stronger demand from higher authorities —whether coast guards, government ministries, or multilateral organizations—to incentivize effective data collection and management.

Photo credit: unsplash / Rob Pumphrey

[47] IMO, *GSIS: Inter-agency platform for information sharing on migrant smuggling* (accessed 24 July 2024) gisis.imo.org/Public/MIGRANT/Default.aspx.
[48] When reached for comment, personnel at the IMO, IOM and UNODC could not provide any information on the platform.

A GLOBAL VIEW OF MARITIME ROUTES

This section provides an overview of global maritime migration routes. Each route is different, with different conditions in countries of origin that drive movements, different journeys over land, and different experiences in crossing the ocean. There are a number of similarities, however. First, these journeys are universally harrowing. Irregular migrants and refugees are frequently vulnerable, often avoiding authorities that provide order and protection for other groups. Frequently, ocean travel is made in small, lightweight watercraft that are often poorly equipped and may not be seaworthy.

These journeys, though dangerous, are also frequently expensive, and may cost thousands of dollars in fees paid to smugglers. Movement by sea thus often requires access to financial resources whether through savings, borrowing from community members, work along the route, or other means. Migrants along many routes, including across north and east Africa and southeast Asia, face multiple risks, including death, sexual- and gender-based violence, trafficking, robbery, and kidnapping for ransom, as criminals seek to extract further money from the migrant's family.[49]

As isolating as these journeys can be, maritime migrants and refugees are almost never alone at sea. All of the major maritime migration routes are also major routes for commercial maritime activity. Migrants and refugees travel along many of the world's key maritime strategic points, including the Straits of Malacca, the Bab al Mandeb Strait, the Straits of Gibraltar, and the Lucayan Archipelago and Greater Antilles in the Caribbean. Thousands of commercial vessels share sea-lanes with maritime migrants and refugees at any given moment, all over the world.

A final common theme in all of these areas is the general paucity of data. This section cites numbers from IOM, UNHCR, and the Mixed Migration Centre. But, as discussed above, there are far too many 'invisible shipwrecks' to provide a complete picture of maritime migration.

Photo credit: SOS MEDITERRANEE / Tara Lambourne

[49] See, for example, UNHCR, IOM and Mixed Migration Centre, *On This Journey No One Cares If You Live or Die, Volume 2: Abuse, Protection and Justice along Routes between East and West African and Africa's Mediterranean Coast* (2024) www.unhcr.org/sites/default/files/2024-07/PUB2023-093-EL-On-this-journey-vol-2%2003-July-24%20WEB.pdf.

A GLOBAL VIEW OF MARITIME ROUTES

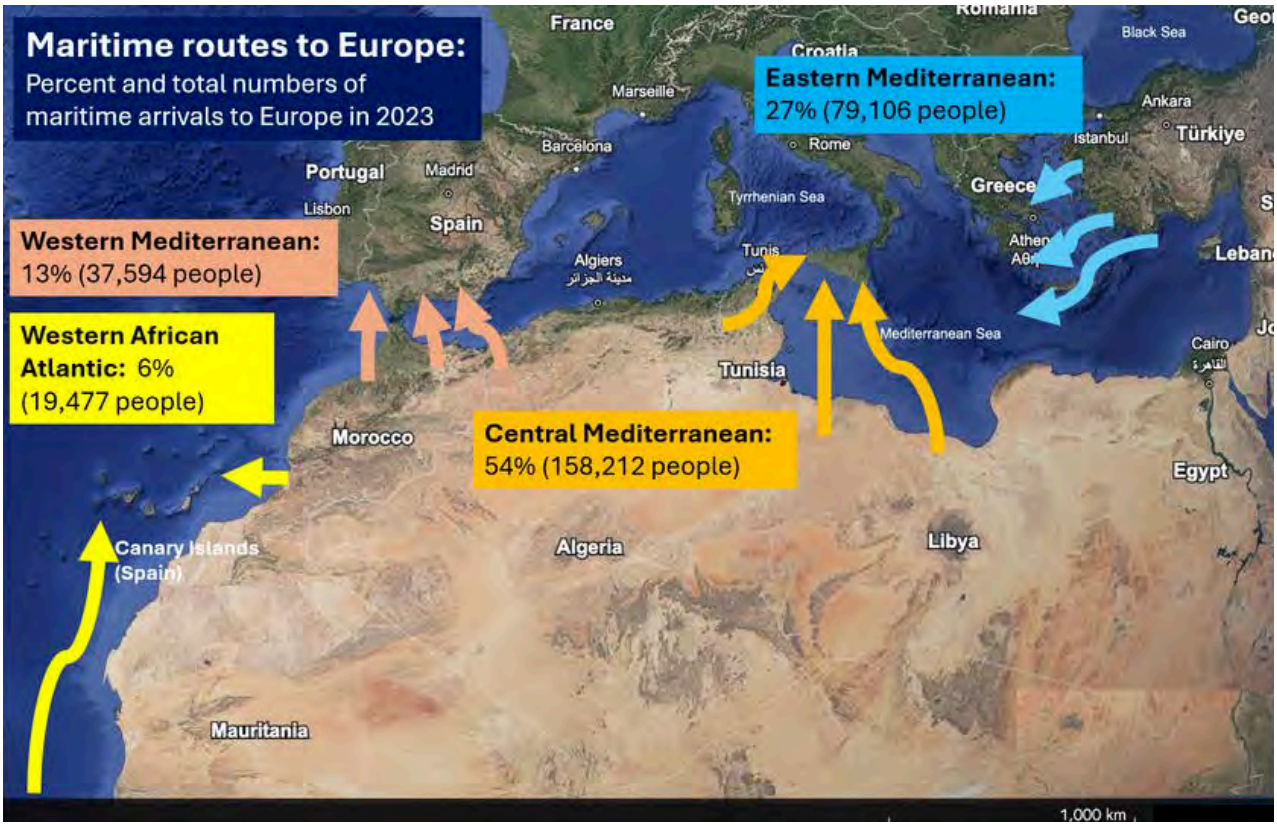
The major routes for maritime migrants and refugees covered in this report comprise:

- The Mediterranean Sea routes, the Western African Atlantic route, and the English Channel
- The Caribbean Sea
- The Gulf of Aden
- The Australasian routes
- Rohingya refugee movements across the Bay of Bengal and Andaman Sea.

This is not a comprehensive picture: there are other important maritime routes, such as to the French island department of Mayotte, and each route included is only sketched. This overview provides important details and context for understanding maritime movements of migrants and refugees from a global perspective.

MEDITERRANEAN, WESTERN AFRICAN ATLANTIC, AND ENGLISH CHANNEL

The Mediterranean Sea remains the most used and best understood maritime migration route in the world, with 292,985 people arriving in Europe in 2023.[50] The Mediterranean and Western African Atlantic routes are complex, with most migrants and refugees making long journeys overland before reaching coastal countries of departure. Some migrants and refugees, moreover, may make more than one maritime crossing, such as moving by sea across the Mediterranean, by land through Continental Europe, and then the English Channel. They may also face several failed attempts before reaching a place of safety.



Arrivals to Europe by maritime route, 2023 (data: IOM, UNHCR)[51]

[50] International Organization for Migration (IOM), Yearly Annual Report: DTM Europe (IOM, 2023), p. 6, dtm.iom.int/europe/arrivals (DTM 2023).

[51] Note that the maps used in this report are not an expression or endorsement of any political position or opinion by the Centre for Humanitarian Action at Sea or its partners.

A GLOBAL VIEW OF MARITIME ROUTES

There are three Mediterrean routes to Europe:

- The Central Mediterranean route, primarily between Libya and Tunisia in North Africa and Italy and Malta in Europe, is often the most heavily utilized, with 54% of maritime arrivals to Europe (158,212 people in 2023).[52]
- The Eastern Mediterranean route, which often sees migrants leaving Turkey for Greece, Bulgaria or Italy or refugees departing from Lebanon or Syria for Europe, accounts for 27% (79,106 people).
- The Western Mediterranean route, with migrants and refugees departing Morocco or Algeria for Spain, was 13% or 37,594 people.
- The Western African Atlantic route, from West and Northwest Africa to the Spanish Canary Islands, accounted for 6% of maritime migration to Europe (19,477 people) in 2023 (these numbers have nearly doubled in 2024, year-to-date).

The English Channel is another maritime route between European countries, in this case France, Belgium and the United Kingdom. Despite being an intra-European route, the English Channel has seen a marked increase in movements, with more than 29,000 migrants and refugees arriving in the UK in 2023.

The ocean/sea crossings are dangerous in the extreme. Refugees and migrants travel in small watercraft, often inflatable boats, iron boats or traditional pirogues. The Central Mediterranean Sea route can be a journey of more than 400 km depending on point of departure while the Western African Atlantic route can stretch more than 1,000 km from Senegal to the Canary Islands, involving many days or even weeks at sea. Some boats have drifted as far as the Caribbean.

The situation on land, however, is often just as harrowing. The United Nations has documented serious abuse and torture of migrants and refugees in Libya and organizations such as Human Rights Watch have identified systematic discrimination against migrants and refugees in Tunisia.[53] Turkey, Algeria and Morocco, while generally safer than Libya, have been criticized by some organizations for not offering sufficient protections for refugees.[54] As discussed above, whether these countries can be considered a 'place of safety' for disembarkation remains contested.

Photo credit: SOS MEDITERRANEE / Jérémie Lusseau

[52] All figures cited in this section, unless otherwise noted, come from IOM's Displacement Tracking Matrix (https://dtm.iom.int) or UNHCR's Operational Data Portal (data.unchr.org).
[53] See United Nations High Commissioner for Human Rights (UNHCR), 'UNHCR position on the designations of Libya as a safe third country and as a place of safety for the purposes of disembarkation following rescue at sea' (UNHCR, 2020) www.refworld.org/policy/countrypos/unhcr/2020/en/123326 ('UNHCR position on Libya'); Human Rights Watch, 'Tunisia: No Safe Haven for Black African Migrants, Refugees' (Human Rights Watch, 19 July 2023) www.hrw.org/news/2023/07/19/tunisia-no-safe-haven-black-african-migrants-refugees.
[54] See, for example, Anuscheh Farahat and Nora Markard, *Places of Safety in the Mediterranean: The EU's Policy of Outsourcing Responsibility* (Heinrich Böll Siftung, 2020) eu.boell.org/sites/default/files/2020-02/HBS-POS%20brochure%20web.pdf.

European nations' responses to increased maritime movement by migrants and refugees has been controversial. Some European countries have been accused of pushbacks that send migrants and refugees back to countries of departure,[55] a practice that the European Court of Human Rights has condemned in numerous cases.[56]The European Union has developed a variety of policies to surveil the Mediterranean and protect the rights of migrants and refugees, such as integrating Fundamental Rights Officers into the European Border and Coast Guard Agency (Frontex). In at least 22 incidents, however, Frontex involvement failed to stop national authorities from conducting push backs of refugees and migrants, and the number of such incidents could be as high as 222.[57] Transparency has also been a major challenge, with Frontex and coastal governments accused of covering up pushbacks.[58]

Some European countries have also come under criticism for creating legal and criminal obstacles to rescue at sea. Seafarers have been prosecuted in Italian courts, after rescuing people and bringing them to Italy.[58] In addition, some European countries have erected legal barriers to rescue operations. In 2018, Italy prosecuted SAR NGOs for minor regulatory infractions, seizing and grounding vessels.[59] More recently, Italy issued a decree requiring rescue vessels to immediately travel to ports of disembarkation assigned by the Italian RCC after a rescue.[60] Non-governmental SAR organizations accuse the RCC of assigning disembarkation at distant ports, sometimes requiring more than ten days of additional transit.[61] This time at sea has deleterious effects on rescued people, who often have significant medical needs, and greatly limits SAR NGO activities.

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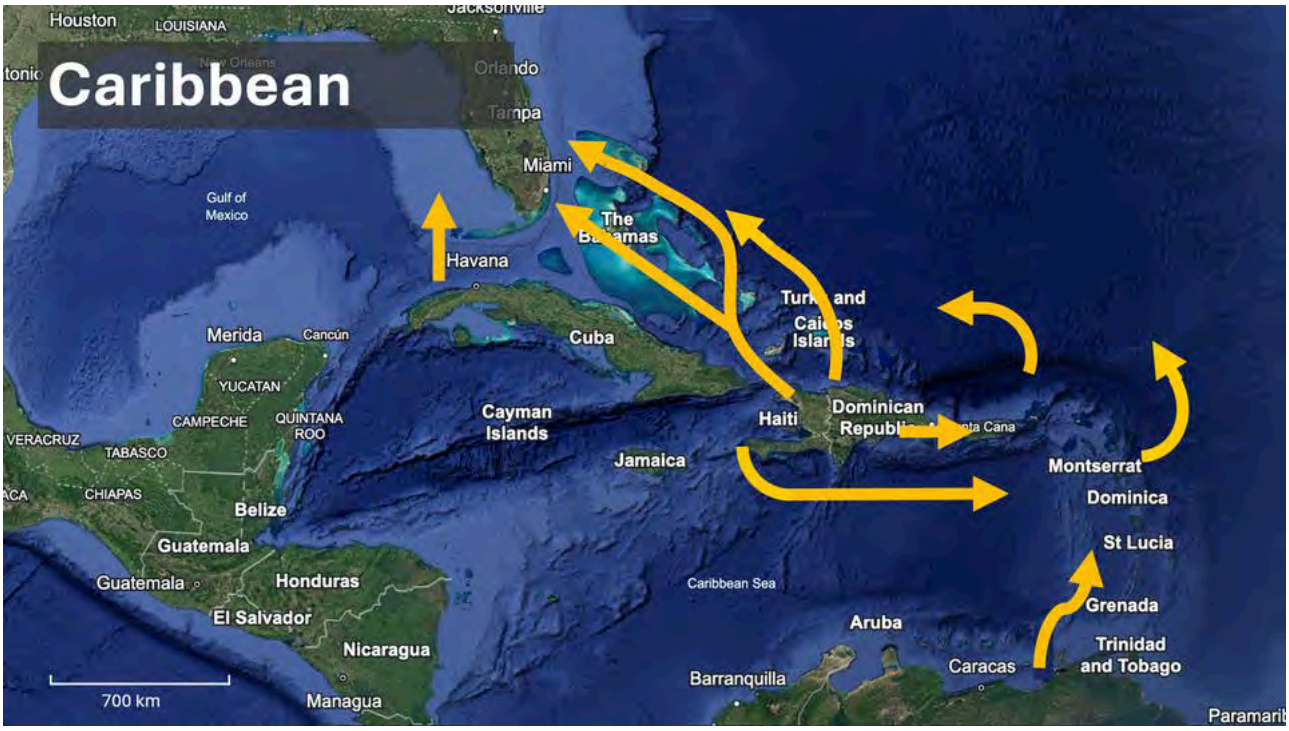
[55] Katrien Luyten, Addressing pushbacks at the EU's external borders European Parliamentary Research Service (October 2022); Jan D. Walter, 'Which EU countries are accused of pushing back migrants?' DW (18 June 2024)https://www.dw.com/en/which-eu-countries-are-accused-of-pushing-back-migrants/a-69394420..
[56] *Hirsii Jamaa and others v. Italy*, European Court of Human Rights (ECtHR), Application 27765/09 (23 February 2022); *Sharifi and others v. Greece*, ECtHR, Application No. 16643/09 (21 October 2014); *Moustahi v. France*, ECtHR, Application 9347/14 (25 June 2020); J.*A. and Others v. Italy*, ECtHR, Application 21329/18 (18 March 2023); *M.A. and Z.R. v. Cyprus*, ECtHR, Application 39090/20 (8 October 2024); for a full list of cases related to collective expulsions, see European Court of Human Rights, 'Factsheet – Collective expulsion of aliens' (October 2024) https://www.echr.coe.int/documents/d/echr/FS_Collective_expulsions_ENG.
[57] Lighthouse Reports, 'Frontex, the EU Pushback Agency' Lighthouse Reports (6 May 2022) www.lighthousereports.com/investigation/frontex-the-eu-pushback-agency.
[58] 'EU Commissioner urges full investigation into alleged pushbacks' *Ekathimerini* (22 May 2023) https://www.ekathimerini.com/news/1211583/eu-commissioner-urges-full-investigation-into-alleged-illegal-migrant-deportations-in-greece; European Union Ombudsman, *Decision on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations and ensures accountability in relation to its enhanced responsibilities*, OI/4/2021/MHZ, 17 January 2022 https://www.ombudsman.europa.eu/en/decision/en/151369; European Union Ombudsman, *Decision on how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations with regard to search and rescue in the context of its maritime surveillance activities, in particular the Adriana shipwreck*, OI/3/2023/MHZ (26 February 2024) https://www.ombudsman.europa.eu/en/decision/en/182665.
[59] Lorenzo Tondo, 'Crew of migrant rescue boat acquitted in Italy after seven-year ordeal' The Guardian (19 April 2024); Lorenzo Tondo, "Tunisian fishermen await trial after 'saving hundreds of migrants'" The Guardian (5 September 2018).
[60] Jason Horowitz, 'Italy Orders Seizure of Migrant Rescue Ship' The New York Times (20 November 2018) https://www.nytimes.com/2018/11/20/world/europe/italy-aquarius-seizure-order.html; MSF, 'Press release: Italian authorities detain MSF rescue ship for 60 days' (MSF, 27 August 2024) https://www.msf.org/italian-authorities-detain-msf-rescue-ship-60-days.
[61] SOS Méditerranée, 'Piantedosi Decree: the price of disregard for maritime law' (SOS Méditerranée, 25 November 2023) https://www.sosmediterranee.org/consequence-of-the-piantedosi-decree.
[62] Ibid.

CARIBBEAN

The ocean route between Caribbean and Latin American countries and the United States is another busy migration sea lane. Deterioration of the Cuban economy and dire political turmoil in Haiti has driven a sharp increase in Caribbean maritime movements in recent years.[63] These movements are often informal and may involve landfall at different islands along the way. In this way, the numbers of migrants and refugees moving in the Caribbean is more difficult to assess than for the Mediterranean, where maritime migrant and refugee arrivals provide an important statistic. The US Coast Guard states that in 2023, a total of 11,955 individuals were interdicted at sea by the US or its regional partners. [64]



Approximate maritime routes in the Caribbean

As in many parts of the world, smugglers play a key role in facilitating Caribbean maritime migration and watercraft are often very basic. Shipwrecks are common, even in relatively short passages like the 115 km Strait of Mona between Puerto Rico and the Dominican Republic. Many of these migrants and refugees face risks in their countries of origin, however. As noted, conditions in Cuba and Haiti have driven significant amounts of migration, with migrants and refugees from Venezuela, the Dominican Republic and Cameroon as well in 2023.

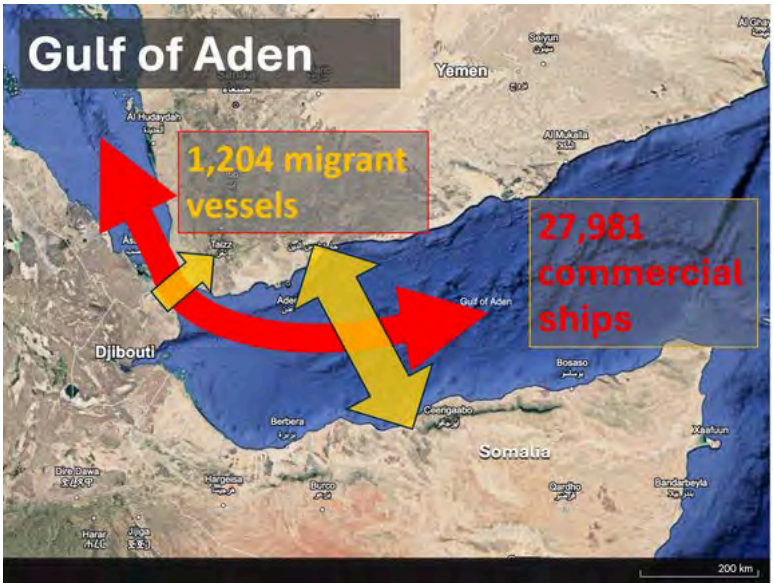
[63] Michael Feltovic and Robert O'Donnell, 'Coast Guard Migrant Interdiction Operations are in a State of Emergency' *U.S. Naval Institute* (Vol. 149/2, February 2023) www.usni.org/magazines/proceedings/2023/february/coast-guard-migrant-interdiction-operations-are-state-emergency.

[64] United States Department of Homeland Security, 'Press Release: Task Force continues to prevent irregular, unlawful migration to the United States' *U.S. Coast Guard News* (12 April 2024) www.news.uscg.mil/Press-Releases/Article/3739500/task-force-continues-to-prevent-irregular-unlawful-maritime-migration-to-united/#:~:text=Migrant%20interdiction%20operations.,whom%20were%20Cuban%20or%20Haitian.

GULF OF ADEN

The Gulf of Aden is a major artery for commercial shipping and for maritime movement, albeit less so recently with the increased dangers for merchant ships transiting. A strategic chokepoint that connects the Indian and Pacific Oceans to the Red Sea and Suez Canal, the Gulf of Aden also separates the Horn of Africa from the Arabian Peninsula. Yemen lies directly across from the African coast and for many years migrants and refugees have made a perilous sea and land journey to try to reach Yemen and Saudi Arabia through Yemen. Unlike most other waterways, moreover, the Gulf of Aden sees migration in both directions. As the conflict in Yemen has intensified and Saudi Arabia has tightened its border, every year thousands of migrants, refugees—and to a lesser degree, returnees—have left Yemen to reach the Horn of Africa.

Lack of governance in the region is a particular problem. Piracy and terrorist attacks have taken place in the Gulf of Aden, which serves to deter commercial shipping from engaging in rescue. Smuggling groups on both sides of the Gulf of Aden are notoriously ruthless, with reported cases of torture during the land journey and smuggling crews pushing migrants and refugees into the water if they are sighted by coast guard vessels.[66] Moreover, Yemen, Djibouti, Somalia and Eritrea do not have a rescue coordination centre (RCC) registered with the IMO.[67] The closest RCCs operate from Jeddah and Damam, Saudi Arabia.



Migrant/refugee vessels and commercial ships in the Gulf of Aden in 2023 (data: IOM, UNHCR)[65]

Based on IOM's Displacement Tracking Matrix and Missing Migrants Project, approximately 113,430 movements were tracked crossing the Gulf of Aden in 2023. The vast majority (96,670) crossed from the Horn of Africa to Yemen. Yet a significant minority (16,760) moved from Yemen back to Somalia and Djibouti, seeking to return to countries in the Horn of Africa.[3] This is a larger number of migrants and refugees moving by sea than the Turkey-Greece Eastern Mediterranean route or the Morocco-Spain Western Mediterranean route.

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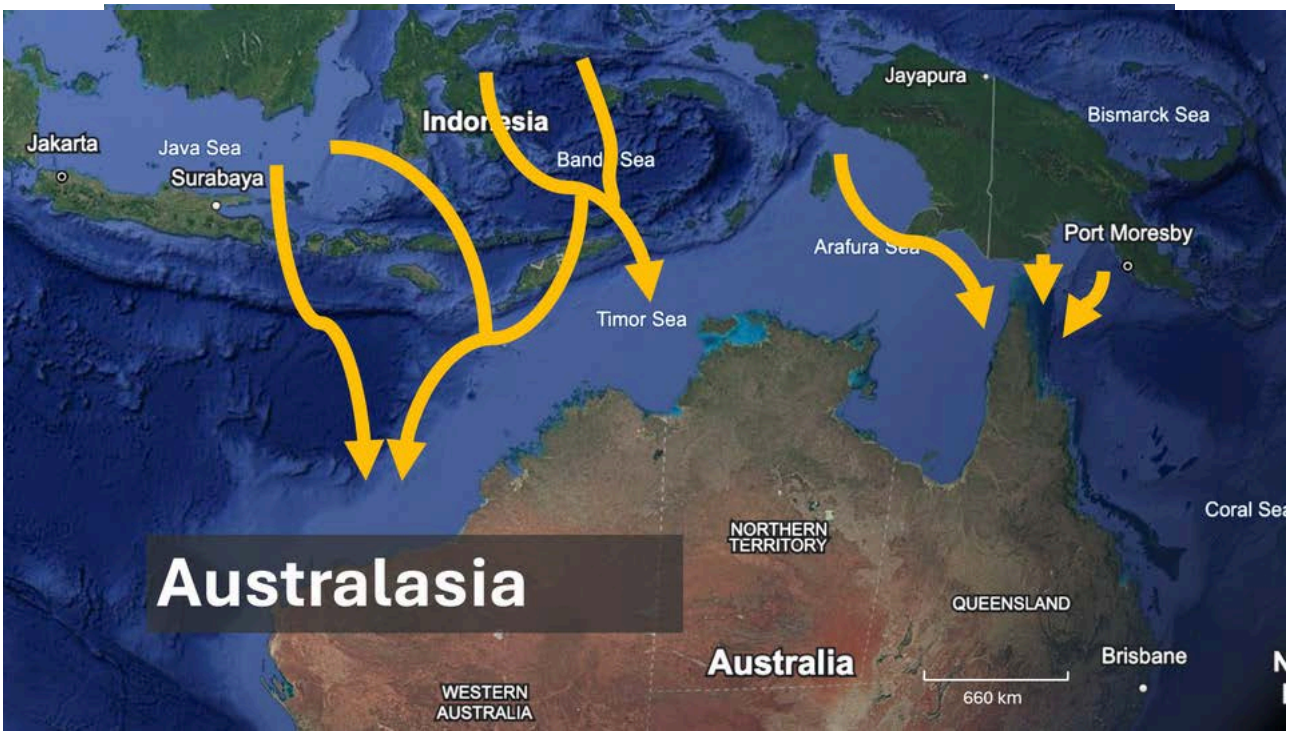
[65] Note that the maps used in this report are not an expression or endorsement of any political position or opinion by the Centre for Humanitarian Action at Sea or its partners.
[66] IOM, 'News: 45 Dead and 111 Missing in Tragic Incident off Djibouti Coast' (IOM, 2 October 2024) https://www.iom.int/news/45-dead-and-111-missing-tragic-incident-djibouti-coast;Xan Rice, 'Smugglers push Yemen migrants into sea and leave 107 to drown' *The Guardian* (17 February 2017) www.theguardian.com/world/2007/feb/17/international.mainsection; Chris Horwood, *Captive commodities: 'This route is like a fire'* (March 2023); Chris Horwood, 'Chapter 5: Deaths en route from the Horn of Africa to Yemen and along the Eastern Corridor from the Horn of Africa to South Africa', in Tara Brian and Frank Laczko, eds, *Fatal Journeys: Tracking Lives Lost During Migration* (International Organization for Migration, 2014) p. 151.
[67] IMO, 'GSIS: Global SAR Plan' (IMO, accessed 23 July 2024) gisis.imo.org/Public/COMSAR/RCC.aspx.
[68] See IOM, Displacement Tracking Matrix Dataset: Yemen Flow Monitoring (December 2023) dtm.iom.int/datasets/dtm-yemen-flow-monitoring-datasets-december-2023; IOM, Missing Migrants Project Data 2023-2024, https://missingmigrants.iom.int/downloads ('Missing Migrants Project Dataset'); IOM, *2023 Migration Overview: Horn of Africa and Arabian Peninsula* (May 2024) https://dtm.iom.int/reports/2023-migration-overview-horn-africa-and-arabian-peninsula.

AUSTRALASIA

The maritime corridor between Australia and neighbouring Southeast Asian nations has also witnessed migration for many years. Migrants and refugees generally travel from different parts of East and Southeast Asia, South Asia, and the Middle East to Australia. More than 17,000 migrants and refugees arrived in Australia in 2012, but numbers have slowed considerably in recent years.[69] Australia's Operation Sovereign Borders, initiated in 2013, is a military-led effort that intercepts vessels suspected of carrying migrants who seek to disembark in violation of Australian immigration law. These vessels are then turned back to neighbouring territorial waters, or the migrants aboard have their asylum claims determined at sea. Until 2014, asylum-seekers were sent to third-country processing facilities in Nauru and, previously, Papua New Guinea.[70] This approach has involved significant naval patrols as well as diplomatic engagement with neighbouring countries, including through the Bali Process on People Smuggling, Trafficking in Persons, and Transnational Crimes (known as the 'Bali Process'), discussed in the section on Rohingya refugee movements.

In 2023, only four boats with a total of 74 people were reported to have arrived in Australian waters,[71] and IOM did not track any deaths or missing migrants headed to Australia in 2023. This is a significant departure from the other maritime migration routes examined in this report. From this perspective, the Australian approach has been successful at deterring maritime migrants and refugees, and the Australian government argues that this deterrence has saved many lives.[72]



Map of approximate routes of maritime entry to Australia

[69] Janet Philipps, 'Boat arrivals in Australia: A quick guide to the statistics' (Parliament of Australia, 23 January 2014) www.aph.gov.au/AboutParliament/ParliamentaryDepartments/ParliamentaryLibrary/ pubs/rp/rp1314/QG/BoatArrivals.
[70] Operation Sovereign Borders, 'Australia's borders are patrolled all day, every day' (Operation Sovereign Borders, accessed 8 August 2024) osb.homeaffairs.gov.au/zero-chance; Elibritt Karlsen, 'Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources' (Parliament of Australia, Parliamentary Library, 19 December 2016) parlinfo.aph.gov.au/parlInfo/ download/library/prspub/4129606/uploadbinary/4129606.pdf;
[71] Phil Mercer, 'Australia Sends Asylum-Seekers Who Arrived by Boat to Pacific Processing Center' *Voice of America* (18 February 2024) https://www.voanews.com/a/australia-sends-asylum-seekers-who-arrived-by-boat-to-pacific-processing-center/7493109.html.
[72] Peter Dutton, 'Three years of Operation Sovereign Borders' (Australian Ministry of Home Affairs, 18 September 2016) minister.homeaffairs.gov.au/peterdutton/Pages/2016/three-years-osb.aspx.

A GLOBAL VIEW OF MARITIME ROUTES

At the same time, Australia's combination of naval patrols, at-sea asylum determination, and third-country processing has drawn criticism. Information on Operation Sovereign Borders is very limited, secrecy that has been criticized by Australian parliamentary committees and human rights organizations.[73] In at least one case, Australia conducted refugee status determination virtually while asylum-seekers were still at sea onboard a military vessel.[74] UNHCR and the Australian Human Rights Commission have expressed concerns that these screening procedures do not protect asylum-seekers from refoulement.[75] Turning back boats may place asylum-seekers at risk, with reported cases of arrest and torture after migrants and refugees were turned over to third-country authorities, and shipwrecks when vessels were sent back.[76]

The use of third-country processing facilities in Nauru and Papua New Guinea has also been criticized. In 2016, the Australian Senate and Constitutional Affairs References Committee found 'harsh and inhumane' conditions, abuse of asylum-seekers, and a failure to properly process asylum claims in the Nauru facility.[77] Australia made a series of reforms following 2016, but scandals continued, including widespread suicide attempts by children, leading to the close of Australia's last offshore facility in 2023.[78] UNHCR has 'consistently expressed its profound concern' over Australia's turn-backs and off-shore processing.[79]

[73] Senate of Australia, Legal and Constitutional Affairs References Committee, 'Interim Report: Payment of cash or other inducements by the Commonwealth of Australia in exchange for the turn back of asylum seeker boats' (Commonwealth of Australia, May 2016) ch 4, paras 4.2, 4.9-4.25, 4.26-4.35 www.aph.gov.au/ParliamentaryBusiness/Committees/Senate/LegalandConstitutionalAffairs/Paymentsforturnbacks/~/media/Committees/legconctte/Paymentsforturnbacks/InterimReport/report.pdf.

[74] Sarah Whyte, 'Immigration department officials screen asylum at sea "via teleconference"' *Sydney Morning Herald* (2 July 2014) www.smh.com.au/politics/federal/immigration-department-officials-screen-asylum-seekers-at-sea-via-teleconference-20140702-3b837.html.

[75] UNHCR, 'Press release: Returns to Sri Lanka of individuals intercepted at sea' (UNHCR, 7 July 2014) www.unhcr.org/africa/news/ news-releases/returns-sri-lanka-individuals-intercepted-sea; Australian Human Rights Commission, 'Tell Me About: The "Enhanced Screening Process"' (Australian Human Rights Commission, June 2013) humanrights.gov.au/sites/default/files/document/publication/enhanced-screening.pdf.

[76] See Kaldor Centre for International Refugee Law, 'Factsheet: Turning back boats' (University of New South Wales, April 2019) www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/kaldor-centre/2023-09-factsheet/2023-09-FactsheetTurning-back-boatsApr2019.pdf; Ben Doherty, 'Vietnamese asylum seekers forcibly returned by Australia face jail' The Guardian (23 May 2016) www.theguardian.com/australia-news/2016/may/24/vietnamese-asylum-seekers-forcibly-returned-by-australia-face-jail;

[77] Legal and Constitutional Affairs References Committee, 'Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre' (Commonwealth of Australia, April 2017) www.aph.gov.au/ParliamentaryBusiness/Committees/Senate/LegalandConstitutionalAffairs/NauruandManusRPCs/~/media/Committees/legconctte/NauruandManusRPCs/report.pdf.

[78] Ben Doherty and Eden Gillespie, 'Australia to move last refugee from offshore processing on Nauru – but its cruelty and costs are not over' *The Guardian* (23 July 2023) www.theguardian.com/australia-news/2023/jun/24/australia-to-move-last-refugee-from-offshore-processing-on-nauru-but-its-cruelty-and-cost-is-not-over#:~:text=Australia's%20second%20iteration%20of%20offshore,restarted%20on%20 the%20Pacific%20island.

[79] UNHCR, 'UNHCR Position: Interception and turn back of boats carrying asylum-seekers' (23 July 2015) www.refworld.org/policy/legalguidance/unhcr/2015/en/116657.

ROHINGYA REFUGEE MOVEMENTS: A CASE STUDY IN THE COMPLEX INTERACTIONS OF MARITIME COMMUNITIES

The Rohingya refugee movements in Southeast Asia represent a case study in the complex interactions of maritime communities and actors. These include governments, regional inter-governmental groups, coastal communities, organized smugglers, and the refugees themselves. In this respect, Rohingya movements represent a useful counterpoint to movements in the Mediterranean, which draw much more focus and can create the impression that all maritime movements feature the same dynamics.

Southeast Asia has a long history of maritime migration and refugee movements, with continued movements from Bangladesh and Myanmar to Indonesia and Malaysia. Currently, nearly one million Rohingya refugees reside in Bangladesh. The maritime journey from Western Myanmar and Bangladesh to Aceh, Indonesia, is the longest examined in this report, with more than 1,800 km of open ocean to cross. In 2023, at least 4,338 people attempted the journey by boat from Bangladesh into the Bay of Bengal and Andaman Sea, with an estimated 416 missing or dying en route.[80]

Background and context

Rohingya refugees have been a marginalized community in Myanmar for generations and are currently the world's largest stateless population. In 1982, the Myanmar (then known as Burma) government passed a law that denied citizenship to Rohingya communities.[81] The 1980s, 1990s and early 2000s witnessed occasional attacks on Rohingya communities, leading tens of thousands to seek refuge in Bangladesh. The years from 2008-2012 saw some democratic reforms in Myanmar but also increased Muslim-Buddhist tensions and further attacks on Rohingya communities. During this period, the first large-scale Rohingya maritime movements begin, with 125,000 making the journey from 2012-2015.[82]

In 2015, Rohingya maritime movements reached a crisis point when regional countries began pushing back arriving Rohingya boats, leaving 8,000 refugees stranded at sea.[83] This crisis was, in part, the result of regional countries cracking down on a serious problem: abusive smuggling operations. In April and May 2015, Thai authorities discovered smuggling and trafficking camps on both sides of the Thailand-Malaysia border. Rohingya who could not afford to pay the full costs of their journey—some of whom may have been extorted for more money, as continues to be reported along the Gulf of Aden route[84]—were beaten, forced to work, or killed. This led to a crackdown by Thai, Malaysian and Indonesian authorities.[85] Smugglers, fearful of being caught, abandoned many of the Rohingya boats, leaving thousands stranded and resulting in an estimated 1,000 Rohingya deaths.

A special meeting hosted in Bangkok and involving more than 20 countries and organizations helped pave the way for a resolution of the 2015 crisis. Indonesia and the Philippines agreed to host processing centres for maritime arrivals and a variety of other countries, from the United States to the United Arab Emirates, pledged funds and other support.[86]

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[80] United Nations High Commissioner for Refugees (UNHCR), 'Myanmar Situation, Rohingya Maritime Refugee Movements' Operational Data Portal (UNHCR, accessed 25 July 2024) data.unhcr.org/en/situations/myanmar.
[81] Elizabeth L. Rhoads, 'Citizenship denied, deferred and assumed: A legal history of racialized citizenship in Myanmar' *Citizenship Studies* 23:1 (2023).
[82] BBC, 'Why are so many Rohingya stranded at sea?' BBC (18 May 2015) www.bbc.com/news/world-asia-32740637.
[83] Id.
[84] Kathleen Newland with Elizabeth Collett, Kate Hooper, and Sarah Flamm, *All at Sea* (Migration Policy Institute, 2016) p 137 www.migrationpolicy.org/research/all-sea-policy-challenges-rescue-interception-and-long-term-response-maritime-migration.
[85] Newland et al., p 106.
[86] Id, p 118.

Rohingya maritime movements continue to this day, however. The Myanmar military (Tatmadaw) initiated a scorched-earth campaign against Rohingya communities in 2017, resulting in more than one million Rohingya fleeing to Bangladesh. The United Nations Independent International Fact-Finding Mission on Myanmar found that the Tatmadaw shot civilians indiscriminately, raped women, and burned villages in a systematic campaign designed to inspire terror. [87]

The situation in Myanmar has only deteriorated since. The Myanmar military overthrew the democratically elected government in 2021, sparking resistance from communities across the country, peacefully at first and later through the formation or re-constitution of armed groups. Numerous ethnically and politically based armed groups are involved and the resultant fighting has displaced more than 500,000 people.[88] While Malaysia and Indonesia continue to be the main intended destinations for the maritime movements in the Andaman Sea and Bay of Bengal, during the first six months of 2024 reports from UNHCR partners and media coverage indicate that people fleeing Myanmar are increasingly using boats to cross the Naf River in search of protection in Bangladesh, with a significant number of people reportedly denied access to territory.[89]

All of these events continue to drive Rohingya maritime movements. In 2023, Indonesia received the highest number of Rohingya maritime arrivals since 2015. UNHCR estimates that 4,500 people attempted the maritime crossing in 2023 with 416 deaths, an increase in both overall numbers and death rate since 2022.[90]At the end of September 2024, the number of Rohingya refugees embarking on sea journeys are about the same to the whole year of 2023 and the sailing season in the region is from October-December.[91]

Newly arrived Rohingya refugees walk ashore after travelingby boat from Myanmar on the Bay of Bengal to Cox's Bazar in Bangladesh
Photo credit: UNICEF / Patrick Brown

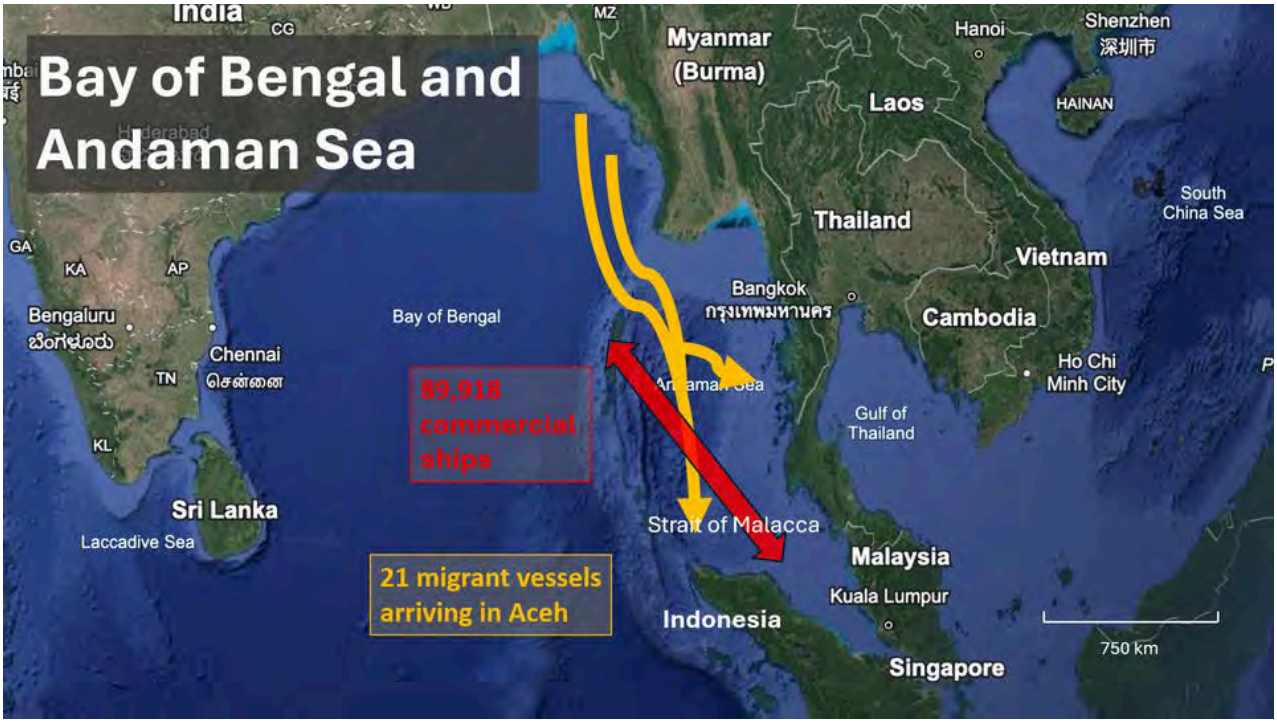
[87] Report of the independent international fact-finding mission on Myanmar, A/HRC/39/64 (12 September 2018) 5-9.
[88] Al Jazeera, 'Explainer: What is Myanmar's Three Brotherhood Alliance that is resisting the military?' *Al Jazeera* (14 January 2024) www.aljazeera.com/news/2024/1/16/what-is-myanmars-three-brotherhood-alliance-thats-resisting-the-military#:~:text=The%20Three%20Brotherhood%20Alliance%20is,to%20 have%20some%2030%2C000%20soldiers.
[89] Feedback from UN official.
[90] UNHCR, *Desperate Journeys: Rohingya Refugees in Search of Protection* (UNHCR, 2024) data.unhcr.org/en/documents/details/106455 ('Desperate Journeys').
[91] UNHCR, Operational Data Portal: Rohingya Reugee Maritime Movements Dashboard (accessed October 11, 2024) https://data.unhcr.org/en/situations/myanmar#powerbi.

A GLOBAL VIEW OF MARITIME ROUTES

The maritime journey

The lengthy maritime route through the Andaman Sea and Bay of Bengal results in more organized voyages using larger vessels. Often, migrants and refugees depart the coast on small boats that meet up with a larger vessel further out to sea. But this does not make these journeys safer. On the contrary, Rohingya maritime refugees often face risks of abuse at sea, as highlighted by the March 2024 case (see boxed section). The Rohingya also face persecution if returned to Myanmar or if they are intercepted by the Myanmar Coast Guard. Regional countries such as Thailand and Indonesia have also cracked down on smugglers, which can create perverse incentives and create greater risks for migrants and refugees as they are handed off between smuggling groups.

Most Rohingya movements end at the western end of the Strait of Malacca, one of the busiest shipping lanes in the world. In 2023, more than 89,000 commercial ships transited the Strait, along with 21 migrant and refugee vessels that travelled to Aceh, Indonesia. An additional 20 migrant and refugee vessels travelled the Andaman Sea but stopped along the Thai coast.



Migrant/refugee vessels and commercial ships through the Strait of Malacca in 2023

As with all maritime routes, the risks of death due to drowning, capsizing, and general exposure remain significant. UNHCR estimates indicate that one Rohingya refugee died or went missing for every eight who attempted the maritime journey.[92] Inconsistent with the principle of non-refoulement and the laws of the sea, survivors have reported practices of push backs and delayed disembarkations that resulted in some of the reported deaths.

[92] UNHCR, Global Trends: Forced Displacement in 2023 (UNHCR, 2024) p 9 www.unhcr.org/sites/default/files/2024-06/global-trends-report-2023.pdf.

A GLOBAL VIEW OF MARITIME ROUTES

The majority of Rohingya maritime refugees travel from Bangladesh to Indonesia, but departures from Myanmar also continue. A substantial number (82 per cent in the first half of 2024) of the attempts to reach Malaysia or Indonesia are unsuccessful, with disembarkation taking place in Myanmar or Bangladesh, leaving refugees in an even more vulnerable situation. Despite the risks, many take the desperate decision to leave in search of protection. As land routes through Thailand become increasingly used by Myanmar nationals fleeing the civil war (many of them non-Rohingya), landing in Thailand and using the land route to Malaysia is becoming more common.[93]

The vast majority of Rohingya maritime refugees disembark in Indonesia, but this is rarely their final destination. Many often seek to reach the Rohingya communities and perceived economic opportunities in Malaysia. However, the journey from Indonesia to Malaysia across the narrow Strait of Malacca also witnesses deaths. In 2016, more than 120 migrants died crossing the Malacca Strait.[94] These crossings are frequent, made by many groups other than Rohingya, and are even more difficult to track.

One journey: Bangladesh to Indonesia, March 2024

A March 2024 case detailed by the Associated Press highlights the distinct challenges of the Southeast Asian route.[95] On 21 March, an Indonesian SAR team, notified by local fishermen, rescued 75 Rohingya clinging to an overturned boat. These were the survivors of a group of 142 who began the journey more than a week before. Their voyage highlights many of the ways in which the Bay of Bengal/Andaman Sea route is similar to but also very different from the Mediterranean.

This journey began when a group of Rohingya were picked up in a small fishing boat on the coast of Bangladesh, ferried to a larger boat in the Bay of Bengal, then transferred to a third, still larger boat, with a crew from Myanmar that carried them most of the way, over the course of approximately one week. As they moved closer to Thai and Indonesian waters, however, they were transferred to an Indonesian-crewed vessel less likely to raise the suspicion of Thai and Indonesian authorities, but also smaller and flimsier. This is a very different maritime journey from most other migration routes, where a single raft or small vessel is used to carry migrants and refugees over the shortest possible distance.

Until this point, the voyage had been mostly without incident. The Indonesian crew, however, immediately became abusive, according to the Rohingya survivors' reports.[96] They separated men from women, beating those who resisted. Over the next two days, the captain and crew raped five women and girls while the men were trapped in the cargo holds without food or water. Resistance among the Rohingya grew, with the captain threatening to capsize the boat. Eventually the boat did flip over, with Rohingya survivors claiming that the capsizing was intentional while police reports indicate that it was an accident and the result of overcrowding. Regardless, at least 45 Rohingya died when the vessel overturned. This gruesome experience again highlights a key difference with other maritime migration routes, where migrants and refugees frequently experience abuse on land but are often on their own during the sea voyage.

Local fishermen spotted the overturned boat the next morning, rescuing six survivors—as many as their small watercraft would carry—and notifying SAR authorities. But the rescue team did not arrive for another 24 hours. At least 20 more Rohingya died in that time due to drowning or exposure.

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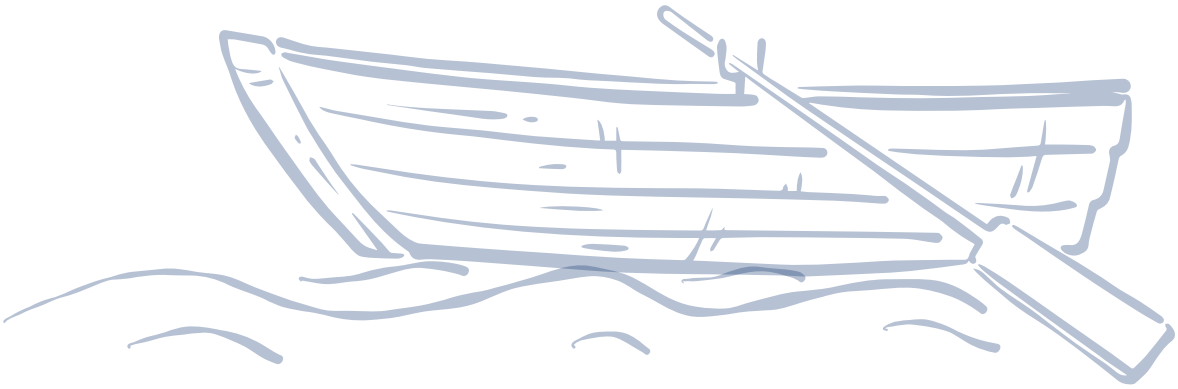
[93] UN Office on Drugs and Crime (UNODC) Observatory on Smuggling of Migrants, *Migrant Smuggling in Southeast Asia* (UNODC, 2024) p 9-12 www.unodc.org/documents/data-and-analysis/glosom/Observatory/2024/SOMObservatorySEAFullStudyMarch2024.pdf.
[94] IOM, Missing Migrants Project (accessed 11 October 2024) [92] UNHCR, Global Trends: Forced Displacement in 2023 (UNHCR, 2024) p 9 www.unhcr.org/sites/default/files/2024-06/global-trends-report-2023.pdf. ; UNHCR, *Mixed Movements in Southeast Asia*: *2016* (UNHCR, 2016) p 7 reporting.unhcr.org/sites/default/files/UNHCR%20-%20Mixed%20Movements%20in%20South-East%20Asia%20-%202016%20--%20April%2020170.pdf.
[95] Edna Tarigan and Kristin Gelineau, ' "They tortured us": Rohingya survivors of fatal capsize say captain raped girls, purposely sank boat' *Associated Press* (7 May 2024) apnews.com/article/rohingya-migration-boat-refugees-indonesia-bangladesh-myanmar-1d2ad5595a5240ea4d2c35e26ddf9394.
[96] Id.

A GLOBAL VIEW OF MARITIME ROUTES



Changing dynamics

The Bay of Bengal / Andaman Sea migration route, like other maritime routes, is not static. It has evolved along with the conflict in Myanmar and responses from regional countries. One clear change between 2023 and 2015 is the age and gender of the migrants. When maritime movements initially peaked in 2014-2015, the vast majority of Rohingya refugees were young men. Today, this age and gender remains the plurality, but almost every boat includes significant numbers of women and children. In 2022-2023, 23% of Rohingya maritime migrants and refugees were women and 36% were children.[97] From January to June 2024, 72 per cent of those attempting sea journeys were women (29 %) and children (44 %). [98]

In 2018, refugees and migrants often relied on small fishing boats, bought directly from a local fisherman, with the capacity to transport between 20 and 100 persons each. In 2019, professional smuggling networks were the primary facilitators of irregular maritime movements, using larger vessels with the capacity to transport up to 200 people at once.[99]

Rohingya boat people stranded off the coast near Geulumpang in Indonesia's East Aceh district of Aceh province wait to be rescued on May 20, 2015, AFP, Januar. Photo credit: UNHCR

[97] UNHCR, *Desperate Journeys: Rohingya Refugees in Search of Protection*, p 6.
[98] UNHCR, *Rohingya refugees: Land and sea routes - Quarterly update - as of June 2024* (26 September 2024) https://data.unhcr.org/en/documents/details/111427.
[99] UNHCR, *Refugee Movements in Southeast Asia: 2018* (UNHCR, 2019) p 5

Regional coordination on maritime migration

Regional coordination mechanisms for maritime migration mark another way in which Southeast Asia dynamics differ from Europe and the Mediterranean. Southeast Asian nations ofted prefer a regionalized and decentralized approach to migration.[100] For example, the Association of Southeast Asian Nations (ASEAN) endorsed the Principles of Bangkok on the Status and Treatment of Refugees (formulated in 1966 but not finally agreed until 2011), but these are non-binding. Amongst Southeast Asian nations, only the Philippines and Cambodia are party to the 1951 Refugee Convention. Other regional agreements do not provide clear protections for migrants and refugees.[101]

In addition, there is no supra-national framework for migration in Southeast Asia comparable to the European Union. Southeast Asian nations have consistently emphasized non-interference and sovereignty, which has made their regional institutions more focused on coordinating dialogue and cultivating consensus than on prompting action or executing decisions.

The region's reaction to the 2015 Rohingya crisis reflected many of these dynamics. ASEAN met to discuss the Rohingya refugee crisis in April and May 2015, but little action resulted. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime ('Bali Process'), established in 2002 and co-chaired by Indonesia and Australia, met on the Rohingya refugee movements. While the Bali Process has developed a range of training and policy materials over the years,[102] it is a non-binding forum that wasn't geared for crisis decision-making.[103]

Photo Credit: SOS MEDITERRANEE / Tara Lambourne

[100] Rey P. Asis and Carlos L. Mangingat, ' "The 'ASEAN Way" in Migration Governance' in Heaven Crawley and Joseph Kofi Teye (eds), *The Palgrave Handbook of South-South Migration and Inequality* (Palgrave McMillan, 2024) p 681-684.
[101] The 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers does not apply to irregular migrants and the 2012 ASEAN Agreement on the Movement of Natural Persons only covers short-term business services. Ibid.
[102] Regional Support Office to the Bali Process, 'Publications' (accessed 15 July 2024) rso.baliprocess.net/resources.
[103] Newland et al, p 114-16.

One challenge from a humanitarian perspective remains that many regional countries view migration primarily through a security lens. As stated by the Commander of the Indonesian Armed Forces, General Moeldoko, during the 2015 crisis, 'With regard to the Rohingya, as they make their way along the Malaccan Strait, insofar as they face trouble at sea, then it's our obligation to help. If they need water or food, we help because this concerns the human. But if they enter our territory, then it's the Armed Forces' duty to guard our sovereignty'.[104]

ASEAN and the Bali Process remain entry points for regional dialogue, however. While migration and refugee disembarkation can be politically sensitive in Southeast Asia—as in almost every region of the world—there has been a sustained dialogue on these issues for a decade now. The decentralized and securitized approaches to maritime migration have, however, made it more difficult to deal with maritime rescue in a consistent and predictable manner.[105]

Community rescue efforts

Coastal communities have also played important roles in maritime search-and-rescue in Southeast Asia, particularly the Acehnese Panglima Laot. While Southeast Asia has no search-and-rescue NGOs like those in the Mediterranean, the community-led efforts of local Acehnese fishermen highlight the different forms that community-based rescue efforts may take. They also highlight the complex nature of these efforts, and how the line between humanitarian imperatives and the illicit profit motives can become blurred when migration is criminalized and unpredictable.

Aceh is the westernmost province of Indonesia, lying at the entrance to the Straits of Malacca, connecting the Indian and Pacific Oceans. This has been a vital waterway for thousands of years and Acehnese coastal communities have long relied on the sea for their livelihoods. By the early 1600s, the Panglima Laot, or 'Sea Commander', was established in Aceh under Sultan Iskandar Muda.[106] Historically, the Panglima Laot, referencing both the title of commander and the institution of personnel under his command, collected taxes and mobilized fishermen for war. In modern times, they resolve disputes among fishermen, regulate fishing areas, and support rescue of vessels in distress. There are 180 Panglima Laot personnel in Aceh's 18 districts, supporting coordination of 100,000 local fishermen.[107]

The Panglima Laot have played an important role in maritime migration. During the 2015 Rohingya refugee crisis, regional coast guards pushed back many of the arriving boats, resulting in what Human Rights Watch called a 'game of human ping pong'.[108] The Panglima Laot, fulfilling their customary duties to rescue seafarers in distress, rescuing passengers on three boats carrying more than 1,800 passengers in May 2015, including at least one boat that had previously been pushed back by the Indonesian Navy.[109] The Panglima Laot has continued to rescue Rohingya vessels in distress, assisting hundreds in the years since 2015.[110]

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[104] Quoted in Avyanthi Azis, 'The Refugees Vanish: Rohingya Movement, Emergency's Temporality and Violence of the Indonesian Humanitarian Border', in Sriprapha Petcharamesree and Mark P. Capaldi (eds), *Migration in Southeast Asia: IMISCOE Reader* (Springer, 2023) p. 181.
[105] Nino Viartasiwi and Antje Missbach, 'Rohingya refugees facing a hostile reception in Aceh' *New Mandala* (4 December 2013) www.newmandala.org/rohingya-refugees-facing-a-hostile-reception-in-aceh.
[106] Ina Nisrina and Suryani Amin, 'Melihat Masa depan Panglima Laot di Aceh' *Mongabay* (27 June 2019) www.mongabay.co.id/2019/06/27/melihat-masa-depan-panglima-laot-di-aceh.
[107] Interview with Azwir Nazar, Secretary-General of the Panglima Laot, 27 June 2024.
[108] Simon Tisdall, 'Southeast Asia faces its own migrant crisis as states play "human ping pong"' *The Guardian* (14 May 2015) www.theguardian.com/world/2015/may/14/migrant-crisis-south-east-asia-rohingya-malaysia-thailand.
[109] Graham Thom, 'The May 2015 boat crisis: the Rohingya in Aceh' *Cosmopolitan Civil Societies Journal* 8 (2016) epress.lib.uts.edu.au/journals/index.php/mcs/article/view/4816/5491.
[110] See, for example: Al Jazeera News, ' "Best of humanity": Indonesian fishermen rescue stranded Rohingya' Al Jazeera (26 June 2020) www.aljazeera.com/news/2020/6/26/best-of-humanity-indonesian-fishermen-rescue-stranded-rohingya; Mitra Suryono, 'Indonesia fishermen rescue Rohingya' *UNHCR Stories* (30 May 2018) www.unhcr.org/us/news/stories/indonesian-fishermen-rescue-rohingya.

Tensions between the humanitarian actions of a community-based institution like the Panglima Laot and state interests in migration and immigration have risen in recent years, however. In 2021, an Aceh district court found three Indonesian fishermen guilty of human trafficking after they organized a rescue of Rohingya refugees, allegedly in collaboration with, and payment from, smugglers.[111] The defendants argued that their acts were humanitarian, based on long standing customary duties of rescue. The court, however, focused on the basic elements of Indonesia's human trafficking statute: transporting people into Indonesian territory who did not have permission to enter, and obtaining direct or indirect profit. (The fishermen received an average of 300 USD each, after operating costs).[112]

The relationship between rescue and smuggling is complex, often defying easy categorization. In 2015, there were no reports of communication or collaboration between local fishermen and smuggling networks. As movements continued, however, both Indonesian coastal authorities and smuggling networks adapted. Indonesia, as previously mentioned, conducted more patrols to detect and often deter Rohingya movements. This increased pressure on the smugglers organizing those movements. It also raised the stakes for fishermen who tried to assist Rohingya, who could be accused of assisting traffickers. This led to natural incentives on the part of smugglers to offer money to local fishermen and for local fishermen to accept it, given the risks to their livelihood if they rescued Rohingya.

Human trafficking is, of course, a grave problem, particularly in Southeast Asia. At the same time, classifying most Rohingya refugee maritime movements as instances of human trafficking is also problematic. Many Rohingya face false promises, deception, exploitation and abuse, as described above. Yet many of these voyages are also voluntary. This makes the label of human trafficking a poor fit for the experiences of many Rohingya. In the case of Indonesia, it focuses the attention of judges and prosecutors on immigration documents rather than experiences of abuse or victimization by the migrants and refugees themselves.[113]

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[111] Bilal Dewansyah, 'Acehnese fishermen and Rohingya rescued at sea' *Inside Indonesia* (16 November 2022) www.insideindonesia.org/archive/articles/acehnese-fishermen-and-rohingya-rescue-at-sea.
[112] Ibid.
[113] Antje Missbach, 'Maritime refugees as an evolving threat to Asia's maritime security' *Asia Maritime Transparency Initiative* (Center for Strategic and International Studies, 15 December 2022) amti.csis.org/maritime-refugees-as-an-evolving-threat-to-southeast-asias-maritime-security.

The situation today

It has been reported that the February 2024 elections in Indonesia have been accompanied by a campaign of 'misinformation, disinformation, and hate speech' against the Rohingya.[114] These campaigns, which have not been attributed to any specific group or figure, resulted in an attack on 137 refugees in Banda Aceh city.[115] Such attitudes are not universal, however, with many Acehnese organizations calling for clearer policies and funding, rather than exclusion.[116]

Coastal communities and the Panglima Laot are aware of the complexities of the Rohingya situation. The Secretary-General of the Panglima Laot said that he and his group did not support law-breakers but also sought to uphold the basic tenets of their customary traditions. Fundamentally, he also called for greater clarity and guidance: 'We need guidance, international standards and procedures. If our fishermen see the Rohingya in the sea, what should we do? We need capacity building. And when Rohingya come to the beach, what should we do? People need water, food. But our government says no, don't provide assistance. We need capacity building of Panglima Laot as an institution.'[117]

THE IMPORTANCE OF ROUTE-SPECIFIC ANALYSIS

This section highlights how specific dynamics and challenges are to each maritime migration route. While some issues concerning maritime migration will be global in nature, many require a region- or route-specific approach. This may particularly be required where there is an emerging regional consensus or platforms to reach consensus on policy issues. It is also important to recognize that some coastal states, such as Yemen and Somalia, may lack sufficient capacity to effectively fulfil their roles in the global search-and-rescue system. Finding ways to support these states is critical. There is also a need to engage coastal communities along maritime migration routes. This includes communities in areas of departure, like Senegal, or arrival, like Aceh. They can play important roles in data collection on maritime movements and ensuring the safety and well-being of migrants and refugees. These are all key issues to consider that have regional and route-specific dynamics.

Photo Credit: SOS MEDITERRANEE / Stefano Belacchi

[114] AFP, 'Fake news, online hate swell Indonesia anti-Rohingya sentiment' *AFP* (3 February 2024) www.france24.com/en/live-news/20240203-fake-news-online-hate-swell-indonesia-anti-rohingya-sentiment.
[115] UNHCR, 'Press release: UNHCR disturbed over mob attack and forced eviction of refugees in Aceh, Indonesia' (UNHCR, 27 December 2023) www.unhcr.org/asia/news/press-releases/unhcr-disturbed-over-mob-attack-and-forced-eviction-refugees-aceh-indonesia.
[116] Rebecca Ratcliffe, 'The online hate campaign turning Indonesians against Rohingya refugees' *The Guardian* (17 January 2024) www.theguardian.com/world/2024/jan/18/the-online-hate-campaign-turning-indonesians-against-rohingya-refugees.
[117] Interview with Azwir Nazar, Secretary-General of the Panglima Laot, 27 June 2024.

NAVIGATING THE FUTURE

Addressing the challenges of maritime migration requires the consensus and concerted action of a range of stakeholders, from state rescue centres and flag states to commercial shipowners, search-and-rescue professionals, and coastal communities. There is already an existing architecture in place to support maritime search-and-rescue but, for reasons enumerated throughout this report, too often these mechanisms fail maritime migrants and refugees. To address these multifaceted challenges, the Centre for Humanitarian Action at Sea established a dedicated dialogue platform in 2023. It is a forum for finding practical consensus, sharing best practices, and coordinating rescue and data collection efforts.

The dialogue platform operates under the following principles:

- ***Confidential:*** The dialogue platform will remain a confidential space where all participants can speak freely.
- ***Pragmatic:*** The platform will be oriented toward producing practical guidance on key issues. It will not shy away from difficult topics, but nor will it seek to rehash debates that take place in other forums.
- ***Open to all relevant actors:*** The platform will bring together the key stakeholders in the maritime environment, including states, the shipping industry, experts in maritime policy and operations, and select humanitarian partners.
- ***Adaptive and iterative:*** The platform will be designed to evolve based on the needs and feedback of participants, allowing for continuous improvement and adaptation to emerging challenges.

RECOMMENDATIONS

Based on the key challenges identified, this report recommends the following priority areas of discussion for the 2024 annual conference. In each of these areas, the dialogue platform can serve as an important forum for engagement and the Centre for Humanitarian Action at Sea can serve as a resource hub. The Centre stands ready to support existing SAR operations and the development of new ones.

Gathering operational perspectives

- *Incorporating perspectives from the commercial sector:* Maritime migration routes are also maritime trade routes. Commercial vessels are by far the most likely set of actors to cross paths with maritime migrants and refugees on the high seas, and yet their opportunity to participate in dialogue on SAR issues is often minimal. This includes identifying ways to support seafarers in operational and mental health matters. The shipping industry needs to be engaged on these issues.

Clarifying legal and policy terms

- *The need for a dialogue on 'place of safety', 'vessel in distress', and related issues that strengthen effective response:* The general guidance to seafarers on maritime migration needs to be clear. While there are important interests to consider in this discussion, every effort should be made to clarify responsibilities of ship masters, flag states, coastal states, and other stakeholders. This includes developing a dialogue on terms such as 'place of safety' and 'vessel in distress' to reduce uncertainty in life-threatening situations.

Expanding maritime domain awareness and improving rescue coordination

- *Explore the use of alarm systems and the use of maritime domain awareness and rescue coordination centres:* Expanding maritime domain awareness is a key feature of strengthening rescue. Often, maritime migrant vessels lack integration into the Global Maritime Distress and Safety System, breaking the first link in the chain of maritime domain awareness. Ensuring that distress calls from migrants and refugees are heard, relayed, and responded to is essential. This can be accomplished through supporting independent mechanisms, such as NGO alarm phone systems, or state-based maritime domain awareness and rescue coordination centres. These options are not exclusive and following up multiple avenues should be pursued.

NAVIGATING THE FUTURE

Supporting flag states and coastal states

- *Supporting flag states and coastal states to fulfil responsibilities on search-and-rescue:* Flag states are key authorities with respect to ships in international waters and coastal states are essential, front-line rescue actors. Their role in monitoring and reporting, as well as ensuring compliance with relevant regulations, is essential. The multitude of these responsibilities can pose challenges, however, when policy questions remain unanswered, and coordination is limited. Flag states and coastal states deserve the full support of the maritime community and a dedicated support structure for key issues, such as maritime rescue.

Improving training and guidance for mass rescue

- *Dissemination of training and good practice for rescue-at-sea:* Effective policy requires training and dissemination. Organizations like IMRF, RNLI, IMO, ICS, and UNHCR and IMO produce such training and operational resources on rescue-at-sea and these efforts should be strengthened. The Centre for Humanitarian Action at Sea can serve as a resource hub for training dissemination and good operational practice.

Developing operational support for seafarers

- *Identify seafarer needs and develop operational support:* Operational support tools, such as bulletins, posters, or online tools like chatbots, are important aides to effective rescue that often fill a niche distinct from training. Identifying what challenges both Seafarers at sea and ship management offices on land face and how operational support tools can help address those challenges is critical. The Centre can serve as a platform to further these discussions, bringing together different parts of the maritime community.

Strengthening data collection and reporting

- *Inconsistent information sharing by Coast Guards, rescue coordination centres (RCCs), and departure/arrival states:* Too often data collection is hampered by a lack of transparency from authoritative, state data sources. Information sharing by coast guards, RCCs, and arrival states is essential for developing a complete picture of maritime migration. While 'invisible shipwrecks' are an inherent challenge of collecting data on maritime migration, improved information sharing by states to organizations like IOM and UNHCR is an issue that can be readily addressed.
- *Lack of a centralized reporting mechanism for maritime migration incidents:* There is currently no centralized reporting mechanism for maritime migration incidents. The IMO Inter-agency platform for information sharing on migrant smuggling at sea shows that such platforms are politically and technically possible and could serve as the basis on which to build a more robust reporting mechanism. Regardless of which platform is used, an effective reporting mechanism should include:
  - General consensus and buy-in from critical states on reporting requirements, including what to information to report, when, how, and to whom;
  - Broad dissemination of this reporting platform to all concerned stakeholders, particularly coastal states;
  - Direct reporting via RCCs, coast guards, or other dedicated authorities, rather than capitals;
  - Data from the commercial maritime sector;
  - Robust cyber security to ensure confidentiality of information.

Photo Credit: SOS MEDITERRANEE / Laurin Schmid

CONCLUSION

The challenges of maritime migration demand a proactive, informed, and humane response. The establishment of the Dialogue Platform for Maritime Migration represents a crucial step towards building the collaborative framework necessary to meet these challenges. By fostering ongoing dialogue, clarifying legal standards, improving operational coordination, and enhancing data collection, we can ensure that the international community is better equipped to save lives at sea and protect the dignity and rights of all migrants and refugees.

As the Centre for Humanitarian Action at Sea continues its work, it remains committed to advocating for policies and practices that prioritize human life and dignity. The journey ahead is long, but with concerted effort and a shared commitment to action, it is possible to navigate the complexities of maritime migration with compassion, clarity, and collective resolve.

Photo Credit: SOS MEDITERRANEE / Tara Lambourne