

2025

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## **Double jeopardy:**

Legal and policy challenges  
facing commercial ships  
conducting maritime  
rescue



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# About Us

The Foundation for Humanitarian Action at Sea (FHAS) is dedicated to protecting lives and rights at sea. It brings together the shipping industry, governments, search-and-rescue professionals, and international organisations to ensure that migrants, refugees, and seafarers receive safe and humane treatment. Through research, dialogue, and practical action, FHAS works to make the world's oceans safer.



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# Introduction

Few principles in international law are as deeply rooted, or as widely respected, as the duty to rescue persons in distress at sea. It predates modern treaty law, embedded in centuries of maritime custom, and today forms a cornerstone of legal obligations under instruments such as the UN Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS), and the International Convention on Maritime Search and Rescue (SAR). This duty applies universally, binding all shipmasters, regardless of the flag they sail under, the voyage they are on, or the identity or status of the people they encounter in peril. Coastal states, too, are obligated to coordinate rescue efforts and ensure the safe and prompt disembarkation of those rescued. In principle, the legal framework is clear. A variety of state policies, however, have introduced legal and policy uncertainty in some cases.

Merchant shipmasters have faced criminal prosecution for rescuing migrants and bringing them to Europe (facing charges of facilitation of illegal entry) and for returning them to Libya (arbitrarily abandoning the rescuees in an unsafe place). And while criminal charges against commercial shipmasters are rare—and convictions are extremely rare—delays and political standoffs over disembarkation are routine. From a few days to seven weeks, commercial ships have faced prolonged periods of deviation, turning what should be quick and efficient rescue operations into extended and costly excursions.

These challenges could potentially have a deterrent effect. There is evidence of commercial vessels in the central Mediterranean rerouting or turning off their automatic identification system (AIS) trackers to avoid being identified as the closest ship to a vessel in distress.[1] This being said, the vast majority of shipmasters continue to fulfil their duty, and there is good faith cooperation between commercial actors and maritime rescue coordination centres (MRCCs). But the lack of legal clarity and predictable outcomes means that the willingness of commercial actors to intervene without hesitation in future rescues cannot be taken for granted.

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[1] Tomas Kristiansen, 'Migrant crisis has ships going off radio and rerouting near Malta' ShippingWatch (9 September 2020)  
<https://shippingwatch.com/carriers/Tanker/article12401608.ece>



This report seeks to support shipmasters and crews involved in rescue through highlighting some of the legal and policy challenges that they face. These men and women make life-and-death decisions in difficult situations. While this report discusses cases of criminal charges and even conviction, its goal is not to assign blame but rather to highlight where state law and policy regimes create difficult choices for responsible shipmasters.

This report reviews the legal framework governing maritime rescue and examines more than a dozen real-world cases involving commercial vessels. It provides a thorough overview of prosecutions and delays involving merchant vessels involved in rescue, reviewing 23 cases. In addition to these cases involving merchant vessels, this report also summarizes the prosecutions and delays faced by humanitarian rescue non-governmental organisations (NGOs).

It should be emphasised at the outset that there is currently no comprehensive dataset of merchant ship rescues. This is a gap that the Foundation for Humanitarian Action at Sea seeks to address, but for which there is currently no complete solution. The 23 cases reviewed in this report represent the full set of merchant ship rescues for which details could be found through a thorough review of open-source reports. Nearly all of these cases involved legal action or delay. However, because the total number of merchant ship rescues is unknown, it is impossible to say how frequently the legal and policy challenges reviewed in this report are encountered. What is clear is that between 2018-2024, an average of 2.6 merchant ship rescues per year faced a delay or legal action.

The vast majority of these cases are from the Central Mediterranean. This is not an intentional limit on the scope of research but rather the reality that this is where most reported merchant vessel mass rescues have taken place, and where they have been the most legally contentious.

The human and financial impact of these obstacles to rescue are significant. While prosecutions of merchant shipmasters are rare, the spectre of criminal prosecution has been used frequently against NGOs. Delays, moreover, are a routine aspect of commercial ship rescue, running from days to weeks. Estimates of the cost of a one-week delay, moreover, reach USD 500,000 for a large commercial vessel,[2] highlighting how costly political standoffs over disembarkation can become. There is also a psychological toll on crew. Studies show that mass rescue of migrants and refugees can already cause trauma for crew supporting a rescue.[3]

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[2] Richard L. Kilpatrick, 'The "Refugee Clause" for Commercial Shipping Contracts: Why Allocation of Rescue Costs is Critical During Periods of Mass Migration by Sea' *Georgia Journal of International and Comparative Law* 46:403 (2018) p. 410.

[3] Hans-Joachim Jensen and Marcus Oldenburg, 'Potentially traumatic experiences of seafarers' *Journal of Occupational Medicine and Toxicology* Vol. 14 (2019) <https://occup-med.biomedcentral.com/articles/10.1186/s12995-019-0238-9>.

This report also examines potential protections and ways to reduce the uncertainty of rescue. There are well established humanitarian exemptions in model criminal laws around smuggling and facilitation, for example, that have not been implemented in many key jurisdictions. These legal protections identify ways to ensure that criminal actors—those who seek to profit from human smuggling—are clearly distinguished from humanitarian rescue actors and shipmasters who simply fulfill their legal duty to render assistance to the distressed.

The allocation of costs of unanticipated rescue in commercial shipping is also explored, including a review of charterparty agreements and insurance coverage. This report finds that charterparty agreements often leave the allocation of costs unclear, thereby contributing to uncertainty around rescue. But it also notes efforts to make this language clearer and more predictable, striking a balance between the interests of shipowners and charterers and the uncertainty of delays.

The cumulative effect of these legal, logistical, and political uncertainties is a maritime rescue environment in which commercial actors are expected to shoulder significant risk without corresponding legal clarity or operational support.

While the vast majority of shipmasters choose to uphold their duty with professionalism and courage, the risk of criminal prosecution or civil liability should not even be a factor when making the decision to assist those in need. Rescue at sea should be a predictable, supported, and legally secure component of maritime operations, not an exception that invites exposure. Without efforts to clarify legal protections, streamline disembarkation, and fairly allocate risk, the international commitment to saving lives at sea—one of the oldest obligations in maritime law—risks becoming an aspiration rather than an obligation.





**Current policies risk creating a system of disincentives to rescue:**

Shipmasters face a clear legal duty to rescue but also risk legal and operational consequences. This tension could potentially discourage rescue, with some ships reportedly avoiding areas of heightened migrant activity.

**Legal protections are missing in key jurisdictions:**

Many states do not incorporate the humanitarian exemptions recommended under the UN Smuggling Protocol or EU Facilitation Directive. States should consider integrating these legal protections.

**Criminal prosecutions are rare, but delays may be prolonged and costly:**

There are many cases of merchant ship rescues leading to multi-day or multi-week delays before disembarkation, incurring significant costs and risks for shipowners. There is no mechanism for compensating shipowners or charterers for these costs; shipowners or charterers absorb the burden.

**Model contracts can be clarified to reduce the uncertainty of the financial burdens of rescue:**

Charterparty forms should clearly address costs during rescue. The sector would benefit from standard clauses, such as a 'humanitarian rescue clause', to transparently allocate costs during prolonged delays.

# Legal background to the duty to render assistance

The duty to render assistance to vessels-in-distress is now so well established in international law and the domestic legislation that it carries the status of customary international law, binding on all countries.[4] The basic idea that all shipmasters—the ‘captain’ or person in charge of a vessel—have a duty to assist a vessel-in-distress goes back hundreds of years.[5] Modern treaties codifying it include the 1910 Salvage Convention, the 1974 SOLAS Convention, 1979 SAR Convention, and the 1982 UNCLOS.[6] Every coastal state in the world is a party to one or more of these treaties.[7]



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[4] Raul (Pete) Pedrozo, ‘Duty to Render Assistance to Mariners in Distress During Armed Conflict at Sea: A U.S. Perspective’ *International Legal Studies*, 94:102 (2018), p. 106. France, Italy, Malta, Spain, the United Kingdom and the United States, for example, all clearly codify the duty to render assistance in their national laws, with the potential for criminal penalties for violation. Code des transports (France), art. 5262-5 [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000023080839](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000023080839); Merchant Shipping Act (Malta), art. 306 <https://www.transport.gov.mt/Sea-Ship-Registration-Merchant-Shipping-Act.pdf-f207>; Merchant Shipping Act 1995 (updated 2021) (United Kingdom), Schedule 11, art. 10 <https://wipolex-resources-eu-central-1-358922420655.s3.amazonaws.com/edocs/lexdocs/laws/en/gb/gb433en.pdf>; Law 14/2014 on Maritime Navigation (Spain), art. 183 <https://www.boe.es/eli/es/l/2014/07/24/14/con>; 46 U.S.C. §2304 (United States) <https://www.law.cornell.edu/uscode/text/46/2304>.

[5] See Irimi Papanicolopulu, ‘The Historical Origins of the Duty to Save Life at Sea in International Law’ *Journal of the History of International Law* Vol. 24 (2022).

[6] International Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea (23 September 1910) 37 Stat 1658, UKTS 2 (1913), art. 11; International Convention for the Safety of Life at Sea, UNTS vol. 1184 (1979), p. 2, Ch. V reg. 33; International Convention on maritime search and rescue, UNTS vol. 1405 (1985); UN Convention on the Law of the Sea (1982), art. 98.

[7] See and compare the list of states party to each convention, available here: SOLAS, <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>; UNCLOS, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en).

Recent interpretations by the Maritime Safety Committee of the International Maritime Organisation (IMO), the European Court of Human Rights, and other courts have clarified key concepts relevant to mass rescue. This section outlines these concepts, including reasonable limits on the duty to rescue, disembarkation in a place of safety, disembarkation without delay, and responsible MRCCs and appropriate places of disembarkation.

## Reasonable limits of the duty to render assistance

These treaties also establish reasonable limits to the duty: UNCLOS affirms the shipmaster's duty to assist 'in so far as he can do so without serious danger to the ship, the crew or the passengers.'<sup>[8]</sup> These limits are particularly important for commercial shipping, where it may be difficult for a large tanker—with a deck ten meters above the water line, extremely crowded deck area with numerous pipes and carrying hazardous and flammable materials—to directly rescue migrants. Notifying maritime rescue coordination centres (MRCCs), or remaining nearby while emergency help arrives, may be more feasible modes of assistance.



At the same time, the exception of 'serious danger' is focused on danger to the ship, crew or passengers; there is nothing in these treaties to suggest that inconvenience justifies failing to act. In 1988, for example, the US Navy ship USS Dubuque was steaming to the Persian Gulf during the Iran-Iraq 'Tanker War' when it encountered an estimated 80 Vietnamese refugees fleeing Vietnam by boat. The captain, under orders to proceed to a combat zone, chose not to embark the refugees even though they were 280 nautical miles from the nearest land and 380 nautical miles from the closest land in the direction of their current.<sup>[9]</sup> Rather, the captain gave them food, medicine, and a basic map, and continued on his mission. The refugees were later found on the coast of the Philippines; 30 had died since being found by the Dubuque and the survivors had resorted to cannibalism.<sup>[10]</sup> The captain was court-martialled, found guilty of dereliction of duty, and relieved of his command.<sup>[11]</sup> This case shows how seriously the duty to render assistance is understood by the civilian and military maritime community.

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[8] UNCLOS, art. 98(2).

[9] Martin A. Harry, 'Failure to Render Aid' Proceedings of the US Naval Institute Vol. 116, No. 2 (February 1990) [8] [UNCLOS, art. 98\(2\)](#).

[10] Id.; Associated Press, 'Captain Loses his Command over Episode with Refugees' The New York Times (27 August 1988) [9] [Martin A. Harry, 'Failure to Render Aid' Proceedings of the US Naval Institute Vol. 116, No. 2 \(February 1990\)](#). [8] [UNCLOS, art. 98\(2\)](#).

[11] Associated Press, 'Captain Loses his Command over Episode with Refugees'.

## Disembarkation in a place of safety

While UNCLOS and SOLAS make the duty to rescue clear, the original treaties were less specific about what happens after a rescue is effected. Amendments to SOLAS and the SAR Convention filled this gap by defining the term 'rescue' to mean: 'An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety'.<sup>[12]</sup> As stated in the IMO Maritime Safety Committee's Guidelines on the Treatment of Persons Rescued at Sea (IMO Guidelines), 'the intent of [amendments to SOLAS and the SAR Conventions] is to ensure that in every case a place of safety is provided within a reasonable time.'<sup>[13]</sup> The concept of a place of safety is thus an essential element of rescue.

The IMO Guidelines provide important guidance on what constitutes a 'place of safety' (see boxed section). This element of the guidelines has played an important role in debates over whether countries of embarkation, such as Libya for maritime movements in the Mediterranean, constitute a 'place of safety' to which migrants and refugees can be returned. In the case of Libya, national and international courts, as well as UN experts, have universally found that Libya does not meet the definition of 'place of safety'.<sup>[14]</sup>

### IMO definition of 'place of safety'

A place of safety [as referred to in the SAR Convention] is a location where rescue operations are considered to terminate. It is also 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. Further, it is a place from which transportation arrangements can be made for the survivors. next or final destination.<sup>[15]</sup>

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[12] Amendments to the International Convention on Maritime Search and Rescue of 27 April 1979 (18 May 1988) <http://www.admiraltylawguide.com/conven/amendsearch1998.html>.

[13] IMO Maritime Safety Committee (MSC), 'Guidelines on the Treatment of Persons Rescued at Sea' MSC 78/26/Add.2, Annex 34, p. 4.

[14] See, for example, *Hirsi Jamaa and others v. Italy*, Grand Chamber, Judgment, Application 27765/09, European Court of Human Rights (23 February 2012) <https://hudoc.echr.coe.int/fre>; UN High Commissioner for Human Rights, 'UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea' (September 2020) <https://www.refworld.org/policy/countrypos/unhcr/2020/en/123326>.

[15] IMO Maritime Safety Committee, p. 8.

## Responsibility for finding a place of safety

The IMO Guidelines also specify that ‘the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Contracting Government/Party responsible for the SAR region in which the survivors were recovered.’[16] There is, however, some controversy over this rule. Malta, for example, has repeatedly objected to the rule and argued instead that the priority for disembarkation should be the nearest safe port, regardless of whether that port is in the same country as the SAR zone in which the rescue takes place.[17]

Notably, the UN Human Rights Committee has found that a state may exercise effective control for the purposes of international human rights law if it has the information and ability to intervene in a rescue outside its SAR zone. The Committee found that Italy had human rights obligations to migrants-in-distress in the Maltese SAR zone because the Italy MRCC was the first to receive a distress call and three hours passed before Malta confirmed that it was coordinating the rescue.[18]



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[16] Id., page 2; para. 6.7.

[17] Times of Malta, ‘Malta insists it is not responsible for all migrants in its search area’ Times of Malta (27 May 2009) <https://timesofmalta.com/article/malta-insists-it-is-not-responsible-for-all-migrants-in-its-search.258642>.

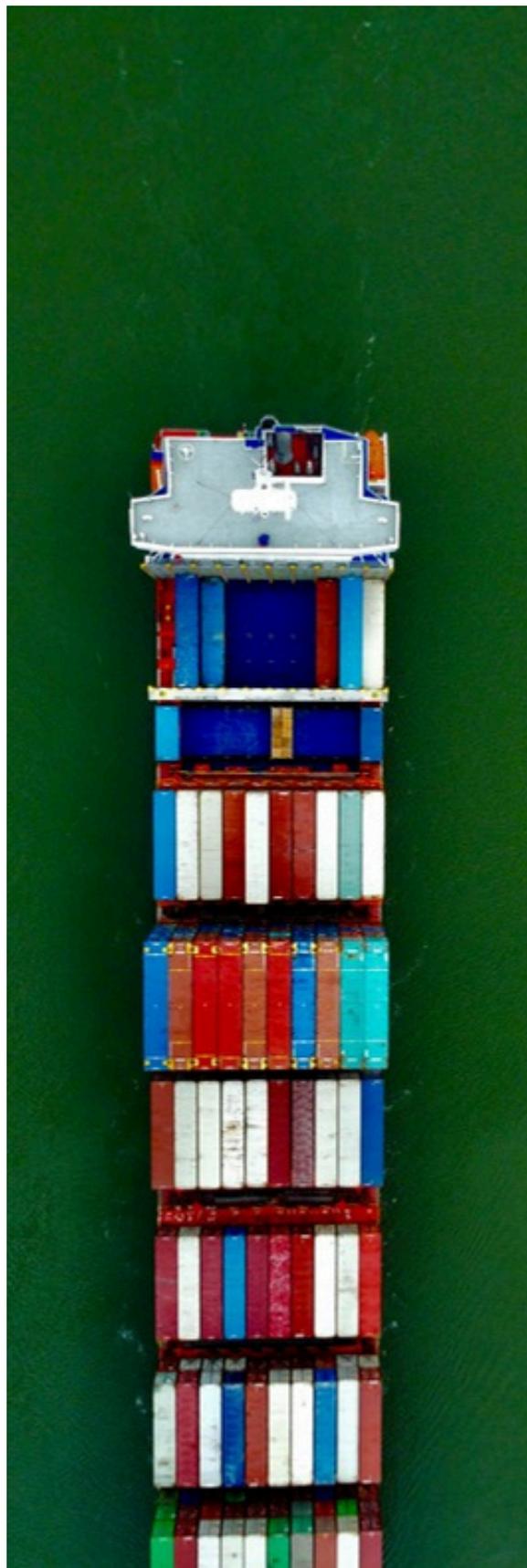
[18] Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3042/2017\* , \*\*, \*\*\*, CCPR/C/130/D/3042/2017 (2021)

# Disembarkation without delay

The IMO guidelines also clarify the following elements, with regard to delays during rescue:

- A ship should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable
- Governments and the responsible RCC should make every effort to minimize the time survivors remain aboard the assisting ship.
- Responsible State authorities should make every effort to expedite arrangements to disembark survivors from the ship; however, the master should understand that in some cases necessary co-ordination may result in unavoidable delays.
- Any operations and procedures such as screening and status assessment of rescued persons that go beyond rendering assistance to persons in distress should not be allowed to hinder the provision of such assistance or unduly delay disembarkation of survivors from the assisting ship(s).[19]

These provisions make clear that governments and the responsible RCC (MRCC in the language used in this report) should ensure disembarkation without delay, avoiding financial burden or suffering of rescuees. Despite this clear language, the report below reviews many cases of delays and political standoffs, which can have significant impacts on shipping companies, as well as the migrants and refugees in distress.



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[19] Id., para. 6.

# Impacts on merchant vessels

While there is a clear international rule obligating shipmasters to assist vessels in distress, some countries take policy measures that create obstacles to rescue, sometimes resulting in legal actions and delays. While many of these suits target NGOs rather than commercial shipping, there is little in principle to stop these same tools being directed against merchant ships and their owners or operators. This section examines some of the potential impacts on commercial shipping.

## Potential criminal charges and legal protections for rescuers

### Smuggling and facilitation of irregular entry

Smuggling of persons is a generally recognised crime in most jurisdictions around the world.[20] Despite strong multilateral standards from the UN and European Union, however, implementation in national legislation remains inconsistent, with key protections missing in sensitive jurisdictions. The UN Smuggling Protocol was adopted in 2000 to provide a consistent law enforcement response against organised crime while also protecting the human rights of migrants. Most European countries, including France, Italy, and Malta, are a party to it.[21] The Protocol makes profit an element of the crime of smuggling, thereby excluding humanitarian rescuers, and prohibits the prosecution of migrants themselves.[22]



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[20] 'Smuggling' of persons is distinguished from 'trafficking' in that the latter involves a lack of consent or exploitation of the persons being moved. 'Smuggling' can occur with the full consent of the people being smuggled while 'trafficking' almost always involves harm to them.

[21] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, Doc. A/55/383, UNTS Vol. 2241, p. 507 (2000) [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18).

[22] Id., art. 3.



The European Union has passed a 'Facilitation Package', which provides a framework for enforcing laws against facilitation of unauthorised entry. Notably, the EU Facilitation Package does not have the kinds of safeguards included in the UN Smuggling Protocol. These include the requirement of profit (exempting humanitarian action) or the prohibition of the criminalisation of migrants themselves.[23] The Facilitation Package permits, but does not require, a 'humanitarian exemption' in criminal laws prohibiting the crime of facilitation.

This has led to a patchwork of legal protections across Europe. For countries like Spain and Belgium, which have adopted the recommended EU language verbatim, there is strong protection against criminalisation. Other countries have adopted modified laws that may provide less protection.[24] France has codified a humanitarian exemption regarding humanitarian assistance related to illegal residence but not illegal entry.[25] Italy and Malta are similar, providing a humanitarian exemption for facilitation that takes place within each country's territory (transit) but not crossing its borders or entering via the sea.[26] There is a 2023 proposal to revise the Facilitation Package, but this does not address the non-binding nature of the humanitarian exemption.[27]

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[23] Inés Marco, Beatrice Goretti, Julia Winkler, Imke Behrends, Sascha Girke, 'The Kinsa Case' (Undated) <https://kinsa-case.eu/eu-facilitation-laws>.

[24] European Commission, 'Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence' (2020/C 323/01) (1 October 2020) [21]. [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18). .

[25] Id.; European Database of Asylum Law (EDAL), 'France – Constitutional Council, 6 July 2018, N° 2018-717/718 QPC (priority question of constitutionality)' (undated) <https://www.asylumlawdatabase.eu/en/case-law/france-%E2%80%93-constitutional-council-6-july-2018-n%C2%B0-2018-717718-qpc-priority-question#content>.

[26] European Commission.

[27] PICUM, How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders (2024) [26]. [European Commission](https://www.picum.eu/en/news/2024/04/02/how-the-new-eu-facilitation-directive-furthers-the-criminalisation-of-migrants-and-human-rights-defenders).

## Non-refoulement and arbitrary disembarkation and abandonment

In one case, the *Asso Ventotto* case discussed below, Italian prosecutors charged and convicted a merchant shipmaster for arbitrary disembarkation, and abandonment of passengers and endangering children. These charges stem from the international legal principle of non-refoulement: it is an internationally recognized violation to return a person to a place where they face persecution or torture. The rule against refoulement is well established by the 1951 Refugee Convention and the Convention Against Torture, and applied by the European Court of Human Rights to the vessels flying EU member flags.[28] While non-refoulement is generally a state obligation, the court in *Asso Ventotto* held that merchant shipmasters exercise public authority in international waters and thus could be held accountable on these grounds. The *Asso Ventotto* court's position is rare if not unique, but it does highlight the responsibility that shipmasters wield.

## Delay and financial impacts

While criminal penalties for rescue-at-sea are rare for merchant shipmasters, delays and resulting financial impacts are common during rescue at sea. These impacts can be direct, such as 'humanitarian provisions, additional wages and stores, extra fuel consumed [due to the necessary, but small, deviation for the rescue], port charges assessed during disembarkation of rescued persons, and repairing, restocking, and cleaning the vessel'[29]; or they may be indirect, including deviation from an intended course to disembark rescues in a safe port.[30] The precise costs of rescue to commercial shipping are difficult to verify, but anecdotal evidence suggests that costs can reach USD 500,000 for a one-week delay. [31] The section below outlines how those costs are allocated and covered in the commercial shipping industry, including charterparty agreements and insurance.



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[28] See Convention Relating to the Status of Refugees, UNTS vol. 89, p. 137, art. 33 (1951); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS vol. 1465, p. 85, art. 3; *Hirsi Jamaa and others v. Italy*.

[29] Kilpatrick, p. 410.

[30] *Id.*

[31] *Id.*

## Contractual allocation of costs

Costs of rescue are ultimately absorbed by the parties involved in the commercial voyage. The migrants and refugees, already destitute, clearly have no means to pay. As one law firm writes: 'There is currently no mechanism in place to ensure compensation in the case of delays, fines, loss or other expenses incurred, leaving ship owners to absorb the cost of SAR operations.'<sup>[32]</sup>

This leaves interested parties to allocate costs between themselves, or to seek insurance coverage. For the purposes of this report, there are two basic types of shipping contract: (1) a bill of lading or sea waybill, and (2) a charterparty. The basics of these documents are reviewed in the box section, with the remainder of this section focused on charterparties based on time.

### Bills of lading and charterparty basics

*Bills of lading and sea waybills—standard contracts in container shipping—set out the responsibilities of the shipowner and cargo owner. International carriage regimes (Hague-Visby, Hamburg, Rotterdam) all recognise that deviation to save life at sea is not a breach of contract,<sup>[33]</sup> a rule also reflected in most national laws.<sup>[34]</sup> As a result, shipowners are generally not liable for cargo delay or spoilage arising from a good-faith rescue.*

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[32] Norton Rose Fulbright, 'The rescue of migrants at sea – obligations of the shipping industry' Norton Rose Fulbright (March 2016) <sup>[28]</sup> [See Convention Relating to the Status of Refugees, UNTS vol. 89, p. 137, art. 33 \(1951\); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS vol. 1465, p. 85, art. 3; Hirsi Jamaa and others v. Italy.](#)

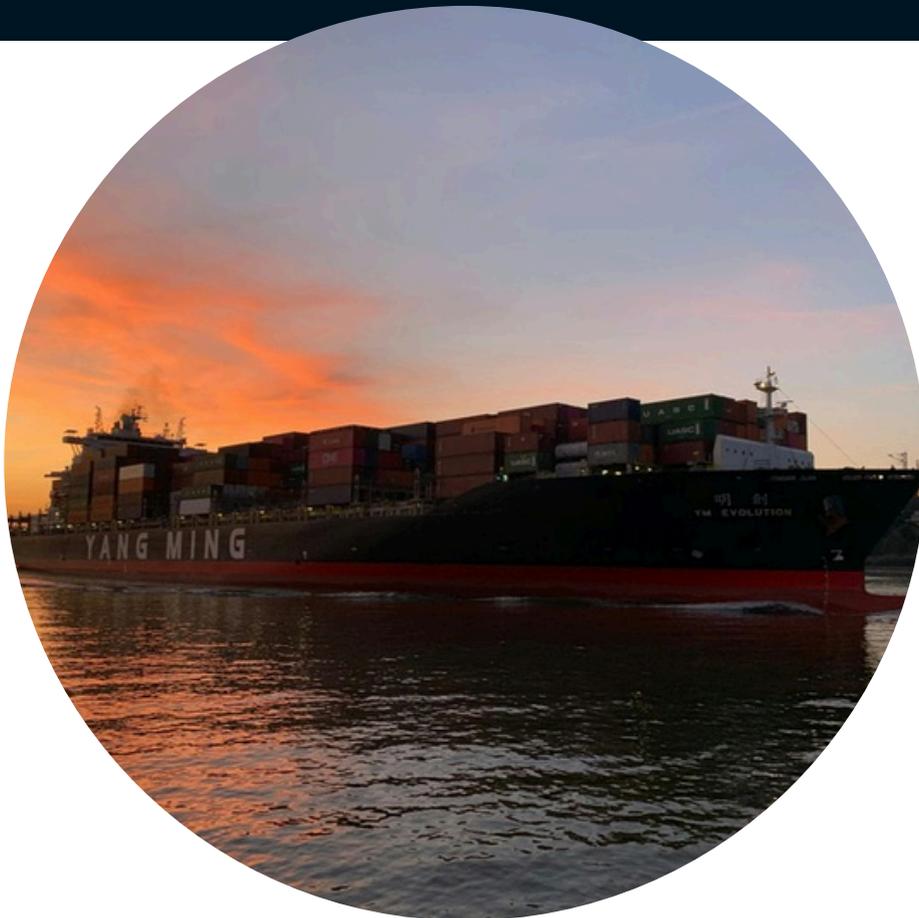
[33] See Mark Russell, 'The Hague Rules – 100 years old and still standing' Gard (2 September 2024) <sup>[29]</sup> [Kilpatrick, p. 410](#); United Nations Convention on the Carriage of Goods by Sea ('Hamburg Rules') (1978) art. 16, 17(3) (l) <sup>[29]</sup> [Kilpatrick, p. 410](#); United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ('Rotterdam Rules') (2008) <sup>[29]</sup> [Kilpatrick, p. 410](#).

[34] See, for example, U.S. Code § 30706(b)(8) <https://www.law.cornell.edu/uscode/text/46/30706>; The Maritime Law of the People's Republic of China (7 November 1992) art. 49 <https://www.lawinfochina.com/display.aspx?id=191&lib=law&utm>; The Indian Carriage of Goods by Sea Act (1925) art. IV(2)(l), (4) [https://www.indiacode.nic.in/bitstream/123456789/2384/1/AAA1925\\_\\_\\_26.pdf](https://www.indiacode.nic.in/bitstream/123456789/2384/1/AAA1925___26.pdf); Carriage of Goods by Sea Act (Nigeria) art. IV(2)(l), (4) <https://placng.org/lawsofnigeria/print.php?sn=58&utm>; Federal Decree by Law No. (43) of 2023 Concerning the Maritime Law (United Arab Emirates) art. 176 <https://uaelegislation.gov.ae/en/legislations/2138/download>; Commercial Code (Indonesia) art. 370 [https://wplibrary.co.id/sites/default/files/Commercial%20Code\\_ENG%20%5BPHI%5D\\_0.pdf](https://wplibrary.co.id/sites/default/files/Commercial%20Code_ENG%20%5BPHI%5D_0.pdf);

## Bills of lading and charterparty basics

*Charterparties are contracts used when an entire vessel is hired, typically for bulk carriers, tankers, and tramp shipping. They define the respective responsibilities of the shipowner and the charterer. Their terms determine how costs, risks, and obligations are allocated during a voyage, including in the event of a rescue. Charterparties can be based on voyage—paying the shipowner for traveling a particular route—or based on time, hiring the ship for a specific period of time. Voyage charterparties generally incorporate language similar to the Hague-Visby Rules, explicitly permitting deviation for the purposes of rescue. [35] Voyage charterparties, therefore, generally provide clarity on where costs incurred for rescue will fall.*

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[35] See examples from four of the 'standard' voyage charterparties: ASBATANKVOY, para. 19 <https://shippingforum.wordpress.com/wp-content/uploads/2012/08/asbatankvoy.pdf>; SHELLVOY 6, para. 31 <https://shippingforum.wordpress.com/wp-content/uploads/2012/08/shellvoy6-part-ii.pdf>; GENCON 1994, para. 3 <https://www.assagenti.it/Public/doc/4.%20GENCON%201994.pdf>; BPVOY 4, para. 26 <https://shippingforum.wordpress.com/wp-content/uploads/2012/08/bpvoy4-from-bp-line-nos-do-not-match-hard-copy.pdf>.

Charterparties based on time have more variation in the clarity that they provide. Some charterparties are clear that rescue is an 'on hire' event, and thus that the charterer continues to pay hire fees during rescue. The BPTIME 3 and SUPPLYTIME 2005 charterparty forms, for example, specifically authorise rescue as a permitted deviation and excluded from the off-hire provision.[36] (Charterparty forms are a kind of template contract that may always be modified by the parties but in practice become standard language). SHELLTIME 4, on the other hand, includes a provision that explicitly splits costs of rescue equally between the shipowner and charterer.[37]



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[36] BPTIME3, clause 19 ('The Vessel shall be off-hire on each and every occasion that there is a loss of time arising out of or in connection with the Vessel being unable to comply with Charterers' instructions (whether by way of interruption or reduction in the Vessel's services, or in any other manner) on account of:--- 19.2 If the Vessel deviates, unless ordered to do so by Charterers, it shall be off-hire from the commencement of such deviation until the Vessel is again ready to resume its service from a position not less favourable to Charterers than that at which the deviation commenced. For the purposes of this Clause the term deviation ... shall exclude deviations made to save life or property.') <https://www.bimco.org/contractual-affairs/bimco-contracts/contracts/bptime3>;

SUPPLYTIME 2005, clause 18 ('The vessel shall be permitted to deviate for the purpose of saving life at sea without prior approval or notice, provided however that notice of such deviation is given as soon as possible.') <https://www.bimco.org/contractual-affairs/bimco-contracts/contracts/supplytime-2005>.

[37] Shelltime4, clause 25 ('Subject to the provisions of Clause 21 hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this Clause 25.') <https://shippingforum.wordpress.com/wp-content/uploads/2012/08/shelltime-4-as-revised-20031.pdf>.

Older time-charterparty forms, such as the NYPE 1946, NYPE 1993, ASBATIME, and BALTIME 1939 provide less clarity. These contract forms were not developed during a period when deviation for rescue was a common or costly occurrence and make no implicit or explicit reference to it as on- or off-hire.[38] Despite their age, these older contracts remain in widespread use, with NYPE 1946 cited as one of the most widely used forms, particularly in bulk shipping.[39]

Courts and arbitral panels have generally found vessels to be 'on hire' under NYPE 1946 even during extended delays due to rescue, even if it is not expressly enumerated in charterparty contract terms, but the contracts are often vague enough to invite litigation when the stakes are high enough.[40] Charterparty contracts thus permit rescue but they leave shipmasters, shipowners and charterers with more uncertainty than is ideal.

There are a series of more recent efforts to find standard charterparty language that is clearer on the responsibilities for shipowners and charterers, helping to reduce the uncertainty of rescue. Professor Richard Kilpatrick suggests developing model contract language that improves the predictability of liability in rescue events, while excluding extreme outlier events.[41]

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[38] Regarding NYPE 1946, see Kilpatrick, p. 413, 418-33; see also Jean-Pierre Gauci, *When Private Vessels Rescue Migrants and Refugees: A Mapping of Legal Considerations* (British Institute for International and Comparative Law, 2020) [https://www.biicl.org/documents/124\\_private\\_vessels\\_research.pdf](https://www.biicl.org/documents/124_private_vessels_research.pdf). For NYPE 1993, ASBATIME and BALTIME 1939, see and compare off-hire clauses (NYPE 93, clause 17 <https://www.bimco.org/contractual-affairs/bimco-contracts/contracts/nype-93>; ASBATIME (NYPE 1981), clause 15; BALTIME 1939 (revised 2001), clause 11 <https://www.bimco.org/contractual-affairs/bimco-contracts/contracts/baltime-1939-as-revised-2001>).

[39] Randall Krantz, Ludovic Laffineur, Lena Faber, and Nishatabbas Rehmatulla, 'Legal and contractual changes to enable operational efficiency' *Global Maritime Forum* (23 May 2023) <https://globalmaritimeforum.org/insight/legal-and-contractual-changes-to-enable-operational-efficiency>;

[40] See generally Kilpatrick. Regarding bills of lading, the 1924 Hague Rules on bills of lading, unlike commonly used chartparties, generally make situations of rescue more clear. *Id.*, p. 416-18.

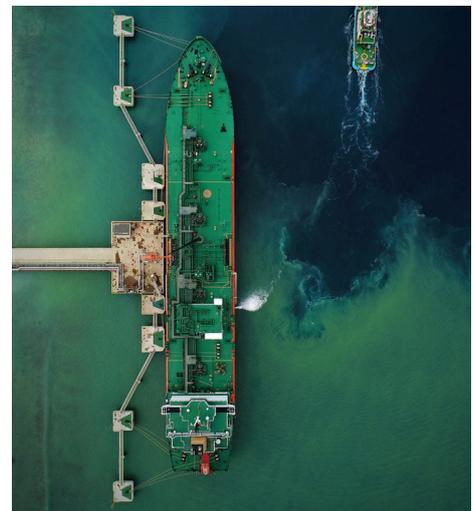
[41] Kilpatrick, p. 440-41. The BIMCO Piracy Clause concerned whether ships could be considered 'on hire' when they were held for ransom by pirates, sometimes for as long as two months. The BIMCO language excludes pirate capture from being an 'off hire' event but limits the charterer's liabilities to 90 days (90 days was the average time that vessels were held by pirates),

The UK Defence Club put forward a 'draft refugee clause' that tries to introduce greater certainty to rescue, setting hire costs to the side, but making an explicit 50/50 split between the shipowner and charterer on all other costs, liabilities and expenses, including bunkering.[42] The new NYPE 2015 also has a revised liberties clause that explicitly recognises deviation for saving life at sea,[43] although the 1946 version is still more widely used.[44]

The terms of charterparties, like any other contract, are always up to the parties to negotiate. Some may have more favourable terms for the shipowner or charterer, depending on the interests and bargaining power of each. Yet many elements of such agreements are 'inherited' from past practice, particularly where rare events like rescue are concerned. Such language should, however, provide clear and predictable guidance that facilitates decision-making in crises and supports the safety of life at sea.

## Insurance

Regardless of who is liable for the costs of rescue under a charterparty, costs will be incurred, raising questions of insurance. Insurance is a key element of merchant shipping. Traditional hull and cargo policies cover physical damage, while protection and indemnity (P&I) insurance covers third-party liabilities.[1] P&I clubs—mutual associations generally funded by member shipowners and charterers—cover liabilities such as collision damage, pollution, war and piracy risks, and certain legal costs. Coverage is generally conditional on members maintaining safe operations, including competent crews and compliance with flag-state regulations.



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[42] UK Defence Club, 'Deviations to save life at sea' Soundings (July 2015)

<https://www.ukdefence.com/fileadmin/uploads/uk-defence/Photos/Publications/Soundings/UKDC-Soundings-June-2015-Deviation-save-life-vW.pdf>.

[43] NYPE2015, clause 22 ('The Vessel shall have the liberty to sail with or without pilots, to tow and be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.') [1] [NYPE2015, clause 22 \('The Vessel shall have the liberty to sail with or without pilots, to tow and be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.'\)](#)

[44] Krantz, et al.; Paul Todd, 'NYPE 2015: Wholesale reform or invitation to cherry-pick?' Lloyd's Maritime and Commercial Quarterly (2016) [https://eprints.soton.ac.uk/389633/1/Todd\\_20LMCLO\\_2016\\_Part\\_202.pdf](https://eprints.soton.ac.uk/389633/1/Todd_20LMCLO_2016_Part_202.pdf).

[45] See London School of Insurance, Marine hull insurance and reinsurance (2019) [https://elearning.londonschoolofinsurance.com/pdf/en/Marine-Hull\\_Ins\\_Reins.pdf](https://elearning.londonschoolofinsurance.com/pdf/en/Marine-Hull_Ins_Reins.pdf); London School of Insurance, Marine cargo insurance and reinsurance (2019)

P&I rules differ, but some policies cover diversion-related costs during rescue, including fuel, wages, provisions, medical care, and port fees.[46] Loss-of-hire insurance may also be available, though it typically includes large deductibles—often 14 days—meaning shipowners may absorb substantial off-hire time before coverage begins.[47] Optional insurance products can offset part of the financial burden associated with prolonged disembarkation delays. However, major expenses are not covered under standard policies, and existing coverage often carries high deductibles, leaving shipowners or charterers to absorb significant costs when rescue delays last days or weeks.

## Cases of criminal prosecution, delay, and administrative sanctions

Assisting vessels in distress is a legal obligation and moral imperative for commercial shipping, yet states have routinely erected obstacles that sanction such assistance. Charges have only been brought against merchant vessel shipmasters in a handful of cases, notably prosecutions of fishermen who conducted rescue and the prosecution of the shipmaster of the *Asso Ventotto*, who returned people to Libya. Of these cases, only the prosecution of the *Asso Ventotto* shipmaster was successful, but even unsuccessful prosecutions can deter action related to rescue.



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[46] See, for example, UK P&I Club, Rules 2025 (2025), rule 2, section 7 [https://www.ukpandi.com/fileadmin/uploads/ukpandi/Documents/uk-p-i-club/rules/2025/Main\\_Rules\\_2025.pdf](https://www.ukpandi.com/fileadmin/uploads/ukpandi/Documents/uk-p-i-club/rules/2025/Main_Rules_2025.pdf); The Swedish Club, P&I Rules and Comments (undated), Chapter II, Section 11 <https://www.swedishclub.com/rules-and-exceptions/part-two-comments/chapter-2-risks-covered/rule-3-liabilities-in-respect-of-persons-2/section-11-diversion-expenses>; NorthStandard P&I Rules 2025/26 (2025), para. 3.4 [https://d3cpegos94401u.cloudfront.net/p&i-rule-book-2025-26-\(online\).pdf](https://d3cpegos94401u.cloudfront.net/p&i-rule-book-2025-26-(online).pdf).

[47] See, for example, Gard, 'Loss of Hire' (undated) <https://gard.no/products-and-services/products/shipowners/loss-of-hire>; Norwegian Hull Club 'Loss of Hire Handbook' (undated) <https://www.norclub.com/casualty-response/loss-of-hire?a=e103898f67bd&a=6f6deb9f81f6>.

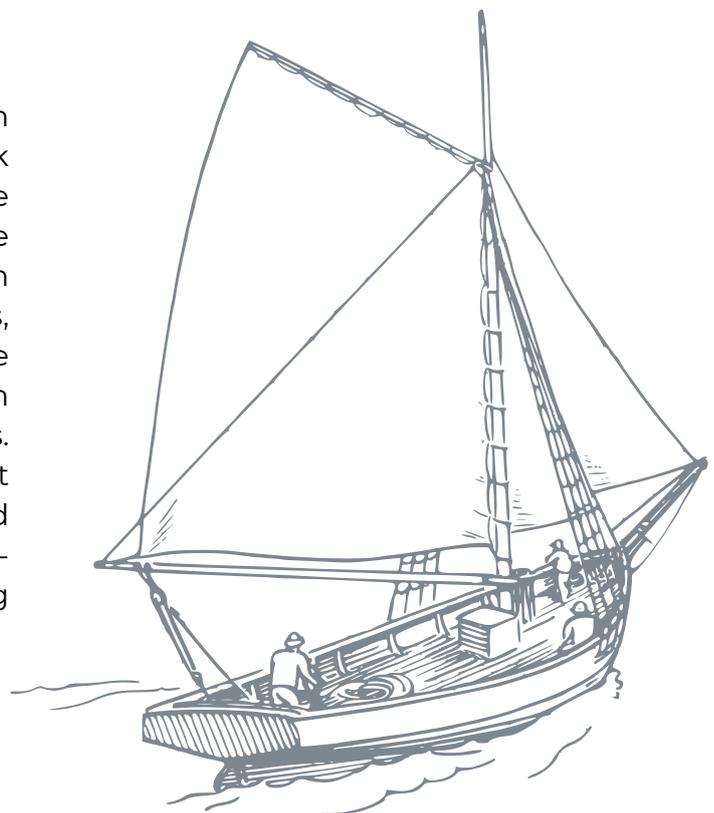
At the same time, delays and disruptions are routine during rescues by commercial shipping. Nineteen cases of merchant ship rescue are reviewed below, and in every instance delay resulted due to political standoffs between coastal countries over where rescued persons should be disembarked. This section also covers merchant vessel rescues that resulted in complicated or undesirable results. This includes the MV Nivin, which saw Libyan security forces force migrants off its decks; and the Vos Triton, which returned migrants to Libya in a case that resulted in a judgment against the Italian government. It also includes two cases where migrant protests against merchant shipmasters' decisions resulted in the ships turning around, the cases of the Vos Thalassa and El Hiblu 1. The third section briefly reviews cases of prosecution and sanction of rescue NGOs. While these organisations are not the focus of this report, they provide insight into the kinds of tools available to governments.

## Criminal prosecutions involving commercial vessels

It should be noted at the outset that merchant ships face operational limitations as well as a variety of legal, policy and political pressures. Almost no merchant ship is designed or crewed for rescue, and NGOs that use re-fitted merchant vessels undertake significant changes to make them suitable rescue vessels. Moreover, some of the ships listed below, such as offshore supply ships, are relatively small ships that may not carry enough fuel to reach ports in Europe at the time of a rescue. Merchant ships operating off the coast of Libya often work in difficult conditions, balancing a variety of security and policy risks. The cases should be understood to recognise these challenges.

### Prosecutions of fishermen

Criminal prosecution of fishermen undertaking rescues stretch as far back as 2007 in Italy, and continue sporadically today in Indonesia. The situations of fishermen—who are often independent or small business owners, with little onshore guidance or corporate backing—are often different from shipmasters of large commercial vessels. The below cases highlight that fishermen undertaking rescue in good faith may be confused with other small-vessel operators engaged in smuggling or trafficking.





## Mortadhi and Mohammed el-Hedi

In 2007, three Tunisian-flagged fishing vessels encountered a migrant vessel in distress. Two of the fishing vessels, the Mortadha and Mohammed el-Hedi, rescued survivors.[48] Italian Coast Guard vessels met the two boats and escorted them towards Lampedusa, but then told them that they did not have permission to enter Italian territorial waters and return instead to Tunisia.[49] The two fishing boats docked at Lampedusa; it is unclear whether this was due to miscommunication (it is unclear what language discussions was used), or a sense of urgency to disembark the rescued persons.

Italian prosecutors initially brought the seven fishermen (two shipmasters and crew) up on charges of 'aiding and abetting illegal immigration'.[50] These charges appear to have been brought on the assumption that the fishermen acted as a 'mothership' for smuggling activities. But prosecutors withdrew these charges after an inability to produce evidence at trial. However, the two shipmasters, Abdelbasset Zenzeri and Abdelkarim Bayoudh, were accused of refusing to obey orders and 'violence against a warship'.[51] They were initially found guilty but a higher court overturned their conviction in 2011, finding that they acted out of a 'state of necessity'.[52] This was, in some respects, the Italian court finding a humanitarian exemption in the criminal code despite the absence of a clear provision as recommended by the EU Facilitation Directive. Despite the ultimately positive outcome for the fishermen, the case played out over four years.

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[48] Melting Pot, 'Comunicato della « Fédération des Tunisiens pour une Citoyenneté des deux Rives »(FTCR)' Melting Pot Europa (29 August 2007)

<https://www.meltingpot.org/2007/08/comunicato-della-federazione-des-tunisiens-pour-une-citoyennete-des-deux-rives-ftcr>.

[49] Fulvio Vassallo Paleologo, 'Ancora sotto accusa chi salva la vita in mare' Melting Pot Europa (18 August 2007) <https://www.meltingpot.org/2007/08/ancora-sotto-accusa-chi-salva-la-vita-in-mare>.

[50] Id.

[51] Ivan Maffei, 'Assolti i tunisini che salvarono 44 naufraghi' Migrants Online (27 September 2011) <https://www.migrantsonline.it/2011/09/27/assolti-i-tunisini-che-salvarono-44-naufraghi>.

[52] Id.

## Chamseddine Bourassine

A second criminal prosecution of fishermen took place in 2018, with the arrest of Tunisian fisherman Chamseddine Bourassine and his crew. They came across a migrant vessel and towed it towards Lampedusa, the nearest safe port, which activity was captured on video by a Frontex aerial asset. The fishermen were met by Italian law enforcement and charged with aiding and abetting illegal migration.[53] The prosecution's case argued that this was not a humanitarian rescue but rather towing an otherwise seaworthy vessel. The court, however, found that there was insufficient evidence to establish such intent, even circumstantially, and the defendants were acquitted.[54]



## Indonesian cases

Indonesian prosecutors have also brought charges against fishermen who rescued Rohingya refugees in Indonesia's Aceh province. During the 2015 Andaman Sea crisis, Acehese fishermen rescued over 1,800 Rohingya refugees adrift at sea.[55] Although Indonesian officials initially warned fishermen not to bring migrants ashore (calling it "illegal entry"),[56] those 2015 rescues were treated as humanitarian acts and no legal action was taken against the fishermen.[57] The first prosecution of Indonesian fishermen for aiding Rohingya refugees did not occur until 2020-21.

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[53] Giorgio Ruta, Migranti, "la Libia non è un porto sicuro": ecco perché sono stati scarcerati i tunisini arrestati a Lampedusa' La Repubblica (24 October 2018) [https://palermo.repubblica.it/cronaca/2018/10/24/news/migranti\\_la\\_libia\\_non\\_e\\_un\\_porto\\_sicuro\\_ecco\\_perche\\_sono\\_stati\\_scarcerati\\_i\\_tunisini\\_arrestati\\_a\\_lampedusa-209838139](https://palermo.repubblica.it/cronaca/2018/10/24/news/migranti_la_libia_non_e_un_porto_sicuro_ecco_perche_sono_stati_scarcerati_i_tunisini_arrestati_a_lampedusa-209838139).

[54] Id.

[55] Bilan Dewansyah, 'Acehnese fishermen and Rohingya rescue at sea' Inside Indonesia (16 November 2022) <https://www.insideindonesia.org/archive/articles/acehnese-fishermen-and-rohingya-rescue-at-sea>.

[56] Daily Sabah, 'Indonesian fishermen 'told not to save Rohingya migrants even if they drown' Daily Sabah (18 May 2015) <https://www.dailysabah.com/asia/2015/05/18/indonesian-fishermen-told-not-to-save-rohingya-migrants-even-if-they-drown>.

[57] Dewansyah.

To date, there have been two completed prosecutions of Acehese fishermen for involvement with smuggling Rohingya refugees.[58] In both cases, defendants admitted that their 'rescue' was actually a planned meeting with the Rohingya vessel and that they were paid for their efforts.[59] Police have uncovered sizable smuggling rings in Indonesia unrelated to the local fishing community,[60] and it is not entirely surprising that fishermen in relatively poor parts of the country have agreed to take part in exchange for money, even if Acehese fishermen have a longstanding tradition of purely humanitarian rescue.



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[58] See Dewnsyah; Teuku Dedi Iskandar, 'Empat warga Aceh didakwa langgar UU Imigrasi selundupkan 72 Rohingya' Antara (4 June 2024)

<https://www.antaraneews.com/berita/4136982/empat-warga-aceh-didakwa-langgar-uu-imigrasi-selundupkan-72-rohingya>.

[59] Dewansyah; Iskandar.

[60] Rahmat Fajri, 'Polisi: Penyelundup Rohingya ke Pidie Aceh raup keuntungan Rp3 miliar' Antara (7 December 2023) [https://www.antaraneews.com/berita/3861105/polisi-penyelundup-rohingya-ke-pidie-aceh-raup-keuntungan-rp3-miliar?](https://www.antaraneews.com/berita/3861105/polisi-penyelundup-rohingya-ke-pidie-aceh-raup-keuntungan-rp3-miliar?utm_source=antaraneews&utm_medium=desktop&utm_campaign=related_news)

[utm\\_source=antaraneews&utm\\_medium=desktop&utm\\_campaign=related\\_news](https://www.antaraneews.com/berita/3861105/polisi-penyelundup-rohingya-ke-pidie-aceh-raup-keuntungan-rp3-miliar?utm_source=antaraneews&utm_medium=desktop&utm_campaign=related_news).

## Asso Ventotto

The case of the Asso Ventotto is the only prosecution of a conventional commercial ship—as opposed to small-scale or owner-operated fishing vessels—for conducting a mass rescue. Unlike the prosecutions of fishermen described above, where fishermen disembarked rescued people in a place of safety, the Asso Ventotto returned the rescued people to Libya. Italian prosecutors charged and convicted the Asso Ventotto shipmaster for arbitrary disembarkation and abandonment of minors and incapacitated people, resulting in a one-year suspended prison sentence and a fine.[61]

The Asso Ventotto was an Italian-flagged vessel operated by an Italian company, which served as a support ship to an oil platform.[62] Its shipmaster was a 13 year veteran with experience in the area, including experience conducting rescues.[63]

On 30 July 2018, the oil platform identified nearby a dinghy with 101 migrants onboard; this was in international waters but within Libya’s SAR zone. The Asso Ventotto was directed to rescue the migrants, first picking up a self-identified Libyan customs officer from the oil platform. The Asso Ventotto then rescued the migrants, which included pregnant women and children.[64] The shipmaster then headed for Libya at the guidance of the Libyan customs officer, only later notifying the Libya MRCC. According to court documents, the manager of the Italian MRCC stated that this was the only time that an Italian-flagged vessel conducting a rescue did not seek guidance from the national coordination centre in Rome.[65] The Asso Ventotto then handed over the migrants to a Libyan patrol vessel.[66]



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[61] Sarita Fratini, ‘Migranti respinti in Libia, a Napoli una sentenza storica’ *Il Manifesto* (15 October 2021) <https://ilmanifesto.it/migranti-respinti-in-libia-a-napoli-una-sentenza-storica>.

[62] Nello Scavo, ‘Cassazione: «La Libia non è un porto sicuro». Reato obbedire ai guardacoste’ *Avvenire* (16 February 2024) <https://www.avvenire.it/attualita/pagine/la-cassazione-la-libia-non-e-porto-sicuro-un-crimine-portare-li-i-migranti-condanno-capitano-italiano-per-un-respingimento>.

[63] Supreme Court of Cassation (Italy), V Criminal Section, sentence 4557724, September 10, 2023 - February 17, 2024, quoted in ‘Asso28, Libya is not a safe haven (Cass. 4557/24)’ *CanestriniLex* (17 February 2024) <https://canestrinilex.com/risorse/asso28-libia-non-e-porto-sicuro-cass-455724>.

[64] *Id.*

[65] *Id.*

[66] *Id.*

The Italian courts found the shipmaster guilty of arbitrary disembarkation, and abandonment of persons and abandonment of minors. The decision turned primarily on procedural violations. First, the shipmaster failed to notify or coordinate with SAR authorities, which the court found constituted a violation of the Italian Navigation Code and SOLAS Convention. The court emphasised that the Libyan customs officer was not in any lawful SAR chain-of-command. The court also acknowledged that a 'legitimate order' from an MRCC could have served as a potential 'exculpatory' ground in this case.[67] The court further noted that, in taking direction from the Libyan customs officer, the shipmaster failed to take reasonable precautionary steps, such as recording the officer's name or title.

The Italian court also found that Libya did not constitute a place of safety, drawing on jurisprudence of the European Court of Human Rights and findings from United Nations reports.[68] Libya's unsafe status fulfilled key elements of the charges, namely the state of danger required for arbitrary disembarkation and abandonment, as well as evidence of general intent that the shipmaster was aware that disembarking the rescued people in Libya placed them in such danger. The court also examined in some detail Italy's human rights obligations regarding refoulement with regard to the shipmaster's actions.[69] While much of this analysis is not necessary to the legal findings ('obiter dicta'), it highlights the relevance of place-of-safety-designations for vessels engaged in rescue.

The Asso Ventotto case is not without controversy. Some commentators have questioned the wisdom of criminally charging the shipmaster, arguing that this will actually create a disincentive to rescue.[70] Others have raised questions regarding whether the court properly understood the shipmaster's maritime responsibilities.[71] Whether the Italian courts were correct on the law is not the subject of this report, however. What is important is that decisions such as this add complexity to the legal and policy terrain in which merchant shipmasters must operate.

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[67] *Id.*, section 7.

[68] *Id.*

[69] The court found, for example, that '[T]he commander of an Italian civilian vessel is to be considered a public official for certain security police functions, such as those relating to sea rescue... the ship's commander is entrusted with a public service pursuant to art. 358 of the Criminal Code, relating to the rescue of persons and property at sea, in the same forms required for similar rescue duties for military or state vessels and in the absence of the powers typical of a public function... He therefore acts as an agent of the State in international waters when he exercises control and authority over the shipwrecked person.' *Id.*, sections 5.5, 5.6.

[70] Franco Londei, 'Ora nessuno raccoglierà più i migranti in mare. Condanna Asso 28 è un autogol' Franco Londei (14 October 2021) <https://www.francolondei.it/nessuno-raccoglierà-migranti-in-mare-condanna-asso-28-autogol>.

[71] Confederation of European Shipmasters Association (CESMA), 'CESMA News, December 2021' (December 2021), p.3 <https://avccmm.org/wp-content/uploads/2021/12/Cesma-Newsletter-December-2021>.

## Continued disembarkation in Libya and civil suits

Despite the clear holding in the Asso Ventotto case, this was not the last post-rescue disembarkation in Libya, even in rescues involving Italian authorities. Indeed, there have been suspicions and accusations that some governments implicitly or explicitly outsource rescue functions, directing shipmasters to return migrants to Libya or simply remaining silent and allowing the Libyan MRCC to coordinate return to Libya. [72]

### **MV Nivin**

The MV Nivin, a Panamanian-flagged vessel, rescued 95 migrants and refugees on 7 November 2018 and disembarked them in Libya at the direction of the Italian MRCC. [73] The rescued migrants and refugees objected to being returned to Libya and refused to disembark. Libyan special forces stormed the ship after 10 days, using tear gas and rubber bullets, forcing the migrants and refugees off of the ship.[74] Panama is a party to the SAR Convention but there is no indication that any legal action against the shipmaster of the MV Nivin was considered.

### **Vos Triton**

The Vos Triton, a Gibraltar-flagged, oil-and-gas support ship, has conducted a number of rescues in the Central Mediterranean, although most appear to have ended in return of migrants to Libya.[75] One particular rescue made headlines when rescue returned to Libya successfully sued the Italian government in court.

In 2021, a group of migrants and refugees notified the NGO AlarmPhone that their vessel was in distress. AlarmPhone in turn notified the Italian MRCC, which tried to reach the Libyan MRCC for several hours before reaching them.[76]

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[72] Patrick Kingsley, 'Privatized Pushbacks: How Merchant Ships Guard Europe' The New York Times (20 March 2020) [Sarita Fratini, 'Migranti respinti in Libia, a Napoli una sentenza storica' Il Manifesto \(15 October 2021\) <https://ilmanifesto.it/migranti-respinti-in-libia-a-napoli-una-sentenza-storica>](#).

[73] Human Rights Watch, 'Libya: Migrants Forced Off Ship at Libya Port' (21 November 2018) <https://www.hrw.org/news/2018/11/21/libya-migrants-forced-ship-libya-port>.

[74] Id.

[75] Emma Wallis, 'Accusations of 'illegal pushbacks' leveled at supply ship Vos Triton in Mediterranean' InfoMigrants (16 June 2016) <https://www.infomigrants.net/fr/post/32983/accusations-of-illegal-pushbacks-leveled-at-supply-ship-vos-triton-in-mediterranean>; Médecins Sans Frontières (MSF), 'Méditerranée: 61 morts dans le naufrage de vendredi, 25 survivants refoulés illégalement vers la Libye' (20 December 2023) <https://www.msf.fr/communiqués-presse/mediterranee-61-morts-dans-le-naufrage-de-vendredi-25-survivants-refoules-illegalement-vers-la-libye>.

[76] Id.

## Protests against refoulement and prosecution of migrants and refugees

Merchant vessels that comply with MRCC directives to return migrants and refugees to Libya have also faced protests from rescuees who object to being brought back to a place where they face persecution, detention, and torture. These protests, which often have disputed levels of coercion or violence, have resulted in state prosecutions against the migrants and refugees who rebelled against possible refoulement.



### **Vos Thalassa**

The Vos Thalassa case illustrates one approach to this challenge, where migrant and refugee protests succeeded in avoiding return to Libya but led to charges of illegal entry; ultimately the defendants found not guilty by reason of justified self-defence. This case highlights a legitimate concern for shipmasters—safety for themselves and their crews when rescuees protest their decisions—as well as the seriousness with which some courts treat the danger posed by return to Libya, in this case serving as a justification for otherwise illegal acts.

In July 2018, the Italian MRCC directed the Vos Thalassa, an Italian-flagged tugboat supporting nearby oil platforms, to rescue 67 migrants in distress in the Libyan SAR zone. The ship performed the rescue and the Libya coast guard then directed a return to Libya.[79] After a few kilometres, the migrants and refugees onboard realised that they were headed back to Libya and began protesting. Some crew members felt threatened when they were surrounded and shouted at by the rescuees, with whom they lacked a common language. Some rescuees made the motion of drawing their finger across their neck (other witnesses later indicated that this gesture was used to indicate that the rescuees would be killed if sent back to Libya, not as a death threat against the crew).[80] The shipmaster reversed course and called for the assistance of the Italian Navy, which met the Vos Thalassa and brought the rescuees on board.

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[79] Court of Trapani, Judge for Preliminary Investigations, Judgment, Unnamed defendants, 3 June 2019 <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/GIP-Trapani%20%281%29.pdf>.

[80] Id.

Italian prosecutors charged two rescuees, identified by the crew as the 'leaders', with illegally procuring entry. The court found that Libya was an unsafe place of disembarkation to which the rescuees should not have been returned, but also that the rescuees undertook illegal acts in reaching Italy without authorisation. The court further found, however, that the defendants were justified on the grounds of proportionate defence of their own rights and others against an unjust offense.[81]

## El Hiblu 1

The El Hiblu 1 case is similar to Vos Thalassa, where migrants and refugees protested return to Libya, were disembarked in a different location (in this case Malta), and then faced criminal prosecution. These proceedings are ongoing and it is unclear whether Maltese courts will apply the self-defence justification in the same manner as Italian courts.

The El Hiblu 1 was a Turkish-flagged bunkering ship (designed to re-fuel ships at sea) en route to Libya in March 2019, when the EU Operation Sophia, a military operation designed to combat maritime smuggling, requested that they rescue a migrant vessel in the Libyan SAR zone.[82] The El Hiblu 1 responded, bringing on board 108 migrants and refugees. Operation Sophia then told the ship master that they were coordinating with the Libyan coast guard and that the migrants should be disembarked in Libya. The El Hiblu 1 proceeded towards Libya, but when rescuees on board recognized the coastline, they protested the ship master's decision to return them to Libya.[83]



The ship master eventually turned the ship around and proceeded towards Malta. Maltese authorities told him that he did not have permission to enter Maltese waters, but the first mate said that he did not have control over the ship.[84] The first mate said that the rescuees had 'forced' him to head for Malta, that crew members had been injured, and that the vessel had been damaged. (Court documents indicate that no crew were injured [85]).

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[81] Id., p. 20-22.

[82] The European Union undertook a series of naval operations in the Mediterranean, beginning in 2013 with Operation Mare Nostrum and continuing through the present with Operation Irina. While Mare Nostrum began with a focus on humanitarian rescue, these operations focused increasingly on maritime security. See Miriam Laux, 'The evolution of the EU's naval operations in the Central Mediterranean: A gradual shift away from search and rescue' *Heinrich Böll Stiftung* (16 April 2021) <https://us.boell.org/en/2021/04/16/evolution-eus-naval-operations-central-mediterranean-gradual-shift-away-search-and-rescue>.

[83] Zach Campbell, 'The Rescue' *The Atavist Magazine* 95 (September 2019) <https://magazine.atavist.com/2019/the-rescue-mediterranean-migrants-malta-europe-crisis>.

[84] Id.

[85] Id.

The account of the rescuees differs. They maintain that they did protest when they learned that the vessel was headed for Libya, including by banging with available objects. But they claim that they persuaded the ship master to turn around by speaking to him, not threatening him. One man and two children—ages 19, 16 and 15—negotiated with the first mate, according to this account, and were with him on the bridge for much of the journey.[86] The 15-year-old, an English speaker, was included as a translator.

Maltese special forces met El Hiblu 1, seized control, and brought it to port, arresting the three rescuees in the bridge. The three young rescuees were brought up on multiple charges, including terrorism; the charges have the potential to carry life sentences.[87] Legal proceedings continue.

## Other returns to Libya

### MS Anne

In May 2020, the MS Anne, a Portuguese-flagged merchant vessel, rescued 98 migrants and refugees in distress in the Maltese search and rescue region at the direction of the Malta MRCC.[88] The ship then waited two days with the rescuees on board while discussions between Portugal, France and Malta sought a safe port of disembarkation.[89] When no solution was found, the Malta MRCC arranged for the pick-up of migrants by the Libyan coast guard, which returned them to Libya.



The Guardian - Photograph: Taha Jawashi/AFP/Getty

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[86] Id.

[87] Id.

[88] Emma Wallis, '98 migrants returned to Libya after being rescued by commercial ship' InfoMigrants (2 June 2020) <https://www.infomigrants.net/fr/post/25040/98-migrants-retournes-a-libya-apres-avoir-ete-rescues-par-un-voilier>.

[89] Ana França, 'Migrants rescued by a Portuguese-flagged cargo ship have already disembarked in Libya: international law was broken' Expresso (27 May 2020) <https://expresso.pt/internacional/2020-05-27-Migrantes-resgatados-por-cargueiro-com-bandeira-portuguesa-ja-desembarcaram-na-Libia-lei-internacional-foi-infringida>.

The return on possible refugees by a state actor raised concerns in Portugal, where members of parliament put questions on the legality of the rescue to the European Commission.[90] (The European Commission confirmed the importance of fundamental rights while disavowing competence over coordinating rescue or return).[91]

## Opielok Offshore Carriers

The German company Opielok operates four offshore supply ships (OOC Panther, OOC Panther, OOC Jaguar, and OOC Tiger) that have carried out 44 SAR operations between 2014 and 2018 that resulted in more than 6,000 migrants and refugees saved.[92] One of their rescues, in which the crew assisted a pregnant woman to deliver her baby on 30 August 2016, received the IMO's Award for Exceptional Bravery at Sea.[93] MRCCs have, however, directed many people to be returned to Libya. The company owner acknowledged in an interview that he faced a dilemma, with return to Libya illegal under international law but European ports closed and ship masters threatened with fines.[94]

## Delays following rescue

While rescue-related prosecutions of commercial shipmasters remain rare, delays after rescue have occurred repeatedly. The following six cases are examples of the often-prolonged delay that results from political standoffs over disembarkation in the course of rescues by commercial ships in the Mediterranean. While these rescues all take place within the relatively short seas between North Africa and Malta and Italy, delays range from four days in 'quick' cases to weeks, and, in the case of the Maersk Etienne, more than one month. As all of these cases involve merchant ships, delays will always have the kind of financial impacts discussed to above.

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[90] Ana França, 'The case of the Portuguese-flagged ship that rescued 100 migrants and returned them to Libya reaches the EU through Paulo Rangel and Isabel Santos' *Expresso* (28 May 2020) <https://expresso.pt/Internacional/2020-05-27-Caso-do-navio-com-bandeira-de-Portugal-que-resgatou-100-migrantes-e-os-devolveu-a-Libia-chega-a-UE-pela-mao-de-Paulo-Rangel-e-Isabel-Santos>.

[91] Answer given by Ms Johansson on behalf of the European Commission, Parliamentary question E-003555/2020 (ASW) (17 August 2020) [https://www.europarl.europa.eu/doceo/document/E-9-2020-003555-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-003555-ASW_EN.html).

[92] Opielok Offshore Carriers, 'Opielok' IFLOS Maritime Talk 2018 (17 March 2018) <https://www.iflos.org/wp-content/uploads/Presentation-Christopher-Opielok.pdf>.

[93] Opielok Offshore Carriers, 'IMO award for OOC crew' (September 2017) <https://opielok.com/news-detail.php?id=15>.

[94] Caterina Obenstein, 'Interview with Christopher Opielok: "It's a disaster"' *Die Zeit* No. 15/2019 (5 April 2019) <https://www.zeit.de/2019/15/christopher-opielok-reederei-rettungsschiffe-fluechtlinge-mittelmeer>.

## MV Salamis

In August 2013, five years before the Asso Ventotto case but one year after the Hirsi Jamaa decision, the Italy MRCC directed the MV Salamis to disembark rescued migrants in Libya.[95] However, the ship master, in consultation with the ship owner, refused on safety and humanitarian grounds, sailing instead towards Malta.[96] Malta denied entry. After three days, Italy permitted disembarkation.[97]

## Alexander Maersk

In June 2018, the Italy MRCC directed the Alexander Maersk, a Danish-flagged container ship, to rescue 113 migrants off the southern coast of Italy. The Italian MRCC could not direct the Alexander Maersk to a port for disembarkation, however, despite the ship being a short distance from the Italian coast. After four days and a request from the Danish government,[98] the ship docked in Italy and disembarked the rescues.[99]



SAROST 5 / Fahmi  
HASSOUNA\_MarineTraffic

## Sarost 5

In July 2018, MRCC Malta directed the Sarost 5, a Tunisia-flagged, oil platform supply ship, to rescue migrants off the coast of Tunisia. The Sarost 5 took 40 migrants onboard a ship that was not built for passengers, but when they called to regional MRCCs for instructions on disembarkation, they received no response. The Malta MRCC, which originally directed the rescue, the Italy MRCC, and the France MRCC all provided no instructions when contacted by the Sarost 5.[100] Receiving no instructions, the ship headed for the nearest Tunisian ports, Sfax and Zarzis, but was denied entry by the Tunisian government.

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[95] Patricia Mallia, 'The MV Salamis and the State of Disembarkation at International Law: The Undefinable Goal' *American Society of International Law Insights* (15 May 2014)

<https://www.asil.org/insights/volume/18/issue/11/mv-salamis-and-state-disembarkation-international-law-undefinable-goal>.

[96] *Id.*

[97] *Id.*

[98] Chris Dupin, 'Maersk ship rescues 113 migrants' *American Shipper* (26 June 2018)

<https://www.freightwaves.com/news/maersk-ship-rescues-113-migrants>.

[99] Reuters, 'Migrants rescued by Danish cargo ship land in Sicily' *Reuters* (26 June 2018)

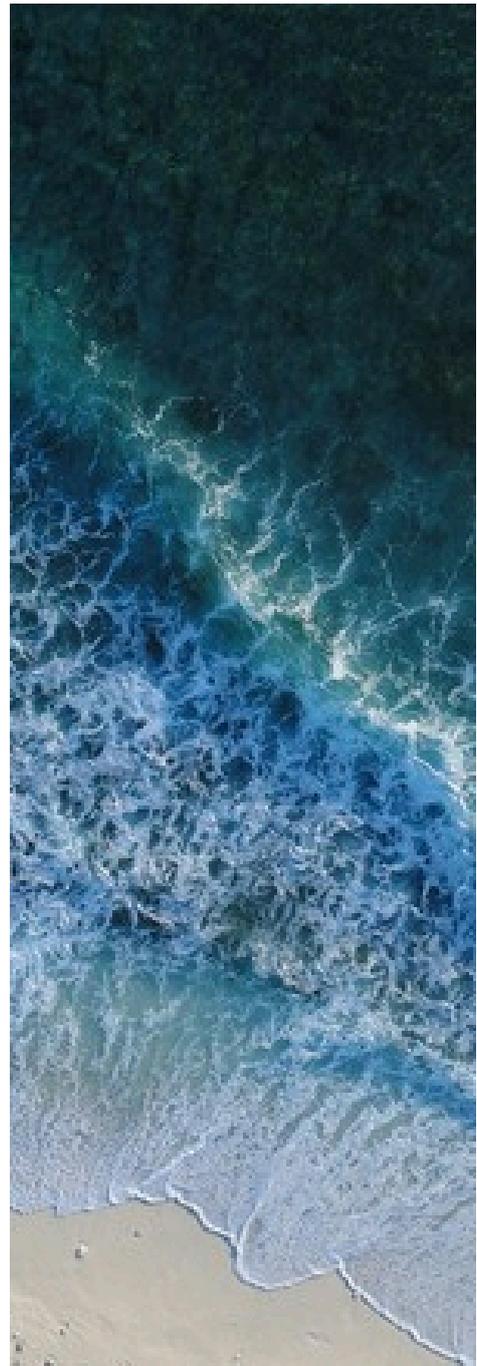
[Chris Dupin, 'Maersk ship rescues 113 migrants' \*American Shipper\* \(26 June 2018\)](https://www.freightwaves.com/news/maersk-ship-rescues-113-migrants).

[100] Kiri Santer, 'The case of the Sarost 5: black holes of responsibility in the central Mediterranean' *Open Democracy* (15 August 2018) <https://www.opendemocracy.net/en/can-europe-make-it/case-of-sarost-5-black-holes-of-responsibility-in-central-mediterrane>.

For the next 17 days, the migrants remained onboard the ship at sea as the governments in the region debated where they should be disembarked.[101] The government of Tunisia finally permitted disembarkation as the health and sanitary conditions of the migrants deteriorated, including for the two pregnant women. The Sarost 5 case illustrates how even a seemingly straightforward rescue can result in a weeks-long suspension of commercial operations.

### **Nuestra Madre de Loreto**

On 22 November 2018 a Spanish-flagged fishing trawler, the Nuestra Madre de Loreto, saw a vessel being pursued by the Libyan coast guard. Twelve migrants and refugees jumped into the water and swam to the trawler; those who remained on the boat were apprehended by the Libyan coast guard. Neighbouring ports refused disembarkation, and the ship master did not want to return the migrants to Libya. The rescuees, many of whom were already injured, remained on the trawler for 10 days, receiving occasional supplies from the NGO Proactive Open Arms. One rescuee collapsed and was evacuated by helicopter after one week but the rest were not permitted to disembark.[102] Finally, a deal was struck between the regional governments: Malta picked up the rescuees from the fishing trawler for onward transport to Spain.[103] During this period, the trawler did no fishing, a potentially significant economic impact.[104]



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[101] Simon Speakman Cordall, 'Pregnant women among stranded at sea off Tunisian coast' *The Guardian* (25 July 2018) <https://www.theguardian.com/global-development/2018/jul/25/pregnant-women-among-migrants-stranded-at-sea-tunisia-refuses-entry-sarost-5>.

[102] Reuters, 'Migrants brought to Malta from Spanish boat after long standoff' *Reuters* (2 December 2018) <https://news.trust.org/item/20181202134852-d39sl>.

[103] *Id.*

[104] Rafa Burgos, Lorenzo D'Agostino, María Martín (Susana Urra, trans.), 'Spain ignores please not to send rescued migrants back to Libya' *El Pais* (28 November 2018) <https://news.trust.org/item/20181202134852-d39sl>.

## Maridive 601

In May 2019, the Maridive 601, an Egyptian-flagged offshore supply vessel, came across a migrant vessel in distress and rescued 75 people, including 32 minors. Within Malta's SAR zone but near Tunisia's zone as well, no country's MRCC coordinated a response or provided instructions for disembarkation. The ship remained at sea for 19 days before Tunisian authorities permitted disembarkation.[105] During that time, illness and scabies broke out and the Tunisian Red Crescent Society provided medical aid. [106] In addition, of course, the ship could not fulfil any of its commercial functions working with the Shell Tunisia oil company.

## MV Talia

In July 2020, amidst the COVID pandemic, the Malta MRCC directed the MV Talia, a Lebanese-flagged livestock cargo ship, to rescue 52 migrants caught in rough seas within the Malta SAR zone.[107] After the rescue, the ship master attempted to dock in Lampedusa, the closest safe port, but Italian authorities refused permission to dock; Malta also denied entry.[108] Over the course of four days, conditions on the boat deteriorated. The ship had just offloaded cattle in Libya, and the only areas safe from rough seas were covered in cattle excrement.[109] Malta relented and permitted disembarkation, but only after four days of a standoff.

## Maersk Etienne

One of the best publicized cases of excessive delay post-rescue, the Maersk Etienne spent 37 days with migrants and refugees onboard. The Malta MRCC directed the Danish-flagged oil tanker to assist a boat-in-distress on 5 August 2020 (Malta later denied that its MRCC coordinated this operation).[110]



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[105] ANSA, 'Maridive 601 docks in Tunisia after 18 day ordeal' InfoMigrants (20 June 2019) <https://www.infomigrants.net/fr/post/17645/maridive-601-docks-in-tunisia-after-18day-ordeal>.

[106] InfoMigrants, 'Tugboat carrying 75 migrants stranded off Tunisia for 10 days' InfoMigrants (10 Junr 2019) <https://www.infomigrants.net/en/post/17413/tugboat-carrying-75-migrants-stranded-off-tunisia-for-10-days>.

[107] Lorenzo D'Agostino, 'Italy, Malta reject 52 migrants stranded on animal cargo ship' (6 July 2020) <https://www.aljazeera.com/news/2020/7/6/italy-malta-reject-52-migrants-stranded-on-animal-cargo-ship>.

[108] Id.

[109] InfoMigrants, 'Migrants disembarked from Talia animal cargo ship in Malta' InfoMigrants (8 July 2020) <https://www.infomigrants.net/fr/post/25873/migrants-disembarked-from-talia-animal-cargo-ship-in-malta>.

[110] BBC, 'Migrants allowed off Maersk tanker after 40 days at sea' BBC (13 September 2020) <https://www.bbc.com/news/world-europe-54136627>.

After rescuing 27 migrants and refugees, including a pregnant woman and a minor, the Malta government refused entry, arguing that the rescue occurred outside its SAR zone (though this claim was disputed). No government took responsibility for weeks, resulting in what the International Chamber of Shipping called ‘a diplomatic game of pass the parcel.’<sup>[111]</sup> Conditions on the ship worsened and four rescuees attempted suicide.<sup>[112]</sup> Maersk agreed with the NGO Mediterraneana Saving Lives to undertake a health assessment of the migrants and refugees. The NGO medical personnel assessed that the rescuees needed urgent medical care and transferred the rescuees onto their ship, Mare Jonio.<sup>[113]</sup> The Mare Jonio then disembarked the migrants in Pollazza, Italy, where they claim that Italian authorities had permitted entry.<sup>[114]</sup>

Six months after the disembarkation and the apparent end to the Maersk Etienne saga, however, Italian prosecutors brought charges against the ship master of the Mare Jonio and other staff of the NGO. Italian prosecutors argued that a donation from Maersk in the amount of EUR125,000 to the NGO, to cover the operations cost of the movement,<sup>[115]</sup> amounted to payment and thus aggravated facilitation of illegal immigration.<sup>[116]</sup> While Maersk has denied that the donation constituted a payment of any kind,<sup>[117]</sup> Italian authorities brought charges in 2023, seized EUR 125,000 in assets, and raided the homes of staff and NGO offices.<sup>[118]</sup> The case is still ongoing, with a first hearing set for October 2025, and marks the first time that Italian prosecutions of maritime rescue NGOs have advanced beyond the preliminary investigation phase.<sup>[119]</sup> More than four years after the Maersk Etienne rescue, the legal fallout for rescuers remains unresolved.

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[111] UNHCR, ‘ICS, UNHCR and IOM call on States to end humanitarian crisis on board ship in the Mediterranean’ UNHCR (7 September 2020) <https://www.unhcr.org/us/news/news-releases/ics-unhcr-and-iom-call-states-end-humanitarian-crisis-onboard-ship-mediterranean>.

[112] BBC.

[113] Kis Soegaard, ‘Safe disembarkation of the 27 rescued persons from Maersk Etienne’ Maersk Tankers (13 September 2020) <https://maersktankers.com/newsroom/caught-at-sea-after-rescuing-27-people>.

[1] Mediterraneana Saving Humans, ‘Maersk Etienne case indictment: We respond with a new ship’ (29 May 2025) <https://mediterranearescue.org/en/news/maersk-etienne-case-indictment-we-respond-with-a-new-ship>.

[115] Soegaard.

[116] ANSA, ‘Migranti, chiesto rinvio a giudizio per equipaggio Mare jonio’ ANSA (28 May 2025) [https://www.ansa.it/sito/notizie/cronaca/2025/05/28/migranti-chiesto-rinvio-a-giudizio-per-equipaggio-mare-jonio\\_733447a3-8993-4bca-ae61-59a990b6f3d1.html](https://www.ansa.it/sito/notizie/cronaca/2025/05/28/migranti-chiesto-rinvio-a-giudizio-per-equipaggio-mare-jonio_733447a3-8993-4bca-ae61-59a990b6f3d1.html).

[117] Soegaard.

[118] The Maritime Executive, ‘NGO Accused of Taking on Maersk Etienne’s Rescued Migrants for Pay’ The Maritime Executive (1 March 2021) <https://maritime-executive.com/article/ngo-accused-of-taking-on-maersk-tanker-s-rescued-migrants-for-pay>.

The case is still ongoing, with a first hearing set for October 2025, and marks the first time that Italian prosecutions of maritime rescue NGOs have advanced beyond the preliminary investigation phase.[119] More than four years after the Maersk Etienne rescue, the legal fallout for rescuers remains unresolved.

## **Basilis L and Froland**

A tragic loss of life occurred on 12 March 2023, when failed attempts to coordinate or initiate action led to the deaths of 30 migrants and refugees.[120] On 11 March, around 1am, the NGO AlarmPhone receives a distress call from a migrant and refugee vessel in the Libyan SAR zone, which has been at sea for two days and has run out of fuel; the vessel is drifting in heavy winds. Before sunrise on 11 March, AlarmPhone notified the Italian, Maltese and Libyan MRCCs, and notifies commercial ships in the area. The NGO Sea-Watch's aircraft caught sight of the vessel at 10am and messages are again sent to the Italian MRCC and issuing a mayday relay. The Basilis L responded to the mayday, but the ship reported that it has been told to standby to wait for the arrival of the Libyan coast guard.

For the next 24 hours, Sea-Watch and AlarmPhone attempt to confirm who is carrying out the rescue. They are told, variously, that the Libyan MRCC has no available boats; that the Libyan MRCC has requested a commercial ship to carry out the rescue; and that the Italian MRCC is coordinating the rescue.[121] At 14:30 on 12 March, it is reported that the merchant vessel Froland rescued 17 migrants and refugees after the vessel capsized; the additional 30 migrants and refugees are presumed dead. The Froland disembarked the survivors in Polazzo, Italy. The Basilis L and Froland incident highlights how indecision and delay can have serious costs in human life, not merely shipping fees.



*Basilis L / Vessel Finder*

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[119] The Maritime Executive, 'Italy Puts NGO Rescuers of Migrants on Maersk Etienne on Trial' The Maritime Executive (29 May 2025) <https://maritime-executive.com/article/italy-puts-ngo-rescuers-of-migrants-on-maersk-etienne-on-trial>; Angelo Amante, 'Italian activists face trial for migrant sea rescue in legal first' Reuters (29 May 2025) <https://www.reuters.com/world/italian-activists-face-trial-migrant-sea-rescue-legal-first-2025-05-29>. The delay is partly a result of the Italian court waiting on a decision of the Court of Justice for the European Union in Kinsa, on the humanitarian exemption of the EU Facilitative Directive. This is discussed further in the section of EU legal protections, below.

[120] The following details are drawn from Alarm Phone, Mediterranea Saving Humans, and Sea-Watch, 'Joint press release: Fatal delay: 30 people lost their lives due to lack of European assistance' (14 March 2023) <https://mediterranearescue.org/en/news/fatal-delay-30-people-lost-their-lives-due-to-lack-of-european-assistance>.

[121] *Id.*

## Port Fukuoka

On 28 July 2025, the NGO aircraft Seabird 2 identified a vessel in distress carrying more than 90 people, approximately 4.5 hours sail from Lampedusa port.[122] The Seabird 2 issued distress calls, copying the Italian, Tunisian, and Maltese MRCCs. After five hours, the Italian MRCC responded on behalf of the Libyan coast guard, and the Seabird 2 was joined by a Frontex aircraft. It was not until the next day, 29 July, however, that any help arrived. The bulk carrier Port Fukuoka arrived to assist in a rescue, although it is not clear, based on public data, who coordinated the Port Fukuoka's involvement or when the Port Fukuoka was notified. During the large merchant ship's rescue, the vessel capsized, throwing all passengers into the water. Two children and one adult drowned in the chaos, though the Port Fukuoka saved many lives. During the capsize, a Frontex plane overhead dropped an inflatable raft.

After the rescuees were on board, the Libyan coast guard arrived and requested that the rescuees be handed over. The ship master of the Port Fukuoka refused this request. The Port Fukuoka contacted the rescue NGO SOS Méditerranée's Ocean Viking ship, which was in the vicinity. The Port Fukuoka requested that the rescuees be transferred to the Ocean Viking or that the NGO ship assist with the medevac of a pregnant woman onboard on the verge of giving birth. Ocean Viking attempted to reach the various MRCCs involved to confirm coordination of a medical response. Italy agreed to medevac the pregnant woman, whose water had broken, by helicopter on 1 August 2025. It is unclear where the remainder of the rescuees were disembarked based on public records but the ship's movements suggest that they were not returned to Libya.



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[122] Details of this case are drawn from: Agrigento Oggi, 'Incinta prelevata da un mercantile e transferita in elicottero a Lampedusa' Agrigento Oggi (2 August 2025) <https://www.agrigentooggi.it/incinta-prelevata-da-un-mercantile-e-trasferita-in-elicottero-a-lampedusa>; Editorial staff, 'Migrated incinta transferita a Lampedusa, era in mare da almeno 4 giorni' Il Sicilia (1 August 2025) <https://ilsicilia.it/migrante-incinta-trasferita-a-lampedusa-era-in-mare-da-almeno-4-giorni>; Sea-Watch, 'Merchant ship with over 90 people at sea for days despite 2 deaths and emergency birth' (31 July 2025) <https://sea-watch.org/en/merchant-ship-with-over-90-people-at-sea-for-days>; Sea-Watch, '2 dead after negligence in the Mediterranean Sea' (29 July 2025) <https://sea-watch.org/en/2-dead-after-negligence-in-mediterranean-sea>; SOS Méditerranée, 'Operation – 26 July-6 August 2025' (6 August 2025) <https://www.sosmediterranee.org/operation/operation-26-july-6-august-2025>.

## Recent signs of improvement

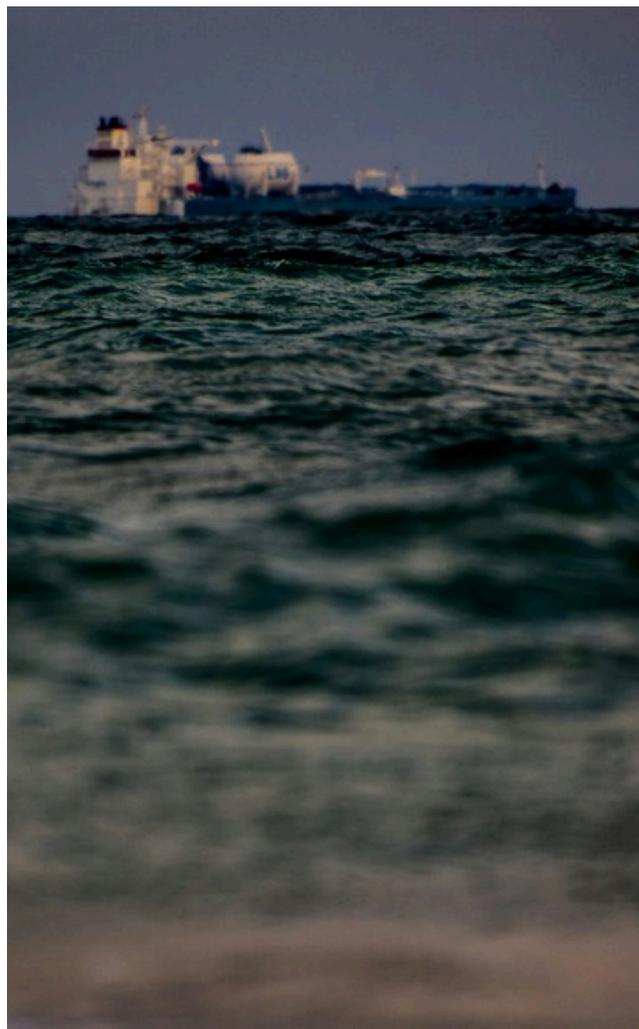
Despite the above cases of protracted delay, there are some recent examples of rescues and disembarkations that proceeded with little problem. In 2024, there were at least three rescues performed by merchant vessels—the tanker Vault, the liquefied natural gas carrier Tessala, and the cruise ship Insignia—under the coordination of Italian and Spanish authorities. As noted in the introduction, it is difficult to say whether these recent cases are actually reflective of the norm or are the indication of a positive trend. They may, however, indicate a greater willingness by states to relieve pressure on merchant vessels.

### *Vault*

On 24 March 2024, the NGO plane Seabird 2 identified a vessel in distress and notified the nearby oil tanker Vault.<sup>[123]</sup> The tanker remained near the distressed vessel for two hours and began to take people on board when the vessel began taking on water. The Vault rescued 158 people; three others did not make it. The tanker transferred the people to an Italian Coast Guard vessel and they were disembarked in Lampedusa.

### *Tessala*

In August 2024, the Algerian-flagged liquefied natural gas (LNG) tanker Tessala responded to a distress call and rescued 30 migrants and refugees.<sup>[1]</sup> (It is unclear based on available sources who initiated the distress call). The rescuees were transferred to the Italian Coast Guard a few hours later.



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[123] This fact pattern is drawn from: ANSA, 'Three migrants missing in international waters after tanker rescue' InfoMigrants (26 March 2024)

<https://www.infomigrants.net/en/post/56053/three-migrants-missing-in-international-waters-after-tanker-rescue>; Sea Watch, 'Migranti. Salvataggi e disperse in mare' *Presenza* (25 March 2024) <https://www.presenza.com/it/2024/03/migranti-salvataggi-e-dispersi-in-mare>.

[124] Khaled Bensekkaim, 'Algerian Gas Carrier "Tessala" Rescues Migrants Near Sardinia' AL24 News (20 August 2024) <https://al24news.dz/en/algerian-gas-carrier-tessala-rescues-migrants-near-sardinia>.

### *Insignia*

In June 2024, the Spanish MRCC directed the cruise ship *Insignia* to assist a vessel in distress that had been identified by another merchant vessel passing by.<sup>[125]</sup> The *Insignia* rescued 68 people, including three women and three children, and recovered three dead bodies from the boat (two more dead bodies could not be recovered due to bad weather). The cruise ship provided food and first aid for the rescuees and requested clothing donations from passengers. The rescuees were turned over to Spanish coast guard authorities.

### Lessons from non-governmental organisations (NGOs)

States have brought criminal prosecutions or placed administrative burdens on numerous maritime rescue NGOs over the years. While a full analysis of rescue NGO cases is beyond the scope of this report and most of these state tools have been directed squarely at NGOs rather than commercial ships, these cases provide lessons regarding state action regarding maritime rescues. Specifically, while criminal prosecutions on charges of smuggling or related crimes are rarely successful, states have many tools at their disposal to fine, sanction, or otherwise disrupt the work of vessel operators. The French Association of Ship Captains (AFCAN) has also argued that crackdowns on humanitarian rescue NGOs will only result in more rescues performed by merchant ships.<sup>[126]</sup>

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[125] The following details are drawn from: Reuters, 'Cruise ship rescues 68 migrants heading for Canaries, six dead' Reuters (20 June 2024) <https://www.reuters.com/world/europe/cruise-ship-rescues-68-migrants-heading-spains-canaries-five-dead-2024-06-20>; Teresa Madrano, 'A cruise ship rescues 68 migrants and finds 5 bodies in a boat adrift in the Atlantic Ocean' AP News (20 June 2024) <https://apnews.com/article/spain-migrants-rescued-cruise-ship-atlantic-984d95ef7e6479925b9d02bfe00fe2be>; The Maritime Executive, 'Spanish Coast Guard Sends Cruise Ship to Rescue 68 Migrants from Atlantic' The Maritime Executive (20 June 2024) <https://maritime-executive.com/article/spanish-coast-guard-sends-cruise-ship-to-rescue-68-migrants-from-atlantic>.

[126] Nautilus International, 'Masters face greater criminalisation in Mediterranean migrant rescue' (15 July 2019) <https://www.nautilusint.org/en/news-insight/news/masters-face-greater-risk-of-criminalisation-in-mediterranean-migrant-rescue/>.



A series of high-profile criminal prosecutions have been brought against NGO shipmasters and associated staff over the past ten years. Italian prosecutors, for example, have brought criminal charges against NGO shipmasters and crew in at least four cases, but charges were dropped in every case, often for lack of evidence, with the exception of the ongoing Mare Jonio case, described above.[127] Italian courts even dismissed charges in the SeaWatch 3 case, where ship master Carola Rackete entered the port of Lampedusa with rescued migrants without permission (following a days-long standoff and deteriorating conditions on the ship), colliding with an Italian patrol boat that tried to stop her but managing to dock. She was immediately arrested and brought up on charges, but the Italian courts found that both the rescue and the emergency entry into port were part of the same rescue operation and both actions were undertaken in compliance with her duties as ship master.[128]

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[127] See cases of the NGO Jugend Rettet's *Iuventa* in 2017; Proactiva Open Arms's *Open Arms* in 2018; and the Mediterranean Saving Humans' *Mare Jonio* in 2019. Lorenzo Tondo, 'Crew of migrant rescue boat acquitted in Italy after seven-year ordeal' *The Guardian* (19 April 2024) <https://www.theguardian.com/world/2024/apr/19/italian-court-acquits-crew-of-migrant-refugee-rescue-boat-iuventa>; Statewatch, 'Mediterranean: Nine new legal proceedings against civil search and rescue ships since June 2020' (18 December 2020) <https://www.statewatch.org/news/2020/december/mediterranean-nine-new-legal-proceedings-against-civil-search-and-rescue-ships-since-june-2020>.

[128] Irini Papanicolopulu, 'Duty to Rescue and Entry into Port: The Carola Rackete Decision', *Italian Yearbook of International Law* 30 (2020) [https://brill.com/view/journals/ijyo/30/1/article-p453\\_23.xml](https://brill.com/view/journals/ijyo/30/1/article-p453_23.xml).

Greek prosecutors have similarly brought criminal charges in at least three cases, only to later to have the defendants acquitted or drop charges for lack of evidence.[129] Even though none of these prosecutions have been successful, they have placed defendants in difficult situations, often for years, while appeals are heard.

Despite the very poor track record of prosecutions, many countries have used administrative fines, seizing of vessels, barring vessels from sailing, and the creation of somewhat arbitrary navigation requirements to slow or stop NGO rescue operations. Some countries have cut off access to their ports for NGO vessels;[130] others require rescue vessels to immediately return to distant ports after a rescue, limiting their time in areas of greatest need.[131] States have also used registration and health regulations to impound rescue ships.[132] These administrative hurdles have resulted in only 17 NGO rescue ships currently operating, out of a total of 43 since 2014.[133]

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[129] See cases of Emergency Response Centre International (ERCI) Volunteers (Sara Mardini, Seán Binder, et al.) and Proem-Aid and Team Humanity. See, respectively, Helena Smith, 'Greek court drops espionage charges against aid workers' *The Guardian* (1 May 2024)

<https://www.theguardian.com/world/2024/may/01/greek-court-decision-to-drop-charges-against-aid-workers-accused-of-espionage-welcomed>; Patricia Otraga Dolz (trans, Elizabeth Kitton), 'Greek court acquits Spanish firemen accused of people-smuggling' *El País* (8 May 2018) [https://english.elpais.com/elpais/2018/05/08/inenglish/1525767878\\_346157.html](https://english.elpais.com/elpais/2018/05/08/inenglish/1525767878_346157.html).

[130] European Council on Refugees and Exiles (ECRE), 'Malta intensifies crackdown on rescuing organisations, while deaths in the Mediterranean are on the rise' (6 July 2018) <https://ecre.org/malta-intensifies-crackdown-on-rescuing-organisations-while-deaths-in-the-mediterranean-are-on-the-rise>.

[131] See, for example, Judith Sunderland, 'Italy Detains MSF Sea Rescue Ship' *Human Rights Watch* (9 September 2024) <https://www.hrw.org/news/2024/09/09/italy-detains-msf-sea-rescue-ship>.

[132] See, for example, the use of administrative action by Spain, Germany, the Netherlands. See, ECRE, 'Spain: Open Arms Search and Rescue Vessel Denied Permission to Conduct Missions' (18 January 2019) <https://ecre.org/spain-open-arms-search-and-rescue-vessel-denied-permission-to-conduct-mission>; Javi Julio, 'After Open Arms, Aita Mari becomes the second ship to have its rescue mission blocked by the Spanish government' *EuroNews* (21 January 2019) <https://www.euronews.com/2019/01/21/spain-s-government-blocks-rescue-ship-s-mission-in-the-mediterranean-marking-policy-u-turn>; InfoMigrants, 'Sea rescue missions face additional hurdles following changes in German shipping law' *InfoMigrants* (7 September 2020) <https://www.infomigrants.net/fr/post/27098/sea-rescue-missions-face-additional-hurdles-following-changes-in-german-shipping-law>; Emma Wallis, 'Sea-Watch 3 to sail under German flag' *InfoMigrants* (5 December 2019) <https://www.infomigrants.net/fr/post/21353/seawatch-3-to-sail-under-german-flag>.

[133] EU Agency for Fundamental Rights, June 2025 Update: Search and rescue (SAR) operations in the Mediterranean and fundamental rights (EU Agency for Fundamental Rights, 2025) p. 7.

To date, states have not used tools to obstruct or deter merchant ships from conducting rescues. Yet these cases highlight the measures that have been used in the past (many of which are still ongoing). Notably, criminal prosecutions have universally failed, with judges finding either a lack of evidence or protections for humanitarian rescue. Yet administrative sanctions, from fines to inspections to impoundment, represent a serious concern for rescue NGOs. These are tools that could potentially be applied to merchant shipping as well.

# Conclusion

This report has reviewed the legal framework governing the duty to render assistance at sea and examined 23 real-world cases of merchant vessel rescue. While the duty to assist persons in distress is firmly grounded in international and domestic law, the legal and operational landscape remains uncertain. This report makes the following key findings and recommendations:

## **Current policies risk creating a system of disincentives to rescue**

Commercial shipmasters are often caught between conflicting expectations: a well-recognised duty to rescue and disembarkation in a place of safety, on the one hand, and potential lawsuits and directives to disembark in unsafe places, on the other. This policy uncertainty creates a real-world disincentive to rescue: there have been isolated reports of shipmasters deactivating AIS and avoiding known areas of migrant travel to avoid being called upon to rescue. [134] Even if these allegations only rest on a handful of anecdotal examples, the policies outlined in this report create clear incentives that could push shipmasters in this direction.

## **Legal protections are missing in key jurisdictions**

Prosecutions for smuggling and ‘facilitation of illegal entry’ are common but many European jurisdictions do not follow the legal protections codified in the UN Smuggling Protocol or the optional exemptions in the EU Facilitation Directive. They do not require profit as an element of the crime or include an exemption for humanitarian action at sea. These gaps create legal jeopardy for commercial shipmasters and rescue NGOs alike. States should consider ways to incorporate legal protections for humanitarian maritime rescue into their legal code, if such protections do not already exist. If there are concerns about including such protections, they should be shared and discussed.

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[134] Kristiansen.

## **Criminal prosecutions are rare, but delays are widespread, costly, and legally ambiguous**

The cases reviewed in this paper show that multi-day delays in disembarkation for vessels engaged in rescue occur. These delays impose significant operational and financial burdens, including lost time, extra fuel, provisioning, and potential legal exposure.

## **Model contracts can be clarified to reduce the uncertainty of the financial burdens of rescue**

Some charterparty agreements, particularly those involved in dry cargo, are not sufficiently explicit on the question of allocating costs, such as hire costs, during and after a rescue. This approach was understandable in an era when rescues were rare and quickly resolved. But in the modern era of maritime migration, when hundreds of lives are at stake in each rescue and delays may stretch into weeks or more than a month, the human and financial costs are significant. Shipowners and charterers owe one another greater contractual clarity regarding these costs. There are a wide range of costs, not just limited to hire, bunkers and port costs to be considered.

Prosecutions for smuggling and ‘facilitation of illegal entry’ are common but many European jurisdictions do not follow the legal protections codified in the UN Smuggling Protocol or the optional exemptions in the EU Facilitation Directive. They do not require profit as an element of the crime or include an exemption for humanitarian action at sea. These gaps create legal jeopardy for commercial shipmasters and rescue NGOs alike. States should consider ways to incorporate legal protections for humanitarian maritime rescue into their legal code, if such protections do not already exist. If there are concerns about including such protections, they should be shared and discussed.

Relevant parties should explore how model charterparty contracts can include a ‘refugee clause’ or ‘humanitarian rescue clause’ that creates greater certainty around the costs associated with rescue. This can incorporate elements of cost sharing or limitation on liability after a certain period of delay.

The cases reviewed in this report make clear that commercial shipping will continue to play a role in maritime rescue. But the uncertainty surrounding disembarkation, liability, and cost creates an untenable situation: one where merchant shipmasters may hesitate before answering a distress call, and where shipping companies must weigh legal exposure against moral and legal duty. Rescue of migrants and refugees can already traumatise crew who feel like they are not doing enough. Added legal uncertainty and contrary legal incentives likely only serves to compound this psychological stress.[1] If commercial actors are to continue to fulfil their duties, they need clarity, legal protection, and predictable mechanisms for cooperation. Absent such reforms, the burden of rescue will fall ever more unevenly on the ships that respond and the people they save.

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[135] Jensen and Marcus Oldenburg.

# Annex: List of acronyms

**AFCAN** // Association Française des Capitaines des Navires (French Association of Ship Captains)

**EU** // European Union

**IMO** // International Maritime Organisation

**MRCC** // Maritime Rescue Coordination Centre

**NGO** // Non-governmental Organisation

**NYPE** // New York Product Exchange

**P&I club** // Protection and indemnity club

**Salvage Convention** // International Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea

**SAR Convention** // International Convention on Maritime Search and Rescue

**SAR Zone** // Search and rescue zone

**SOLAS Convention** // International Convention for the Safety of Life at Sea

**UN** // United Nations

**UNCLOS** // United Nations Convention on the Law of the Sea

# Annex:

## Table of cases and incidents

Establish that most cases do not involve criminalisation but there are many instances of delay and political gridlock that serve as deterrents

### Model contracts can be clarified to reduce the uncertainty of the financial burdens of rescue

No	Ship or owner name(s)	Date	Notes
1	Mortadha and Mohammed el-Hedi	8/2007	Fishermen prosecuted by Italy; found not guilty
2	Asso Ventotto	7/2018	Shipmaster prosecuted by Italy and found guilty for abandonment / refoulement
3	Vos Thalassa	7/2018	Rescue and attempted return to Libya. Rescuees protested and ship was met by Italian Navy. Italy prosecuted two rescuées with illegally procuring entry, but court found that they were justified in avoiding refoulement in Libya.
4	Bourassine	10/2018	Fishermen prosecuted by Italy; found not guilty
5	El Hiblu 1	3/2019	Rescue and attempted return to Libya. Rescuées protested and ship turned around the Malta. Ship master claimed that he was 'forced' to return. Three rescuées were charged with terrorism; their case is pending.

No	Ship or owner name(s)	Date	Notes
6	Afrizal, Aziz and Afrijal	6/2021	Indonesia fishermen found guilty for people smuggling
7	Vos Triton	6/2021	Rescue and disembarkation in Libya. Successful civil suit filed in Italy by survivor.
8	Herman, Mukhtar, Erfan	3/2024	Indonesian fishermen found guilty for people smuggling

## Disembarkation incidents

No	Ship or owner name(s)	Date	Notes
9	Opielok Offshore Carriers	2014-2018	44 migrant and refugee SAR operations over four years. Many rescues appear to have been returned to Libya.
10	MV Nivin	11/2018	Disembarkation in Libya at direction of Italian MRCC. Rescuees refused to leave, resulting in storming of ship by Libyan special forces.
11	MS Anne	5/2020	Disembarkation in Libya at direction of Malta MRCC. Inquiry by European Parliament members.

## Delays following rescue

No	Ship or owner name(s)	Date	Notes
12	MV Salamis	8/2013	Rescue of 102 people; disembarkation permitted in Italy after 3 days.
13	Alexander Maersk	6/2018	Rescue of 113 people; disembarkation permitted in Italy after 4 days.
14	Sarost 5	7/2018	Rescue of 40 people; disembarkation in Tunisia after 17 days.
15	Nuestra Madre de Loreto	11/2018	Rescue of 12 people; disembarkation in Malta and then Spain after 11 days.
16	Maridive 601	5/2019	Rescue of 75 people; disembarkation in Tunisia after 19 days.
17	MV talia	6/2020	Rescue of 52 people; disembarkation in Malta after 4 days.
18	Maersk Etienne and Mare Jonio	8/2020	Rescue of 27 people by commercial tanker. After 37 days, rescuees transferred to NGO vessel for medical care. NGO disembarked rescuees in Italy. Italian government brought charges, arguing that donations from the shipping company constituted profit. Case against NGO rescuers is ongoing.
19	Basilis L / Froland	3/2023	Rescue of 17 people but 30 people died while waiting more than 24 hours after their discovery for the coordination of assisting ships. Disembarkation in Italy.
20	Port Fukuoka	7/2025	Rescue of approximately 90 people; delay of one day after discovery of boat before rescue coordinated; two children and one adult die in capsizing during rescue; pregnant woman medevacked to Italy. Location of disembarkation unclear.

## Positive recent rescues

No	Ship or owner name(s)	Date	Notes
21	Vault	3/2024	Rescue of 158 people; disembarkation permitted in Italy with little delay.
22	Insignia	6/2024	Rescue of 68 people; disembarkation in Spain with little delay.
23	Tessala	8/2024	Rescue of 30 people; disembarkation in Italy with little delay.

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