

OPERATIONAL FRAMEWORK

SOS MEDITERRANEE & MSF

As European, maritime and humanitarian organizations, we are deeply concerned by the recent dramatic increase in mortality (due to drownings) at sea following policy developments around the Central Mediterranean situation, which to us are by nature incompatible with fundamental principles of solidarity at sea, as established by the maritime conventions such as UNCLOS, SOLAS and SAR conventionsⁱ.

The Aquarius is about to resume her Search & Rescue activities in the Central Mediterranean and we would like to express our concerns and clarify our operational framework, which sole and only aim is and has always been to undertake rescues at sea, in full respect of the aforementioned international regulations.

As a fully equipped and staffed for rescue shipⁱⁱ, we contest any attempt to deny us the possibility to be at sea in international waters and to carry out our rescue mission where boats in distress are reported. Freedom of movement in international waters is a key provision of the UNCLOSⁱⁱⁱ.

While the recent EU Council of Brussels on June 28 and 29 has been strongly asserting the role of the Libyan Coast Guards, the International Maritime Organisation (IMO) officialized on its GISIS^{iv} website the role of Libya as a coastal State in the coordination of rescues in a designated Libyan SAR region^v. In its conclusions of late June^{vi}, the EU Council expressed both that all vessels operating in the Mediterranean should respect applicable laws, and that Libyan Coastguard operations should not be obstructed, together in the same sentence. This not only sounds contradictory but also seems to disregard the fundamental principles of the maritime conventions and relevant human rights and refugee law, as the consequence of the Libyan Coastguard interception is the refoulement of people to Libya, a place which currently cannot be considered a place of safety^{vii}.

While we are willing to continue operating under the instructions of maritime coordination centers^{viii}, and would have no issue in principle to do it with any newly established Joint Rescue Coordination Centre (JRCC) in Tripoli^{ix}, we have at the same time to strictly respect maritime conventions, which clearly requires all ships and Masters, when having information or any doubt about any potential distress event, to take all necessary means to provide assistance without delay^x. The said rescues are being considered as terminated when people are disembarked as soon as reasonably practicable in a place of safety^{xi}, a place where their basic needs are met, but also a place where they can seek the protection they might be entitled to and where they are not at risk of further abuses and violations^{xii}.

For these reasons, once being back in the search and rescue area and while being coordinated by any RCC (Italy, Malta, Libya or any other)^{xiii}, we intend to continue operating as follows, in strict compliance with relevant human rights law, maritime legal frameworks, humanitarian principles of humanity, neutrality, impartiality and independence, and in a responsible manner:

- If requested to keep away from a boat in distress or to delay our intervention, while we have reason to believe that the danger is imminent, and if we are not sure that all necessary means are deployed on time and adequately, we will rescue these people without delay^{xiv}, with the intention to save their lives, to provide proper emergency care^{xv}, and to bring them to a place of safety which meets the criteria of the above mentioned conventions.
- If requested to disembark rescued people in Libya or to transfer them onto a Libyan coast guards unit, we will strongly oppose it as Libya can in no way be considered, for the time being, a place of safety according to the criteria defined by all the maritime conventions and guidelines^{xvi}.



As the Aquarius has gathered strong support from the European civil society, we also intend, while going back at sea, to enhance our testimony mission^{xvii, xviii}. We will further increase our means and efforts to relay directly^{xix}, comprehensively and in the most transparent and objective way what we witness at sea, and make public and denounce anything that appears to breach or compromise the international Maritime Conventions and their sole objective of saving lives at sea, without any other consideration.

We believe that the recent policy developments not only challenge the Aquarius mission, nor only the mission of civilian and private rescue organizations, but that it is the core spirit of rescue at sea which is currently at stake, and rescue as seafarers have practiced it at sea for decades, regardless of other considerations.

ⁱ The Maritime Conventions can be found on the following addresses:

- 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (**UNCLOS**)
http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- 1974 INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA (**SOLAS CONVENTION**)
<http://solasv.mcga.gov.uk/>
- 1979 SEARCH AND RESCUE CONVENTION (**SAR CONVENTION**)
[http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-\(MSC\)/Documents/MSC.70\(69\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-(MSC)/Documents/MSC.70(69).pdf)

Concurrently with the revision of the SAR Convention, the IMO and the International Civil Aviation Organization (ICAO) jointly developed the International Aeronautical and Maritime Search and Rescue (**IAMSAR**) Manual, published in three volumes covering Organization and Management; Mission Co-ordination; and Mobile Facilities.

Even more precise provisions regarding mass rescue operations in the context of migration can be found in the Resolution of the International Maritime Organisation (IMO) Maritime Safety Committee (MSC) n°MSC.167(78) (adopted on 20 May 2004) "GUIDELINES ON THE TREATMENT OF PERSONS RESCUED AT SEA"

<http://www.imo.org/en/OurWork/Safety/RadioCommunicationsAndSearchAndRescue/SearchAndRescue/Documents/MSC.167-78%20-Guidelines%20on%20treatment%20of%20persons%20rescued%20at%20sea.pdf> .

This was completed in 2015 by the IMO with the UNHCR and the International Chamber of Shipping (ICS) in a guideline "RESCUE AT SEA – A GUIDE TO PRINCIPLES AND PRACTICE AS APPLIED TO REFUGEES AND MIGRANTS"

http://www.imo.org/en/OurWork/Safety/RadioCommunicationsAndSearchAndRescue/SearchAndRescue/Documents/UNHCR-Rescue_at_Sea-Guide-ENG-screen.pdf

ⁱⁱ The Aquarius ship is fitted and crewed for mass rescue operations, with over 2 years of experience in this area, and assisted more than 29 000 people in more than 200 operations at sea, all coordinated by competent maritime authorities. On numerous occasions, the Aquarius, given her capacity & specificity, has been mobilized by said authorities to accommodate people rescued by other vessels in the Central Mediterranean, either commercial, military or coast guards ships. The ship has 3 fast rescue crafts with emergency floatation tools for massive rescue operations, a crew of 35 people with professional sailors, rescuers and medical team, recruited and trained for mass rescue operations. The Aquarius has been set-up to provide emergency care to more than 500 people for several days on high seas.

ⁱⁱⁱ **UNCLOS Art. 58** : "Rights and duties of other States in the exclusive economic zone 1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention".

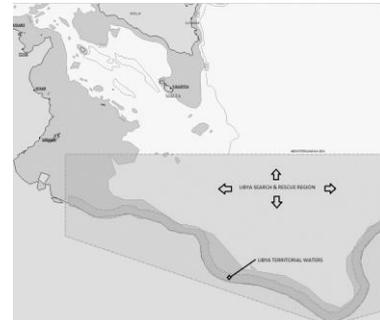
UNCLOS – Art. 87 : "Freedom of the high seas 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States: (a) freedom of navigation".

^{iv} The GISIS (Global Integrated Shipping Information System) is the data base of the IMO (International Maritime Organization) and can be accessed (with a public username) at



<https://gisis.imo.org/Public/COMSAR/RCC.aspx?CID=LBY&Action=View&ID=2032> . Its data is a reference for all ships. On 27th June 2018, coordinates of a Libyan Joint Rescue Coordination Center (JRCC) were uploaded on the GISIS, fully legitimizing the coordination of rescues by this JRCC in the SAR Region corresponding to Libya.

v Following the adoption of the 1979 SAR Convention, IMO's Maritime Safety Committee divided the world's oceans into 13 search and rescue areas, in each of which the countries concerned have delimited search and rescue regions for which they are responsible. A search and rescue region of a coastal State is not to be mistaken with its territorial waters (12nm from the shore), and is not an area where the said State has any authority, but a place where it has a responsibility to coordinate rescues for the best possible outcome for people.



vi The EU Council meeting conclusions of 28th of June 2018 can be found on <http://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/> and state the following “3. As regards the Central Mediterranean Route, efforts to stop smugglers operating out of Libya or elsewhere should be further intensified. The EU will continue to stand by Italy and other frontline Member States in this respect. It will step up its support for the Sahel region, the Libyan Coastguard, coastal and Southern communities, humane reception conditions, voluntary humanitarian returns, cooperation with other countries of origin and transit, as well as voluntary resettlement. All vessels operating in the Mediterranean must respect the applicable laws and not obstruct operations of the Libyan Coastguard”.

vii Further to what people rescued by the Aquarius and fleeing Libya have been telling our teams over the last 2,5 years, multiple reports describe how unsafe is Libya for migrant people . Among those, please refer to the following :
UNHR: https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf
UNHCR: <http://www.unhcr.org/news/briefing/2017/10/59e5c7a24/libya-refugees-migrants-held-captive-smugglers-deplorable-conditions.html>
MSF : <https://www.msf.org/photo-story-human-suffering-inside-libyas-migrant-detention-centres>
Oxfam: https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/mb-migrants-libya-europe-090817-en.pdf
Amnesty International: <https://www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF>
Human Rights Watch: <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>

Many European leaders have repeatedly denounced this situation and acknowledged that people fleeing Libya could not be taken back there. The EU Commission spokesperson, in a recent press briefing on the 2nd of July 2018, acknowledging a “inhumane situation for many migrants in Libya” said that aid ships and boats flying the European flag and making rescues at sea could not bring migrants back to Libya, this being against international law.
<https://www.theguardian.com/world/2018/jul/03/mediterranean-migrants-drown-three-days-libya-italy>

viii All the rescue and transfer operations performed by Aquarius since February 2016 have been performed under the instruction of the Maritime Rescue Coordination Center in Rome, as “most capable RCC to assist”, under the IAMSAR procedures.

ix **SAR Convention Chapter 4.2.3**: “Any authority or element of the search and rescue service having reason to believe that a person, a vessel or other craft is in a state of emergency shall forward as soon as possible all available information to the rescue co-ordination centre or rescue sub-centre concerned”.
IMO Resolution MSC.167 (78) : “shipmasters should [...] keep the RCC informed about conditions, assistance needed, and actions taken or planned for the survivors”.
SOLAS V Chapt. 4-3: “Any search and rescue unit receiving information of a distress incident shall initially take immediate action if in the position to assist and shall, in any case without delay, notify the rescue co-ordination centre or rescue subcentre in whose area the incident has occurred”.

x **UNCLOS Art. 98**: “Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:



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- a. to render assistance to any person found at sea in danger of being lost;
- b. to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him.

SOLAS Reg. 33-1: "The master of a ship at sea which is in a position to be able to provide assistance on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so. This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found".

IMO Resolution MSC.167(78): "All persons in distress at sea should be assisted without delay." "Prompt assistance provided by ships at sea is an essential element of global SAR services; therefore it must remain a top priority for shipmasters, shipping companies and flag States".

^{xi} **SOLAS Reg. 33-4:** "The contracting Government responsible for the SAR Region in which such assistance is rendered shall exercise primary responsibility for ensuring such coordination and cooperation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking in account the particular circumstances of the case and guidelines developed by the Organization. In these cases, the relevant Contracting Governments shall arrange for such disembarkation to be effected as soon as reasonably practicable".

IMO Resolution MSC.167(78): Specifically, paragraph 1-1 of SOLAS regulation V/33 and paragraph 3.1.9 of the Annex to the SAR Convention, as amended, impose upon Governments an obligation to co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage.

^{xii} **IMO Resolution MSC.167 (78):** "A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) 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". "The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea".

^{xiii} **IMO Resolution MSC.167 (78):** in a case where the RCC responsible for the area where the survivors are recovered cannot be contacted, attempt to contact another RCC, or if that is impractical, any other Government authority that may be able to assist, while recognizing that responsibility still rests with the RCC of the area in which the survivors are recovered.

^{xiv} **UNCLOS Art. 98:** "Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

- a. to render assistance to any person found at sea in danger of being lost;
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^{xv} **IMO Resolution MSC.167 (78):** "survivors, regardless of nationality or status, including undocumented migrants, asylum seekers and refugees, and stowaways, are treated, while on board, in the manner prescribed in the relevant IMO instruments and in accordance with relevant international agreements and long-standing humanitarian maritime traditions"; "do everything possible, within the capabilities and limitations of the ship, to treat the survivors humanely and to meet their immediate needs".

^{xvi} **IMO Resolution MSC.167 (78):** "shipmasters should [...] seek to ensure that survivors are not disembarked to a place where their safety would be further jeopardized"; "A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) 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”. “The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea”.
See also footnote n° VII

^{xvii} Refer to SOS MEDITERRANEE Charter <https://sosmediterranee.com/wp-content/uploads/2018/03/Charter-EN.pdf>

^{xviii} Refer to MSF working principles <https://www.msf.org/who-we-are>

^{xix} As of 1st August 2018, the activity of the Aquarius can be followed on www.onboard-aquarius.org

