



Rescue at sea is a duty!

Position Paper:

Compliance with international maritime and refugee law in the Central Mediterranean!

European migration policy causes thousands of avoidable deaths every year. This is particularly evident in the Central Mediterranean. Since 2014, at least 21,000 people¹ have died fleeing in unseaworthy boats in the area between Libya, Tunisia, Italy and Malta. The number of unreported cases is far higher. There is a lack of sufficient search and rescue capacities. Because EU states have gradually withdrawn from their responsibility for coordinated search and rescue, civil society actors like SOS Humanity have been filling this gap since 2015.

We see our search and rescue operations as a concrete commitment to the human rights and international maritime law obligations that all EU states – including Germany – have signed. At sea and on land, however, we repeatedly observe how state actors circumvent their obligations under international law and systematically

ignore human rights. Since 2023, Italy has massively restricted rescue at sea by NGOs through the application of a national law – which contradicts international maritime law and has catastrophic consequences for refugees. To this day, the Central Mediterranean is one of the deadliest refugee routes in the world.

In order to stop the dying in the Mediterranean, the EU and its member states must stand by their fundamental values and consistently advocate for compliance with international obligations and humanitarian principles in the Mediterranean.

¹ IOM Missing Migrants Project

Maritime rescue is a legal duty. This is firmly anchored in international law, and applies everywhere at sea, to all ships equally.² Central principles of the law of the sea include the duty to rescue at sea, states' duty to coordinate, and the duty to disembark survivors as quickly as possible in a place of safety. In addition, international human refugee and refugee rights apply at sea as well as on land.

Lack of search and rescue capacities

To ensure safety at sea, all coastal states are legally obliged to establish and operate an "adequate and effective search and rescue service" themselves or to join forces regionally to make such services possible.³ However, since the termination of the Italian search and rescue operation 'Mare Nostrum' at the end of October 2014, there is no longer a proactive search and rescue service in the Central Mediterranean.

The EU, on the other hand, has outsourced the responsibility for maritime rescue to the so-called Libyan Coast Guard, which has been trained, financed and equipped by the EU and individual member states since 2016. However, the so-called Libyan Coast Guard does not carry out rescues in accordance with applicable law, but instead forces people back to Libya in violation of international law. Through its support, the EU is thus complicit in breaches of international law.

Lack of state coordination in search and rescue

International maritime law imposes further clear rules and obligations on coastal states to ensure safety at sea. For this purpose, there are search and rescue (SAR) zones worldwide. These are assigned to coastal states, which are responsible for coordinating search and rescue measures within this zone. They are obliged to set up a control centre that is staffed around the clock with English-speaking personnel, receives emergency calls⁴ and, in the event of a maritime emergency, assigns ships and aircraft in the immediate vicinity to carry out search and rescue.⁵ Following a rescue, they must swiftly assign a place of safety for those rescued.⁶

Until June 2018, Italy coordinated maritime emergencies in the Central Mediterranean. Since the establishment of an EU-supported Libyan SAR zone, however, rescue operations in the Central Mediterranean, where most maritime emergencies occur, are officially under the coordination of the Libyan authorities. Contrary to its obligations under international law, however, the so-called Libyan rescue coordination centre is usually not accessible, emergency calls are usually not answered, state coordination does not take place and

people seeking protection are returned to Libya in violation of international law. Sea emergencies are almost only discovered and reported by the civilian emergency hotline Alarm Phone, by civilian reconnaissance aircraft or civilian rescue ships. Contrary to their duty under international law, state rescue coordination centres hardly ever alert people to maritime emergencies. In doing so, they delay rescues and put human lives at risk. Frontex aircraft and drones also do not immediately pass on information to all actors on the ground.

Delays in disembarkation at place of safety

A rescue at sea is only complete when those rescued go ashore at a place of safety. Under international maritime law, the rescue is therefore always linked to the prompt disembarkation in a place of safety. The responsible state in the respective SAR zone must assign said place of safety as quickly as possible and ensure the landing of the survivors as soon as possible.⁷ This must be a place where the lives of the survivors are no longer in danger, the fulfilment of their basic needs, such as food, shelter and medical care, can be ensured, and onward travel is possible.⁸

However, the responsible European coastal state, Italy, delays disembarkations and since 2023 has systematically assigned NGO rescue ships to distant ports in the north of the country, exposing survivors to avoidable risks and up to five additional days at sea. This is both illegal and inhumane. It sometimes leads to massive psychological stress for the survivors, who are already vulnerable due to their experiences in Libya as well as Tunisia and fleeing across the sea.

Furthermore, when disembarking people rescued from distress at sea, international maritime law requires that consideration be given to whether they are seeking protection.⁹ The right to asylum is a human right and is

² International Convention for the Safety of Life at Sea (SOLAS, 1974); International Convention on Search and Rescue (SAR, 1979); United Nations Convention on the Law of the Sea (UNCLOS, 1982)

³ UNCLOS, 1982, Art. 98

⁴ SAR (1979): Annex 2.3.3; MSC. 167(78), Annex 6.1-6.11; MSC. 70(69) 2.3.3

⁵ SAR (1979): Annex 5.3.5

⁶ IMO (2004): Resolution MSC.167(78)

⁷ 2004 Amendments to the International Convention on Maritime Search and Rescue (1979), IMO Resolution MSC.155(78), 3.1.9; IMO Resolution MSC.167(78), 2004, 6.8, 6.15 und 6.16

⁸ IMO (2004): Resolution MSC.167(78), 6.12

⁹ IMO (2004): Resolution MSC.167(78), 6.19

enshrined in the Geneva Refugee Convention as well as in the Charter of Fundamental Rights of the EU. Accordingly, EU states must grant access to their territory at the EU's external borders - including territorial waters and transit zones - to ensure access to an asylum application and procedure.¹⁰ No person may be deported to another country without an individual examination of their asylum application.¹¹

People forced back to Libya and Tunisia

According to the Geneva Refugee Convention, the return of refugees to a country where their life or freedom may be threatened is prohibited (the non-refoulement principle).¹² Both the UN Convention against Torture and the European Convention on Human Rights further stipulate that persons may not be returned to or handed over to states where they are threatened with torture, inhumane treatment or serious human rights

violations. Due to human rights violations on a massive scale, neither Tunisia nor Libya can be considered a safe disembarkation point for survivors according to the definition of maritime law. Nevertheless, Libyan authorities usually assign rescuing ships either no port, or a Libyan port. According to international law, captains are not permitted to follow this instruction from the 'officially responsible' Libyan authorities. They are instead obliged to look to Italy or Malta, the nearest rescue coordination centres responsible for coordinating a safe port.

¹⁰ EU-Directive 2013/32/EU, Art. 26

¹¹ EU-Charter of Fundamental Rights (2000): Art. 19, paragraph 1: EU-Directive 2013/32/EU

¹² Convention Relating to the Status of Refugees (1951), Art. 33

Our demands to the EU and its member states

1. Compliance with applicable international maritime law in the Central Mediterranean

SOS Humanity demands that international law is consistently respected and implemented at the EU's external borders. This includes the compliance of all EU Member States with their legal obligations under the United Nations Convention on the Law of the Sea (UNCLOS) instead of continuing to knowingly circumvent them. This includes the duty of states to coordinate maritime emergencies, the duty to rescue at sea and the disembarkation of rescued persons to a safe place as quickly as possible.

2. Effective state coordination by EU states

European coastal states must make every effort to rescue people in distress at sea without delay. Any delay can mean the difference between life and death. No information must be withheld that ships and aircraft, such as NGO rescue vessels or merchant vessels, require for the rapid search and safe rescue of people in distress at sea.

3. Disembark survivors as soon as possible in a safe place in the EU

The EU and its member states must comply with applicable law and ensure that people rescued at sea can go ashore in a safe place as quickly as possible. As competent coastal states, Italy and Malta must immediately coordi-

nate and assign a safe port in the immediate vicinity of the rescue ship in accordance with applicable maritime law. Due to their human rights situations, Libya and Tunisia cannot be considered safe places for people rescued at sea in terms of international law. Avoidable delays on the part of coastal states in the allocation of a safe port as well as allocations of distant locations for the disembarkation of survivors are unlawful.

4. EU Search & Rescue Programme in the Central Mediterranean

SOS Humanity demands that the EU take responsibility for saving lives at its external borders and not leave coastal states alone. This requires an effective search and rescue programme financed and coordinated by EU member states, with sufficient ships deployed for the purpose of search and rescue. This programme should be solely focused on ensuring safety at sea and protecting human lives. EU states should jointly establish a comprehensive, non-military search and rescue programme that is coordinated and financed by states. This must have adequate, coherent resources in order to be able to fulfil its mission. The search and rescue programme, its funding and its resources must be managed by the EU and its member states in a transparent and publicly visible manner to fulfil responsibility and accountability requirements. The public search and rescue agency 'Salvamento Marítimo' in Spain could serve as an orientation for the design of a potential EU search and rescue programme in the Central Mediterranean.

Our demands to the German Federal Government

In its coalition agreement, the German government committed itself to the “civilisational and legal obligation not to let people drown”.¹³ Germany, as the largest EU member state, must act decisively to ensure that no more people die at Europe’s external borders and that people seeking protection are no longer subjected to serious violations of their most basic rights. In order to live up to the claim that it strives for “state-coordinated and European-supported maritime rescue in the Mediterranean”,¹⁴ the German government must now urgently push for a search and rescue programme in the Central Mediterranean financed and coordinated by the EU member states. Within the framework of European negotiations on migra-

tion and asylum, multilaterally and bilaterally with other EU member states, and last but not least as an influential individual member state, Germany can and must advocate for compliance with applicable international maritime law and an EU search and rescue programme.

¹³ Coalition agreement between SPD, Bündnis 90/Die Grünen and FDP (2021) p. 142

¹⁴ Ibid.



Imprint

Editor: SOS Humanity
PO Box 44 03 52, 12003 Berlin
Tel.: + 49 30 / 23 52 56 82
Homepage: [sos-humanity.org/en](https://www.sos-humanity.org/en)
Email: contact@sos-humanity.org

Editorial staff: Mirka Schäfer (responsible according to the press law),
Marie Michel

Contact: advocacy@sos-humanity.org

Current state: July 2023

www.sos-humanity.org/en

Twitter: [@soshumanity_de](https://twitter.com/soshumanity_de)

Twitter intl.: [@soshumanity_en](https://twitter.com/soshumanity_en)

Facebook: [soshumanity.de](https://www.facebook.com/soshumanity.de)

Instagram: [soshumanity_de](https://www.instagram.com/soshumanity_de)

YouTube: [@SOSHUMANITY](https://www.youtube.com/@SOSHUMANITY)

LinkedIn: [@sos-humanity](https://www.linkedin.com/company/sos-humanity)

Donation account:

SOS Humanity

IBAN: DE 04 1005 0000 0190 4184 51

BIC: BELADEBEXX