

**UNHCR Comments on the Draft Resolution on Oceans and the law of the sea (A/57/L.48/Rev.1) and the Report of the Secretary General on Oceans and the law of the sea (A/57/57)**

**Introduction**

UNHCR is grateful to the Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, for having shared the above mentioned documents and having given UNHCR the opportunity to provide comments on issues of concern to the Office. The complex nature of the law of the sea, encompassing issues as diverse as maritime safety, conservation and management of marine living resources, climate change and sea-level rise is obviously not in its entirety of direct relevance to UNHCR's mandate for the international protection of refugees. However, as has been clearly illustrated by the effective co-operation between our two offices during the course of 2002, there are a number of issues of common concern. With reference to the documents under review the most pertinent issues for UNHCR can be found in the following sections:

- Inter-agency co-operation to address the treatment of persons rescued at sea (para 34 and 63 to 67 of the draft resolution, additionally referred to in para 116 of the report)
- Assistance at sea, rescue of persons in distress (para. 114 to 118 of the report)
- Crimes at sea, including the smuggling of migrants and handling of stowaway cases (para. 133 to 170 of the report).

**Inter-agency co-operation**

UNHCR welcomes the positive reference in the text of the draft resolution recognising the efforts of the International Maritime Organisation (IMO), UNHCR and the International Organization for Migration (IOM) to foster inter-agency co-operation. However, we would urge that the additional participation and contribution of the OLA, the OHCHR and the UNODC also be highlighted to illustrate the broad-based approach to this co-operation.

IMO Secretary-General O'Neil's November 2001 call for an inter-agency co-ordinating panel drawing upon the different institutional competencies of various UN agencies in response to the challenges generated by rescue and stowaway incidents (especially those involving asylum seekers and/or refugees), came to fruition in July 2002 with the convening of the *United Nations Inter-Agency Meeting on the Treatment of Persons Rescued at Sea*. On 2<sup>nd</sup> and 3<sup>rd</sup> July, under the Chair of the IMO and hosted by UNHCR, representatives of IMO, OLA, UNODC, OHCHR and IOM came together to discuss more effective modes of co-operation in response to emergency situations at sea, such as that illustrated by the Tampa incident. The formal note of this meeting was subsequently entered into the record of IMO's Maritime Safety Committee as a contribution to the ongoing debate within that

body on the need for legislative reform including consideration of amendments to the SAR and SOLAS Conventions. Though the inter-agency group has only met on this one occasion the working level interaction established between the different participating agencies has contributed to ongoing co-operation on issues of common concern. In addition the meeting established a focal point system to facilitate more effective responses in the event of another Tampa like scenario.

### **Assistance at sea**

Paragraphs 114 to 116 of the Report provide background to the inter-agency mechanism described above. In addition UNHCR has pursued a number of inter-related activities in pursuit of appropriate responses to the specific protection needs of asylum-seekers and refugees rescued at sea. Foremost among these was an expert roundtable held in Lisbon on 25 –26 March 2002 which brought together 33 participants from governments, the shipping industry, international organisations, non-government organisations and academia to discuss the challenges posed by complex rescue scenarios. The summary of discussions generated by the meeting<sup>1</sup> focused in particular on the following key points:

- upholding the integrity of the global search and rescue regime
- underlining the essential humanitarian character of rescue
- striking a balance between the duty of the master to provide assistance and the role of States in facilitating the effective exercise of this duty
- the importance of international co-operative efforts to adequately address the complex components of rescue scenarios involving asylum-seekers and refugees.

The outcome of the Lisbon meeting has provided a framework of reference for ongoing UNHCR interventions at the various IMO Committee Sessions, guiding our promotional and advisory efforts with respect to rescue and stowaways alike. Issues of relevance to assistance at sea have been a particular focus of discussions during the course of the past year in response to IMO's Assembly resolution A920(22) of November 2001, calling for a review of safety measures and procedures for the treatment of persons rescued at sea.

UNHCR was an active participant in;

- the 29<sup>th</sup> Session of the Facilitation Committee resulting in agreement on amendments to the annex of the FAL Convention with respect to the effective resolution of stowaway cases, including a specific reference in Section 4.1 to the relevance of the 1951 Convention Relating to the Status of Refugees. It is UNHCR's understanding that these changes will take

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<sup>1</sup> OLA, Division for Ocean Affairs and the Law of the Sea was an active participant in Lisbon and all documents referred to have been previously shared. Additionally copies can be obtained from Grainne O Hara, [ohara@unhcr.ch](mailto:ohara@unhcr.ch)

effect in May 2003 and it is hoped that the full co-operation of all States, signatories to the FAL Convention or otherwise, will be forthcoming to give practical effect to the substance of these improvements.

- the 75<sup>th</sup> and 76<sup>th</sup> Sessions of the Maritime Safety Committee where discussions focused on the meaning of the phrase "delivery to a place of safety" and the advisability of introducing amendments to SAR and SOLAS (and possibly other relevant legal instruments) in order to bring further clarity to the interpretation of this term. An ad hoc meeting hosted by the Swedish Maritime Administration between sessions of the Maritime Safety Committee, facilitated an in depth discussion allowing for much closer scrutiny of the various proposals put forward by States (Norway, France and German in particular)<sup>2</sup>. UNHCR's active engagement in this debate has provided further opportunity to explain and recommend an approach that is in keeping with the outcome of the Lisbon roundtable; namely to complement the required clarification of maritime law with responsibilities under its international refugee, human rights and criminal law and, within such a framework, to address situations of distress at sea involving asylum-seekers in a burden-sharing manner.
- the 6<sup>th</sup> and 7<sup>th</sup> Sessions of the Sub-Committee on Radiocommunications and Search and Rescue, in which the Working Group on Search and Rescue examined in further detail the general proposals for legislative reform presented to the Maritime Safety Committee. A rather restrictive proposal submitted by Spain to COMSAR 7 (January 2003) and not previously considered by either COMSAR or MSC, raised a number of concerns in that it suggested a hierarchy of points of disembarkation not necessarily corresponding to the pressing needs of the persons rescued or taking into due account the safety and security concerns of the master of the vessel. The draft amendments eventually agreed upon at COMSAR 7 for the consideration of the 77<sup>th</sup> Session of the Maritime Safety Committee in May 2003, constitute an amalgamation of earlier State proposals, the Spanish proposal not having received support.
- the 85<sup>th</sup> Session of the Legal Committee, which reviewed ongoing discussions in other IMO fora but did not itself engage in any detailed discussion on the assistance to persons rescued.

UNHCR is encouraged by the direction of the debate within IMO, in particular the careful attention given by a number of States to the humanitarian and protection challenges. We will maintain representation at the relevant IMO sessions to ensure due attention to asylum specific concerns and to assist States in the search for appropriate solutions to the complex challenges presented by rescue and stowaway scenarios.

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<sup>2</sup> The formal note of this meeting, including details on the text of the various State proposals was entered into the record of the 76<sup>th</sup> Session of the Maritime Safety Committee as MSC 76/22/11.

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## **Crimes at sea**

Recent developments in response to stowaway cases, outlined at paragraphs 164 to 170 of the Report are welcomed by UNHCR as is reflected by our comments above under the heading of the FAL Committee.

Developments with respect to combating smuggling of migrants, as embodied in the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime 2002 are welcomed by UNHCR. The detrimental effects of organised criminal smuggling for the protection of asylum-seekers and refugees is an issue highlighted by the Global Consultations on International Protection, organised by UNHCR over the course of the past two years. This is clearly reflected in the Agenda for Protection which resulted from this process and which, inter alia, includes a specific call States to consider accession to the Protocol. UNHCR is confident that full implementation of the Protocol is beneficial to the protection interests of asylum-seekers and refugees and particularly notes the Saving Clause of Article 19, which is designed to preclude any conflict between the provisions of the Protocol and the other rights, obligations, and responsibilities of States under international law, including where applicable the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

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