



GUIDANCE ON RESCUE OPERATIONS IN THE MEDITERRANEAN

Know Your Rights

Who we are

Born in 2014, the Italian coalition for civil rights and liberties (CILD) is a network of 35 civil society organizations that protect and expand the rights and liberties of all, through a combination of advocacy, public education and legal action. CILD's areas of activity include migrants and refugees rights, LGBT rights, criminal justice, Roma and Sinti rights and freedom of expression.

Why this guide

Asylum and immigration are among CILD's main areas of activity. Many organizations of our Coalition are also active, through assistance (including legal support), advocacy, campaigning.

Considering the unprecedented, ongoing attack against civil society, focused in particular on NGOs doing search and rescue activity at sea, we want to contribute to an informed debate by giving information and the tools to defend themselves, especially to those working on the front line. Because knowing your rights is the first step in being able to assert them.

This guide has been developed in collaboration with lawyer Gennaro Santoro.

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Maritime cooperation under international law

1 Is there a duty to rescue at sea?

Yes, there is. Maritime law and the Italian Constitution (Article 2) are based on cooperation which is a fundamental obligation.

International law (the Montego Bay Treaty and others, [see glossary](#)) requires States to require any masters of ships flying their national flag to fulfil their duty to give assistance to anyone found to be in danger at sea, to inform the competent authorities, to provide initial medical assistance to the persons rescued, and to transfer the persons rescued to a place of safety (for a definition of ‘place of safety’, [see question 8](#)).

2 Is it a criminal offence not to give assistance to shipwrecked survivors?

Yes. In Italy, the unjustified failure to provide aid to shipwrecked survivors constitutes a criminal offence according to Sections 1113 and 1158 of the Italian Navigation Code.

3 Who are obliged to save people in danger at sea?

All private and public individuals and entities who become aware of a vessel or a person in danger at sea are obliged to give them assistance in the event that such danger is serious and imminent and requires immediate rescue.

4 Are coastal States obliged to provide a search and rescue service?

Yes, they are. In accordance with the Hamburg Convention of 1979, all coastal States are obliged to provide a search and rescue service (SAR). All rescue operations are identified by this acronym.

5 In which areas of the sea are vessels obliged to provide assistance?

The duty to save and give assistance to any person found to be in danger at sea applies in any area of sea (international waters, domestic waters, etc. – [see annex 1](#)). Rescue may (also) be provided in foreign territorial waters; however, the relevant foreign State has the exclusive competence for organizing and overseeing rescue activities and for specifically providing assistance to vessels in distress.

Annex 1

What are territorial waters, the exclusive economic zone, and international waters?

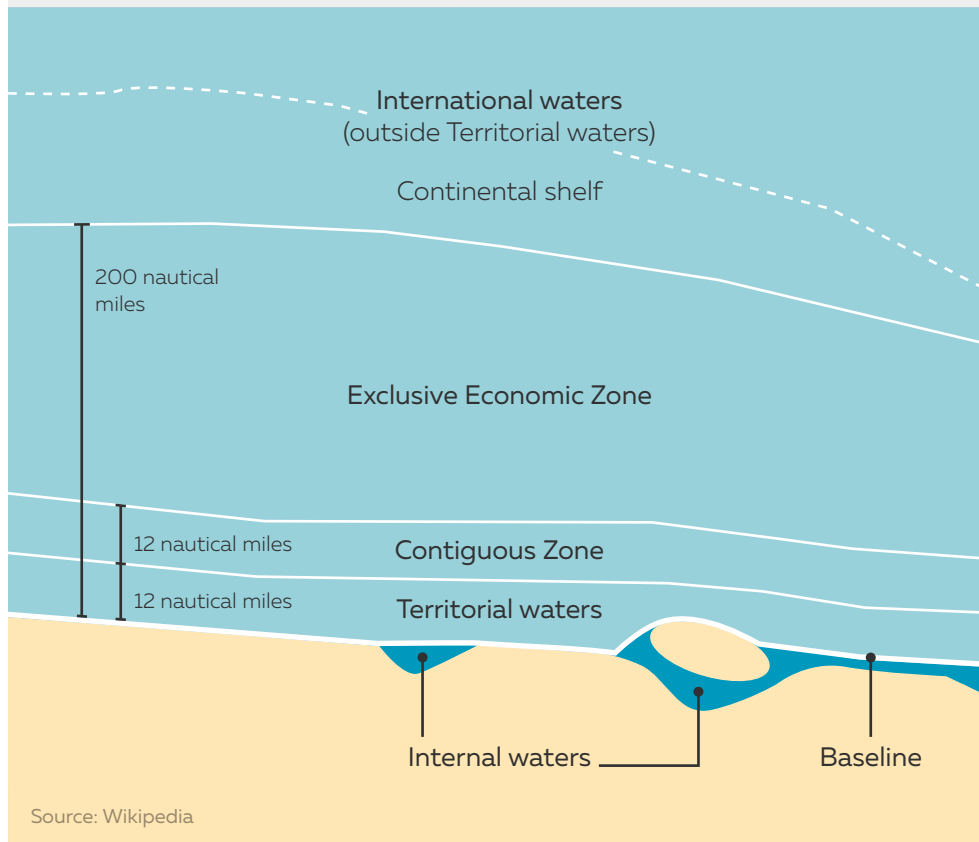
Territorial waters is a belt of coastal waters of a coastal State, including bays and gulfs. The maximum limit of extension (also called the external limit) of territorial waters is 12 nautical miles. Territorial waters are regarded as the sovereign territory of the State, though they cannot enforce their civil or criminal jurisdiction with respect to events occurring on a foreign vessel, save for a few exceptions ([see question 20](#)).

The **adjacent zone** is a zone neighboring the territorial waters within which a State can exert limited control for the purpose of preventing or punishing infringement of domestic laws and regulations within its territory or territorial waters. This zone will typically be 12 nautical miles wide starting from the external limit of the territorial waters, (i.e. up to 24 nautical miles from the baseline from which the territorial waters are measured).

An **exclusive economic zone** is a portion of sea adjacent to territorial waters. It can extend from the outer limit of the territorial waters to a maximum of 200 nautical miles from the territorial waters baseline. A coastal nation has control of all economic resources within its exclusive economic zone, including the construction

and use of artificial islands, structures and infrastructure, marine scientific research, and the protection and preservation of the marine ecosystem. The State cannot, however, prohibit passage or loitering in the area.

International waters (high sea) include all areas beyond territorial waters, as well as waters on the continental shelf and the waters of the exclusive economic zone. The principle of “free seas” applies in these areas, meaning that all countries, with or without coastline, have the same rights for carrying out activities provided that they respect the interests of other States. Only peaceful activities may be conducted on the high seas and no State may claim sovereignty: each State shall have jurisdiction only on the vessels flying its flag.



6 Why is Italy the only country to carry out search and rescue in the Mediterranean?

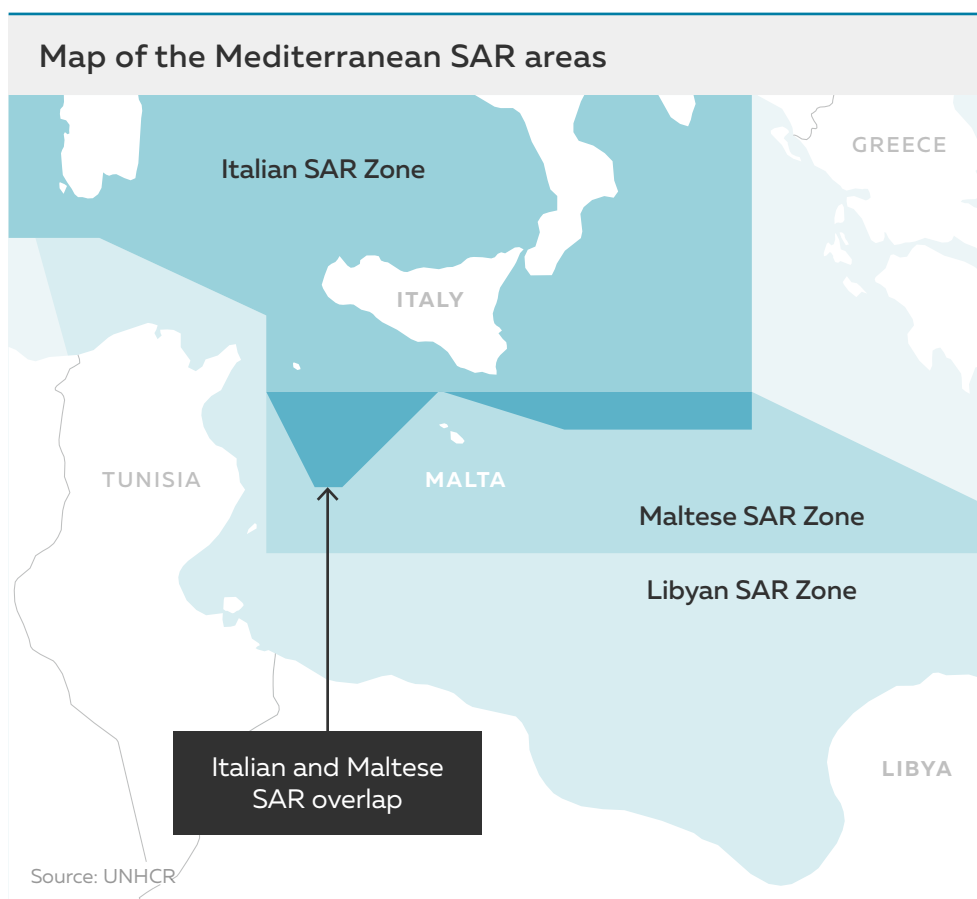
In accordance with the Hamburg Convention all coastal States on the Mediterranean must have a SAR service and must collaborate with the other States.

In particular, the responsibility of SAR in the Mediterranean was divided between the coastal States during the IMO Conference (International Maritime Organization, [see annex 3](#)) held in Valencia in 1997. According to this division of the SAR areas ([see annex 2](#)), the area Italy is responsible for is approximately a fifth of the entire Mediterranean, being 500 square kilometers.

However, the government of Malta – itself responsible for a vast area – has used assistance from Italy to surveil the area: in essence, the Malta regional SAR Coordination Centre does not respond to vessels in distress which may contact it nor do they intervene when requested by the Italian regional SAR Coordination Centre. The failure of Malta to provide rescue operations does not, however, exempt the vessel that spotted the vessel in distress. If the Maltese SAR does not respond (or provide a negative reply), then the vessel must lodge a request with the Italian SAR, which will then intervene.

Although Libya and Tunisia ratified the Hamburg Convention, they have not declared their respective areas of SAR responsibility. The area of the Libyan sea which sits next to Libya's territorial waters is not under the responsibility of any one of the countries. As such, the only country that provides SAR to the area sitting next to territorial waters of Libya is Italy.

Annex 2



7 What does a captain have to do when he or she discovers a vessel in distress with people on board?

The captain of a vessel must first inform the competent regional SAR Coordination Centre, which is usually Italy (see question 6). The captain must then give assistance if time is of the essence and follow the instructions provided by the regional SAR Coordination Centre (e.g. to intervene immediately or wait for other rescue ships, or to take the rescued survivors to a specific location).

8 What does place of safety mean?

The place of safety is the location where the safety and medical assistance for survivors can be guaranteed.

In practice, this means that the SAR process is not actually complete once rescue operations at sea have been completed: survivors must be taken to a place which can provide the individuals with the fundamental guarantees (not just in terms of medical assistance but also that they will not be tortured and they will be able to submit requests for international protection). The SAR Centre overseeing the rescue operations will be responsible for the identification of this location unless the rescue operations are conducted in territorial waters, in which case the relevant coastal State will be.

The place of safety is not always the closest State to where rescue operations are carried out. In actual fact, countries are not considered a safe place if individuals there can be persecuted for their political beliefs, their ethnicity or their religion or where their life or freedom is threatened.

For example, the [UNHCR believes](#) that Libya does not meet the criteria for a place of safety given the volatility of the country and compromised safety, especially of citizens from other countries. Such a location would fail to meet the required standards and, in particular, there have been reported incidents of the abuse of asylum seekers, refugees, and immigrants.

According to the [ASGI](#) report, Libya should not be considered a “place of safety” insofar as the country has failed to ratify the Geneva Convention of the status of refugees and agreements on human rights, as well as for the reason that there are several international reports on serious breaches of human rights involving migrants.

9 Is it possible to block access to ports by private vessels which have been involved in rescue operations?

A coastal State can block access to its ports by exercising its power of sovereignty. International agreements on maritime law, although not expressly providing

for an obligation for States to allow access to their ports by vessels that have conducted rescue operations, are nonetheless founded on the obligation of solidarity at sea, which is inconsistent with refusing access to ports by vessels carrying individuals in danger, requiring medical assistance, or immediate aid.

The closure of ports would constitute a breach of international regulations on human rights and the protection of refugees, especially the fundamental *non refoulement* principle provided for by article 33 of the Geneva Convention (see annex 4).

Refusing to allow access to ports to vessels involved in rescue operations constitutes an infringement of Articles 2 and 3 of the European Convention of Human Rights (ECHR), if the rescued individuals require urgent medical care and essential supplies (water, food, medicines), and those needs cannot be satisfied due to such refusals of access.

Arbitrary and indiscriminate refusal to allow access to vessels makes it impossible to assess the condition of the rescued people on board and hence breaches the prohibition of collective expulsion in Article 4 of Protocol 4 of the ECHR.

10 Who coordinates rescue operations in Italy?

SAR operations at sea are carried out by the Italian Coast Guard (SAR Center of the Italian Coast Guard), which guarantees medical assistance via specific agreements in place with first aid providers.

The SAR Center of the Italian Coast Guard is responsible for ensuring the efficient organization of SAR services at the relevant Italian sea areas which go well beyond Italian territorial waters (approximately a fifth of the Mediterranean, in other words, nearly 500 square kilometers).

The General Command (*Comando Generale*) actually has the role of Italian Maritime Rescue Coordination Centre (I.M.R.C.C.) and is thus responsible for the complex task of organizing all SAR operations at sea.

The I.M.R.C.C. liaises with the rescue coordination centers from other States in order to ensure maximum collaboration at international level in accordance with the Hamburg Convention.

11 What are the rescue procedures at sea?

The rescue procedures at sea are established, in an international context, by the Maritime Safety Committee, an internal body of the International Maritime Organization (IMO, [see annex 3](#)), a specialized agency of the United Nations. In the Italian national context, the Ministry of Transport and Navigation approved the National Plan for SAR at sea. The National Plan describes operational situations, coordination authorities, emergency phases, and details of the tasks of the authorities involved.

In the abovementioned plan, health care assistance is provided by ASL updating the competent Prefecture in order to give assistance to shipwrecked survivors who are transported to shore, and requesting the necessary land-based means, facilities, and personnel.

The Italian Ministry of Health together with the Italian Coast Guard and the CIRM (International Radio Medical Centre) approved the Procedure for medical assistance at sea and State of Emergency “*Procedura per l’assistenza medica in mare. Situazione di emergenza*” which provides practical information for giving first aid at sea.

Annex 3

What is the IMO?

The International Maritime Organization (IMO) is an independent agency of the United Nations responsible for developing the rules and techniques of international maritime navigation and improving the planning and development of international maritime navigation. Originally established under the name Intergovernmental Maritime

Consultative Organization (IMCO) by the Geneva Convention of 1948 and afterwards renamed under the current name in 1982, today it is the sole intergovernmental organization - to which nearly all the countries in the world adhere - concerned exclusively with facilitating the circulation of information, increasing cooperation between countries, and making regulations in any subject relating to navigation with the ultimate goal of improving the safety of shipping, navigation, and human life at sea.

Beyond Mare Nostrum: how and why private rescue missions in the Mediterranean Sea have become necessary

12 What is *Frontex* and what kind of activities does it perform?

Frontex is the European Agency of the coast and border guard. It coordinates the patrol system of the external borders, maritime, and land areas of the EU States and the enforcement of those agreements entered into with States neighboring the EU.

The Agency has seen a rapid growth over the last few years following an unprecedented rise in the number of refugees wishing to enter the EU, and the related pressure on those European States with external borders, which have been entrusted with the task of patrolling the borders.

In this context, *Frontex* offers additional technical assistance to those European States experiencing substantial migratory pressure; in particular, it grants delivery of additional technical equipment as well as the deployment of specially trained border staff to coordinate external land borders (e.g. in Bulgaria, Romania, Poland, and Slovakia) and maritime operations (in Greece, Italy, and Spain). For such reasons, *Frontex* has played a strategic role in almost all humanitarian SAR operations carried out over the past few years in the Mediterranean Sea, except for *Mare Nostrum* (see below).

13 What is the *Mare Nostrum* mission?

Mare Nostrum was a humanitarian and military operation in the Central Mediterranean Sea carried out by the Italian Government following the fatal shipwreck near Lampedusa on the night of October 2, 2013, which caused 366 casualties.

Mare Nostrum's objective was two-fold: to safeguard human life at sea and to prosecute those who made a profit from the illegal trafficking of migrants.

The operation was carried out with the participation of the personnel, naval vessels, and aircraft of the Italian Navy (*Marina Militare*), Italian Air Force (*Aeronautica Militare*), *Carabinieri*, Finance Guard (*Guardia di Finanza*), and of the Harbor's Master Offices (*Capitaneria di Porto*). Staff employed in the immigration offices were on board the vessels for the immediate identification of migrants and medical staff was there for any necessary sanitary/health checks and interventions. *Frontex* was not involved in this Operation.

More than 100,000 shipwrecked persons were saved thanks to *Mare Nostrum* during its 12 months of activity – from October 18th 2013 to October 31st 2014 – when the new operation called *Triton* began.

14 What is the *Triton* mission?

Triton is an EU operation for border security carried out by *Frontex*. Unlike *Mare Nostrum*, it has the primary aim of controlling European borders and only secondarily exists to carry out SAR missions at sea (according to EU Regulation no. 656 of 2014, *Triton* shall react to request-for-assistance calls and actively participate in SAR activities coordinated by the Central Control of the Coastguard).

Triton, which is made up of 26 EU States, began November 1, 2014, replacing the ongoing missions in the Mediterranean Sea (both those carried out by *Frontex* and by *Mare Nostrum*).

The capacity and the scope of intervention are, however, substantially lower compared to *Mare Nostrum*: less than 3 million euros per month, a modest fleet,

and an explorative mandate limited to the 55km area to the south of Malta and Sicily.

Consequently, from November 2014 to May 2015, *Triton* was a complete failure. Indeed, following another tragic shipwreck in the Italian seas on April 18, 2015 (58 casualties and 700-to-900 declared missing), *Triton* was significantly strengthened: more funds (26.5 million euros for *Triton* and *Poseidon* – the analogous mission in the Aegean Sea – until the end of 2015; and 38 million euros for 2016 only for *Triton*), the doubling of the fleet and, overall, a substantial extension of the operative area (up to 255 km to the south of Sicily). Despite *Triton* currently operating with 11 boats, its intervention capacity is not deemed very satisfactory.

15 What is the *Sophia* mission?

The *Sophia* operation, officially known as European Union Naval Force Mediterranean (in Italian: *Forza navale mediterranea dell'Unione Europea*) or by its acronym EUNAVFOR MED, is a military operation launched by the EU following the devastating shipwrecks which occurred in April 2015.

Its main aim is to dismantle the business model of the networks of human trafficking in the central-southern Mediterranean Sea, adopting systematic measures to identify, stop, and disable vessels and the means used or suspected to be used by human traffickers.

The operation has three steps: the first one regards the surveillance and evaluation of the networks of smuggling and human trafficking in the Mediterranean Sea the second phase entails the search and, if necessary, the diversion of boats and related equipment, preferably before they are used; and, finally, the stopping of drivers and smugglers.

The operation is conducted by boats under various flags (Italy, Belgium, France, Germany, Slovenia, Spain, and England) and since April 6th 2017 the Flagship of the whole operation has been the boat “San Giusto”, which belongs to the Italian Navy.

In the context of the *Sophia* operation, Italy undertook to train the Libyan coastguard, as formalized in the Memorandum of Understanding of August 23rd 2016 entered into by and between Mr. Enrico Credendino, Admiral Head Commander of EU fleet EUNAVFOR MED-SOPHIA, and Mr. Abdallah Toumia, Commodore of the Libyan Coastguard.

16 What is the crime of aiding and abetting illegal immigration (and how does it relate to the obligation to rescue at sea)?

According to Italian Law, and in particular [Article 12 of Legislative Decree No. 286/1998](#), the aiding and abetting of illegal immigration is an offence of mere conduct and free form. This means that, in order for the crime to be configured, there is no need for any event to occur, not even the actual entry of the foreigner into the territory. In order for the offence to occur, instead, it is sufficient to have an activity aimed at facilitating the arrival of the foreigner. Particularly high penalties are provided for ([see annex 4](#)).

Nonetheless, as rescuing shipwrecked persons at sea is a legal obligation ([see answers 1 and 2](#)) and, consequently, such conduct is NOT a crime.

Annex 4

Essential explainer on the aiding and abetting of illegal immigration offence, humanitarian clause and principle of non-refoulement

Italian Law: Article 12 of Legislative Decree No. 286/1998

- Anyone promoting, directing, organizing, financing, making, or carrying out other acts to procure the transport of foreigners in the territory of the State or of another State of which that person has no citizenship or permanent residence, violating the rules on foreigners' entry is punishable with imprisonment from 1 to 5 years and with a fine of € 15,000.

- A prison sentence of between 5 and 15 years if:
 - the entry or permanence regards 5 or more people;
 - the person's life or safety have been exposed to danger;
 - the person has been subjected to inhumane or degrading treatment;
 - the fact has been committed by three or more people/using international transport services/through altered or illegally obtained documents;
 - the authors have weapons or explosive materials available.

EU Law: Article 1 of EU Directive 2002/90/EC of the Council, the Member States shall punish anyone who intentionally aids non-EU citizens:

- To enter or transit through a Member State in violation of the legislation of such State on entry and transit of foreigners.
- To stay in a Member State in violation of the law of such State on the stay of foreigners. In this case, such conduct shall be considered as a crime if it is held for profit.

The same penalties must be provided for with regards to those who instigate, are complicit, or attempt to commit the offense.

There are cases where having a foreigner enter the territory of the State is not a crime (the so-called "humanitarian clause").

The humanitarian clause justifies the conduct of encouraging illegal entry of people into the territory of the State when it is motivated by humanitarian assistance. It is provided for in Article 12 of Legislative Decree No. 286/1998, according to which the rescue and humanitarian assistance provided in Italy to foreigners in need present in the territory of the State do not constitute a crime. EU Law also allows Member States to adopt such a humanitarian clause. Under Article 1, para. 2, of EU Directive 2002/90/EC, Member States may decide not to impose sanctions against a person who helps a foreigner enter or stay illegally in the territory of a Member State if the purpose of such action is humanitarian assistance.

There are cases where there is a mandatory prohibition on refusing entry to an irregular foreigner (so-called *non-refoulement* principle). The *non-refoulement* principle - established by Article 33 of the 1951 Geneva Convention - prohibits States from refusing a refugee the right to enter the State territory and from deporting, expelling and/or moving them to a State where their life or their freedoms would be threatened. This principle, enshrined in Article 3 of the ECHR as well, also applies with respect to rescue at sea in international waters. According to the ECHR judgment *Hirsi v. Jamaa* of February 23rd 2009, the criterion to be taken into consideration is the nationality of the rescue ship: every time the ship flies the flag of an ECHR State, the *non-refoulement* principle applies and the persons rescued may not be transferred to a State where their life or their freedoms would be threatened. In Italy, the bill on making torture a crime, currently under approval, provides for the introduction of this principle also in the Consolidated Law on Immigration (*Testo Unico sull'Immigrazione*) (Article 19).

17 When does the right arise for shipwrecked persons to ask for international protection?

The Hamburg Convention provides that, if sailing migrants are in danger, the country responsible for the relevant rescue area (SAR) has the duty to take them to a safe place (also) in order to allow them to seek asylum and international protection.

At sea there can thus be no formal assessment of the person's refugee or asylum seeker status (Palermo Protocol of 2000 against migrant trafficking; EU Regulation 2014/656 for *Frontex* operations; Legislative Decree 286/98, Consolidated Law on Immigration).

Pursuant to the provisions of the International Conventions, the captains of rescue ships are expected to identify themselves with the Regional Coordination Center (*Centro di Coordinamento Regionale*) and notify them of both the rescue and the port

of destination. In addition, during operations, people in need must be guaranteed international protection; therefore, any asylum applications made by the survivors need to be reported to the UNHCR, in addition to the ban on disembarking in the countries of origin.

When refugees are rescued by ships with the flag of a State of the Council of Europe and/or taken to a port of a State of the Council of Europe, the principle of *non-refoulement* applies. (see [Hirsi judgment, annex 4](#)).

Conversely, when the rescue operations (or, more often, rejection) are carried out by the Libyan authorities, refugees are simply readmitted to Libyan territory – where no access to international protection is available.

As already mentioned (see [question 8](#)), Libya has not ratified the Geneva Convention relating to the Status of Refugees, nor the primary Human Rights Conventions, and there are numerous international reports denouncing serious and systematic human rights violations perpetrated against migrants.

18 Can private NGOs perform rescue operations at sea?

Yes. The duty of solidarity at sea is a principle of international law (see [glossary](#)) compatible with direct actions, such as rescues at sea, performed by many NGOs and private individuals, not only in cases of chance rescues, but also when it is an express mission. Therefore, it is also legally justified to fill the gap left by humanitarian rescue actions provided by public authorities created after the end of the *Mare Nostrum* mission.

Since the end of that mission, EU interventions have been primarily military and therefore private individuals have intervened to carry out humanitarian actions at sea – under the direction of the Italian Coast Guard, which from time to time asks a single private vessel to intervene or receives the signal of a broken down boat from the NGO.

As described above, any private ship that sees a boat in difficulty must first notify the relevant SAR Regional Coordination Center, provide immediate rescue if need

be, and follow the directions provided by the SAR Regional Coordination Center (e.g. intervene immediately or wait for the arrival of other rescue ships, or lead the people rescued to a certain place).

The NGOs' work is therefore lawful, as it is international law that imposes solidarity at sea and the obligation to rescue. However, accompanying the shipwrecked persons, rescued under the rules of maritime law, to the so-called place of safety mentioned above could (erroneously, [see annex 4](#)) be seen as aiding and abetting the entry of irregular foreigners into the territory of the State.

Q&A about operators on board private ships aiming to rescue people in the sea: healthcare professionals, journalists, cultural mediators, and volunteers

19 Which legislation applies to the on-board personnel and the passengers of a private ship whose mission is to rescue people in international waters?

National law applies. The attribution of a nationality to the ship has the consequence (and the purpose) of making it subject to the sovereignty of the relevant Country. This link is relevant under multiple profiles, such as diplomatic protection, setting up of the ship's suitability criteria, boarding rules (including with reference to the healthcare staff), tax regime, etc.

However, the jurisdiction of the ship's Country is not unlimited and under multiple profiles the ship will be subject to the sovereignty of other Countries, such as those whose territorial waters or adjacent areas are crossed by the ship.

Since the ships' mission is rescuing lives in the sea, during rescue missions the on-board personnel will have to follow the instructions provided by the "*Centro di Coordinamento Regionale SAR*" which is responsible for the area where the relevant rescue takes place.

20 What are the powers and the specific duties of a ship's captain?

The ship's captain is the head of the mission and the leader of the travelling group. As head of the expedition, the captain has different tasks including the duty to comply with all the police requirements regarding the departure and the arrival of the ship; the duty to ensure that the required documents relating to the ship, the crew, the passengers, and the cargo are on board and that the on-board books are ritually kept; and the duty to draft reports of any extraordinary events which occur.

One of the most significant duties is the activity of rescuing ships in danger.

As leader of the mission, the captain also has additional powers, such as: hierarchical power over the crew, police and security powers, healthcare police powers, and customs police powers.

According to Art. 186 (*Captain's Authority*) of the Navigation Code (*Codice della Navigazione*) all people who are on board are subject to the Captain's authority; pursuant to Art. 187 (On-board Regulation) members of the crew are subject to the orders given by their superiors.

This means that, during the rescue operations in the sea, the captain, even if lacking in medical professionalism, will have the responsibility to take decisions which are not purely medical, will have to cooperate with the other advanced means of rescue (helicopter rescue, etc.) and will have to coordinate with the other operators involved in the rescue. There is therefore no doubt that the doctor will have to express his requests as regards his own expertise, but the decision-making power will remain with the captain, including cases of a transfer to the coast or by means of an helicopter, or transshipment on other ships.

21 Is the criminal jurisdiction for crimes committed on-board always the jurisdiction of the ship's Country?

In international waters, the ship is subject to the exclusive power of the relevant country which implies the impossibility for other countries to carry out government acts on-board the ship itself (Art. 92 of the Montego Bay Convention).

When the ship enters territorial waters or the adjacent area of a foreign State, the crew and people on board shall continue to be subject to the jurisdiction of the ship's Country and to the authority of the ship's captain. However, there are cases in which the coastal country may exercise its criminal jurisdiction on-board and there will therefore be a concurrent jurisdiction between the jurisdiction of the ship's country and the one of the coastal country.

According to international law, *“the criminal jurisdiction of the coastal country should not be exercised on board a foreign ship crossing territorial waters in order to arrest any person or in order to conduct any investigation in connection with any crime committed on board during its transition, with the following exceptions:*

- *if the consequences of the crime extend to the coastal country;*
- *if the crime could disturb the peace of the country or the good order of the territorial waters;*
- *if the assistance of the local authorities has been requested by the ship's captain or by a diplomatic agent or consular officer of the ship's country;*
or
- *if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances”.* (Article 27 of the Montego Bay Convention).

In the area adjacent to its territorial waters, the coastal Country may exercise the necessary control to:

- prevent infringement within its territory or territorial waters of its customs, tax, healthcare, and immigration laws and regulations;
- punish infringement of the above laws and regulations committed within its territory or territorial waters. (Article 33 of the Montego Bay Convention)
- Therefore, in the territorial waters and in the adjacent area, the ship's country does not necessarily have exclusive jurisdiction: this means that the ship's country is not the only country which could initiate an investigation and carry out the related legal activities, such as ordering the seizure of a ship or stopping it.

Under international law (both in accordance with the market standard and the agreements achieved), a crime is subject to the criminal jurisdiction of a state as long as there is a link between the country and the relevant event, between

the event and the territory, the nationality of the guilty party and of the victim, or if the constitutive element of the crime or its effect has been committed within the territory of the relevant country.

In Italy, the criminal code provides that the jurisdiction is primarily based on the principle of territoriality, which means that the person (Italian or foreigner) who commits a crime within the territory of the Country (including crimes committed against ships showing the Italian flag, even in international or foreign waters) can be punished under Italian law.

In order to apply the principle of territoriality, it is sufficient to have a link with Italy, even if the criminal act has not been entirely carried out in Italy. For example, the crime addressed as “facilitating illegal immigration” will be considered under Italian jurisdiction even when foreign traffickers have put in place actions aimed to facilitate the entrance of foreigners in the Italian territory without success because the actions committed on a foreign territory and in international waters were pre-directed and aimed to the entrance into the Italian territory.

Notwithstanding the principle of territoriality, crimes of a particular seriousness which have been carried out abroad, listed under Art. 7 and 8 of the Italian criminal code. (*e.g.* crimes against the personality of the country), are subject to Italian jurisdiction even if the crime has not been committed within Italian territory, and regardless of whether the author is Italian or foreigner.

Further exceptions to the principle of territoriality are the crimes committed abroad by Italians (Article 9 Criminal Code) or foreigners (Article 10 c.c.) which are prosecutable only under the conditions set forth under the abovementioned articles, such as when the author of the offense remains in Italian territory after having committed the offense.

22 How can conflicts of jurisdiction be resolved?

A possible conflict of jurisdiction among countries which acceded to the Montego Bay Convention (UNCLOS) may be resolved on the basis of Part XV

of the Convention, which sets out the methods of conflict resolution arising from the application of the Convention itself:

- Article 279 provides an obligation to settle disputes by peaceful means;
- Article 282 provides that “*if the State parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional, or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute agree otherwise*”;
- Article 287 provides for four courts to which the countries shall choose (optional and not hierarchical): ITLOS, International Court for the Law of the Sea; The International Court of Justice; court of arbitration; a court of arbitration for specific categories of disputes.

Countries that are not party to UNCLOS cannot be subject to the rules of the Convention either as regards the jurisdiction (question N. 20) nor the settlement of disputes. The problem could arise in particular with Libya, which, despite having signed UNCLOS, has never ratified it, and has no obligations deriving from the Convention.

However, a sentence of the International Criminal Court of 1985, given in relation to a dispute between Malta and Libya itself, stated that some UNCLOS rules could be considered as market standard and applied to Libya despite the fact that the convention was not yet in force: Libya had accepted this possibility and had also accepted that the dispute in question was governed by the market standard. If an UNCLOS rule is recognized as market standard, then it will also apply to Libya.

The 2008 Italy–Libya Treaty of friendship, partnership and cooperation does not set out specific dispute settlement mechanisms, but Article 3 (by reproducing a provision of the UN Convention) prohibits the use of threat or force against territorial integrity, Article 1 imposes to the Countries the respect of international legality, and Article 4 imposes the principle of non-interference in affairs falling within the jurisdiction of the other party.

23 When could a ship be pursued by authorities of a country different from the one of the ship?

The possibility for a Country to pursue a ship showing a foreign flag varies according to the area involved:

- in territorial waters: the Country has the right of pursue it because the territorial waters are assimilated to the territory of the Country;
- in the adjacent area: the Country has the right to pursue it, but only if the protection rights of such an area have been violated;
- in the exclusive economic zone and in the waters above the continental shelf: the country has the right to pursue it to prevent violations of the laws concerning such an area;
- in high seas: the right of a State to pursue a ship showing a foreign flag, the so called “right of hot pursuit”, is regulated under art. 111 of UNICLOS.

Pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of the country. Such pursuit must be commenced when the foreign ship was crossing the internal waters, the archipelagic waters, the territorial waters or the adjacent zone of the pursuing country, and may only be continued outside the territorial waters or the adjacent zone if the pursuit has not been interrupted.

The right of “hot pursuit” may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to such purpose. The right of “hot pursuit” ceases as soon as the ship being pursued enters the territorial waters of a third State.

24 Does a healthcare professional working on a ship on behalf of a private organization have the same duties and responsibilities as when working in a public hospital (as a “public officer”)?

No. The healthcare professional (doctor, nurse, obstetrician) who performs his/her job as an independent contractor on a private ship does not have authoritative powers and does not even exercise an activity regulated by public law; therefore, the qualification of public officer or person entrusted with the public service.

25 Does the healthcare professional working on a ship on behalf of a private organization have the obligation to report the crimes he or she becomes aware of “in the exercise of or because of his or her duties or service”?

No, because he/she is not a public officer or an officer entrusted with public service. However, they are subject to the obligation to draft a report, provided under Art. 365 of the Criminal Code. Failure to comply with this obligation constitutes a crime subject to the payment of a fine.

26 What is the report?

If while a person is carrying out a healthcare profession a situation presents the characteristics of a crime, such person is required to draft a report (Article 365 Criminal Code), indicating the essential elements of the facts, the data useful to identify the person who has been assisted (which is usually the victim of the crime), the day it occurred and the relevant evidence. The report must be sent within 48 hours to the prosecutor’s office or to any police officer who is obliged to report to the public prosecutor.

The submission of the report to the ASL (local healthcare authority) or to the Prefecture does not therefore release the healthcare professional from its duties, while the submission to the Police, the Coast Guard, etc. excludes the omission.

27 In which cases is the healthcare professional not required to draft a report? When does professional secrecy apply?

The healthcare professional is not required to comply with such duty when the report exposes the person assisted by him/her to criminal proceedings. In other words, the healthcare professional is required to draft a report if he/she finds out of the existence of a crime that can be directly prosecuted and that has been made against the person assisted by him/her, while he/she is not required to draft the report if the assisted person is the offender, because in that case he/she is subject to the **professional secrecy**.

The violation of the professional secrecy involves both criminal (detention) and civil (indemnification) sanctions.

28 If a rescued person reveals that serious crimes have occurred in Libya or in other foreign countries, does the health care professional have to draft the report?

No. Crimes committed by foreigners against foreigners and outside the territory of the State, cannot be prosecuted in Italy (except in residual cases and under the conditions set out in Article 10 of the Italian criminal code). If the perpetrator of the crime is or will be transferred, even after the commission of the crime, in the territory of the State, the crime may be subject to Italian jurisdiction as long as an explicit request is made by the Minister of Justice. Therefore, where the healthcare professional detects traces or elements of a crime in its activity without any connection with Italy, the reporting obligation is not required. It should be pointed out that the crime committed in the high seas (in international waters) on ships showing the flag of a foreign country or without a flag shall also to be considered as committed abroad.

In practice, the healthcare professional involved in rescue mission of migrants in the sea could detect a large number of crimes (against the person, against property, against sexual freedom), but in the majority of cases it will be possible to detect the absence of jurisdiction by Italian judicial authorities, as long as the relevant actions have been carried out abroad. In such cases, there is no obligation to report which could be sanctioned if omitted. The submission of the report, however, can be considered as a “good practice”, useful in ensuring the transparency of the rescue operations carried out, as well as for the purposes of knowing the events which, although having taken place abroad, still have an impact in the territory of the State.

29 In case of investigations conducted by the Italian judicial police, are cultural mediators and volunteers operating on a ship belonging to a private organization obliged to cooperate in respect of the investigation activities?

Yes. In accordance with Article 348 of the Italian Code of Criminal Procedure, the judicial police are required to gather all useful elements for the reconstruction of the events and identify the responsible persons and to this end “the Police, among others, carry out activities with regard to a) the search for objects and traces relevant to the criminal offence, as well as the preservation of evidence

and of the crime scene; and (b) search for individuals who can report on circumstances relevant to the reconstruction of the events”.

Therefore, a volunteer working on a private ship may be requested to cooperate (for example, by handing over material useful for the above investigation activities) and the unjustified refusal to do so could be considered “illegal behaviour” and consequently the volunteer put under investigation for making false statements to the Public Prosecutor or even for facilitating the commitment of criminal offences.

30 In which circumstances can a journalist be forced by a policeman to display his journalistic material (notes, pictures, etc.)? In which circumstances can you be forced to hand over such materials? Can the journalist object on grounds of professional privilege?

The right to information and professional privilege and the freedom of the journalist can be strongly limited in the name of public order in the context of police preventive actions against illegal immigration or conducted in the context of investigations by judicial police as delegated by the Public Prosecutor’s office with regard to serious criminal offenses, such as human trafficking.

Article 348 Italian Code of Criminal Procedure provides that the judicial police are required to collect all useful elements for the reconstruction of the events and the identification of the responsible persons. For example, it may happen that the judicial police intervene immediately after the commitment of a criminal offense or is conducting investigations delegated by the public prosecutor for the identification of the skipper, and request a journalist present on the ship to hand over photos. The unjustified refusal to hand over such material may be considered illegal, so that the journalist may be put under investigation for making false statements to the Public Prosecutor or even for facilitating the commitment of criminal offences.

In such cases, it is certainly possible for the journalist to object to such request on grounds of professional privilege and in order to protect his or her sources (in accordance with Article 200 Italian Code of Criminal Procedure and Article 10 ECHR).

There is indeed a right for professional journalists – but not for volunteers or reporters and journalists not listed with the public-roll of journalists – to raise an objection on grounds of professional privilege against the public authority requesting the delivery of documents received by reason of their professional activity (article 256 Italian Code of Criminal Procedure).

31 What happens if the journalist refuses on grounds of professional privilege?

Following the objection on grounds of professional privilege, the judicial authority, if it has reason to dispute the grounds of such objection and deems that is impossible to proceed without the acquisition of the documents, proceeds with examining the case; if the journalist's objection proves groundless, it orders the seizure of documents and drafts a report (Article 354 Italian Code of Criminal Procedure)

According to the best case-law, in case a professional privilege objection is raised, the judicial authority must carry out appropriate investigations and may authorise the seizure, but only if this is necessary for the purposes of the investigation.

The examination, for example, of a journalist's personal computer's memory, even if it is a third party not under investigation, is considered lawful, provided that such investigation activity does not compromise the journalist's right to the confidentiality of his correspondence and protection of his sources.

32 What rights have the volunteer, the journalist, or the doctor involved in investigations?

Under Italian law, the police, must inform a person under investigation, (regardless of their nationality) that (a) s/he is under investigation, (b) that s/he must elect where s/he intends to receive the relevant notices regarding the proceedings, and (c) that has the right to appoint an attorney (Article 161 Italian Code of Criminal Procedure).

A person under investigation has several several rights which vary depending on the type of activity carried out by the police (e.g. search, interrogation, or arrest).

For a complete review of the rights of the investigated person please refer to [Know your Rights: A short guide on your rights with the police](#).

In summary

In the event of a search or personal search you are entitled to:

- require that such acts be carried out in the presence of a lawyer or a person you trust;
- to have a copy of the search report, even if nothing is seized, indicating the operations carried out, the reason for the search to be carried out without the prior authorisation of a judge, the names and the qualifications of the police agents who conducted the search;
- have an interpreter if the person concerned is a citizen of the country but does not speak or understand Italian.

In the event of a search or personal search, officers and judicial police officers shall:

- carry out such operations in accordance with the dignity and privacy of the person;
- not employ methods or techniques that can undermine one's self-determination capacity;
and
- in the case of searches on women, only use female staff.

However, police officers do not always wait until the lawyer's arrival. In these cases, it is good practice to follow all the search operations and pay attention to the drafting of the search, and possibly seizure, report. Before being signed, the report minutes must be read to confirm that the operations have been carried out in the manner described therein. If this is not the case, it is advisable not to sign such report. In any case, in such situations it is always advisable to consult a lawyer.

In the event of arrest or detention as a result of being suspected of committing a serious crime, you are entitled to:

- appoint a trusted lawyer;

- receive the relevant information in order to be able to gain access to the benefit of free legal aid if you have an annual income of less than 11,000 Euros;
- be informed of the charges raised against you;
- if unable to speak Italian, obtain language translation assistance by an interpreter and translation of the main documents;
- remain silent;
- inform the consular authority and family members;
- have access to emergency medical care;
- be conducted before a judicial authority for validation within 96 hours from the time of arrest or detention;
- appear before the court in order to be interrogated and appeal at the Supreme Court against the decision to validate the detention or the arrest warrant;
- receive the assistance of a lawyer appointed by a close relative or a court - appointed attorney if unable to appoint a trusted lawyer;
- to consult with your lawyer immediately after the arrest or detention, save for the public prosecutor's office's ability to delay such interview for up to 5 days.

33 Can a policeman force a journalist or volunteer to disembark from the boat in Italian territory?

In case police carry out controls and a person refuses to declare his or her identity or provide an identity document, or there is sufficient evidence to conclude that the identity or documents provided are false, you may be taken to the police station (this is the so-called identification stop, not to be confused with the imprisoned imprisonment of a serious crime). In such cases, or when the person is subject to interim measures (arrest or detention), a journalist or volunteer may be forced to leave the ship in order to be taken to a police station.

Police officers accompanying the police for identification must:

- immediately inform the Public Prosecutor;
- detain the suspect for the time strictly necessary for his or her identification, and in any case release the same within 24 hours of the communication to the Public Prosecutor.

In such cases, there is no right to appoint a lawyer.

34 When does one have the right to call a lawyer or the embassy? If you are interrogated as a person informed on the facts (potential witness), do you have the right to be assisted by a lawyer?

The lawyer can only be contacted if the operator is being investigated (and as such subject to an interim measure) or subject to a personal search. In the event of arrest, detention or enforcement of a criminal conviction, there is also a right to inform family members and, in the case of a foreign person, the right to contact the embassy.

If the suspect is questioned, he is entitled to the assistance of a lawyer and may refuse to answer if the lawyer is not present. Statements made, if any, will not be admissible in trial if have not been made in the presence of a lawyer.

However, it may also be the case that the public prosecutor has arranged to hear the volunteer or journalist in order to acquire summary and preliminary witness statements. In this case, you are not entitled to the assistance of a lawyer and you have an obligation to answer the questions by telling the truth, save for the right to refuse on grounds of professional privilege as journalist or doctor but not as a cultural mediator and volunteer.

Essential glossary of international regulatory sources

[Montego Bay United Nations Convention on the Law of the Sea \(“UNCLOS” or the “Convention”\)](#)

of 1982, ratified by Italy by means of law No. 689: it regulates the rights and obligations of States in the use of the seas and oceans, by regulating what it had been the customary use of marine spaces until its approval. It is the primary and supreme source of international maritime law. Article 311 provides the Convention shall not alter the rights and obligations of States which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States of their rights or the performance of their obligations under the Convention. Among the rules that cannot be subject to a derogation from the States also by means of agreements with other states, Article 98 must be highlighted as it constitutes application of the fundamental principle of the duty of solidarity at sea. Each State requires that the captain of a ship flying its flag, as far as possible and without the ship, crew and passengers, being put in serious danger:

- to provide assistance to anyone in danger at sea;
- to go as soon as possible to help of people in difficulty if informed that they need assistance, and within the limits of the reasonableness of the intervention;
- to succour in the event of a collision with other ship, its crew and its passengers.

The second paragraph requires that Coastal States create and keep in place the operation of an adequate and effective SAR permanent service that can ensure maritime and air safety and, where required, cooperate to this end with neighbouring States in the framework of agreements regional;

[International Convention for the Protection of Human Life at Sea](#)

(known as SOLAS, acronym for Safety of Life at Sea) of 1974, ratified by Italy by means of Law 313 of 23/5/1980: it is an international agreement drawn up by the Maritime Organization International (IMO), aimed at safeguarding merchant shipping navigation and with explicit regard to the safeguarding of human life at sea;

[1979 Hamburg International Convention on SAR](#)

ratified by Italy by means of Law 147 of 3/4/1989: It is an international agreement drawn up by the International Maritime Organization (IMO) to protect the

security of merchant shipping navigation, with explicit reference to sea rescue. It governs the organisation of SAR services. It provides that the contracting States must divide, on the basis of regional agreements, the sea in areas of their SAR competence, providing for the delimitation between the front States of the so called SAR zones through regional agreements, without prejudice to the legal regime of maritime areas. It also provides that the authorities of a coastal State responsible for the relevant area of intervention (on the basis of regional agreements entered into), once informed by the authorities of another State of the presence of persons living in the SAR area of their own competence, are required to take immediate action without taking into account the nationality or legal status of those persons (point 3.1.3 of the Hamburg Convention).

The authority responsible for the implementation of the Hamburg Convention (SAR) is the relevant Ministry of Infrastructure and Transport, while the central and peripheral organisation is entrusted to the General Command of the relevant Port Authority and its peripheral structures;

[Guidelines on the treatment of people at sea which were adopted in May 2004 by the Maritime Safety Committee](#)

amending the SAR and SOLAS conventions make it clear that “a safe place is a place where: (a) rescue operations are considered to be completed and where the survivors’ safety or their lives are no longer threatened, (b) primary human needs (such as food, housing, and medical care) can be met and (c) the transport of the survivors to the near or final destination can be organised. It is emphasised in particular that “the landing of asylum seekers and refugees, previously recovered at sea, in areas where their lives and their freedom would be threatened, should be avoided.” Finally, it is added that “any operation and procedure such as identifying and defining the status of the assisted persons, which goes beyond the provision of assistance to endangered persons, should not be allowed where there are obstacles to providing such assistance or excessive delays to landing”;

[IMO Resolution MSC / Circular 960 / 2000](#)

is a document from the International Maritime Organization which specifically regulates the provision of sea-going medical care.

GUIDANCE ON RESCUE OPERATIONS IN THE MEDITERRANEAN

Know Your Rights

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