



GUIDANCE ON RESCUE OPERATIONS IN THE MEDITERRANEAN II

Know Your Rights

About us

Born in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of 37 civil society organisations that defends and promotes everyone's rights and liberties, through a combination of advocacy, public campaigns and legal action. CILD's areas of activity include migrants' and refugees' rights, LGBTI rights, criminal justice, Roma and Sinti rights and freedom of expression.

Why this guidance

Migrants' and refugees' rights are among CILD's main areas of activity. Saving lives at sea is an obligation imposed by the law of the sea and by the Italian Constitution, which are based on solidarity as a mandatory duty. Under international law, States are required to oblige the masters of ships that fly their national flag to provide assistance to anyone found at sea in life-threatening conditions.

Considering the unprecedented attack against civil society members who rescue migrants at sea, a year ago we published our [first guidance on rescue operations in the Mediterranean](#), in order to contribute to an informed debate, as well as to provide protection tools for those working on the front line in rescue operations.

The establishment of the Libyan SAR and the externalisation of rescues at sea in favour of the Libyan Coast Guard, together with the prohibition of vessels involved in rescue operations in the Mediterranean to land at Italian ports, have caused a sharp increase in the number of deaths at sea in 2018, as well as further criminalisation of shipmasters and people carrying out rescue operations.

Accordingly, we have decided to update the questions included in our first guidance. Because knowing one's rights is the first step in asserting them.

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Foreword

Under [international law](#), States are required to oblige any masters of ships flying their national flag to provide assistance to anyone found at sea in life-threatening conditions, inform the competent authorities, provide the individuals rescued at sea with first aid, and transfer them as soon as possible to a place of safety (Hamburg International SAR Convention, hereinafter [Hamburg Convention](#), para. 3.1.9).

All subjects, public or private, who become aware that a ship or person is in danger at sea, are obliged to provide assistance in the event that such danger is serious and imminent and requires immediate rescue.

Under the [Hamburg Convention](#), all coastal States are required to provide search and rescue (referred to with the acronym “SAR”) services. The acronym SAR refers to all the operations aimed at saving people in need.

The duty to save and provide assistance to any person found to be in danger at sea exists in any area of sea (international waters, territorial waters, etc. See annex 1, p. 6 of our [Guidance on rescue operations in the Mediterranean I](#)).

Under the [Hamburg Convention](#), all coastal States of the Mediterranean are required to provide SAR services, and the SAR services of the various States are required to coordinate their actions with one another.

At the national level, SAR activities are coordinated by the Rescue Coordination Centres (hereinafter RCCs). These centres may qualify as Maritime Rescue Coordination Centres (hereinafter MRCCs) or Joint Rescue Coordination Centres (hereinafter JRCCs).

The responsibility of SAR activities in the Mediterranean was divided between coastal States during the IMO Conference (International Maritime Organization, see annex 3, p. 12 of our [Guidance on rescue operations in the Mediterranean I](#)), held in Valencia in 1997.

According to this division of the SAR zones (see annex 2, p. 9 of our [Guidance on rescue operations in the Mediterranean I](#)), Italy is responsible for an area that amounts to about one fifth of the whole Mediterranean sea, i.e. 500 square kilometers. In several areas the Italian SAR zone overlaps with the SAR zone of Malta, which is responsible for an extremely extended zone with respect to the island's territory and its patrolling assets.

Finally, Libya established its SAR zone with a unilateral declaration, which has been internationally recognised since its establishment and was officially approved by the IMO at the end of June 2018. Search and rescue activities in the Libyan SAR zone are coordinated by the JRCC of Tripoli.

Rescue procedures at sea are established internationally by the Maritime Safety Committee (hereinafter MSC), the IMO's technical body that works on security issues. In 2004, the MSC adopted the [Guidelines on the treatment of persons rescued at sea](#) (hereinafter IMO Guidelines on rescue at sea), in order to provide guidance to Governments and to shipmasters with regard to their obligations relating to treatment of persons rescued at sea.

FAQs

1 What are the duties of shipmasters when they find a vessel carrying individuals in life-threatening conditions?

First of all, shipmasters must inform the competent MRCC. They must then provide immediate assistance, if urgently needed, and scrupulously follow the directions provided by the Regional SAR Coordination Centre (e.g. to immediately intervene, to wait for the arrival of other rescue ships, or to bring the rescued individuals to a specific place).

2 What happens if a vessel involved in rescue operations in international waters makes a request to intervene and no MRCC responds?

If the MRCC responsible for the area where the survivors are recovered cannot be contacted, shipmasters should attempt to contact another MRCC or any other Government authority that may be able to assist, beginning with those from the vessel's flag State.

If the MRCC that has been contacted does not have competence to intervene, it should immediately begin efforts to transfer the case to the MRCC responsible for the region in which assistance is being rendered.

The first MRCC contacted, however, is responsible for coordinating the case until the responsible MRCC or other competent authority assumes responsibility (IMO Guidelines on rescue at sea, para. 6.7). For more information about coordination between regional MRCCs, see [Sheet 1](#).

3 What are the duties of a coastal State if a vessel involved in rescue operations requests its intervention?

Coastal States, as well as the responsible MRCC, should make every effort to minimize the time survivors remain aboard the assisting ship ([IMO Guidelines on rescue at sea](#), para. 6.8).

Coastal States should also adopt measures aimed at relieving the ship as soon as practicable, in order to avoid undue delay, financial burden or other related difficulties after assisting persons at sea ([IMO Guidelines on rescue at sea](#), para. 6.3¹). For more information about how to resolve the conflicts that can arise between States in the application of the [Montego Bay Convention](#), see question 22, p. 24 of our [Guidance on rescue operations in the Mediterranean I](#)).

4 Can masters of private vessels that have saved lives at sea disregard an order by the coordinating MRCC to tranship migrants onto Libyan patrol boats or to land at a Libyan port? And at a Tunisian port?

Yes, they can. The order to take the rescued persons to a Libyan port or to transfer them onto the ships of the Libyan Coast Guard can be disregarded by the shipmaster because Libya cannot be considered a place of safety (see the [Asso 28 case](#)).

Indeed, according to the [IMO Guidelines on rescue at sea](#), shipmasters should seek to ensure that survivors are not disembarked at a place where their safety would be further jeopardized (para. 5.1.6).

However, the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Government responsible for the SAR region in which the survivors were recovered ([IMO Guidelines on rescue at sea](#), para. 2.5). In fact, the responsible State shall adopt all the measures that are necessary to ensure that the survivors assisted are delivered to a place of safety as soon as reasonably practicable ([Hamburg Convention](#), para. 3.1.9. See [Aquarius case](#) and [Monte Sperone case](#)), i.e. a location where the survivors' safety of life is no longer threatened, where their basic human needs (such as food, shelter, and medical needs) can be met, and from which transportation arrangements can be made for the survivors' next or final destination ([IMO Guidelines on rescue at sea](#), para. 6.12. See [Maltese SAR case](#)).

¹ In the cases of the rescues carried out by the ships Diciotti, Monte Sperone and Protector, Italy might have violated these rules.

In no way can **Libya** be considered a place of safety because it has neither ratified the 1951 Geneva Convention nor adopted domestic legislation for the protection of refugees. In addition, the United Nations and several [other international organisations](#) report that those migrants who are forcibly returned to Libya suffer systematic human rights violations (including torture, violence, and arbitrary detention in inhumane conditions). Even the Judge of preliminary investigations of Ragusa, in rejecting the request for the preventive seizure of the ship *Open Arms*, in his decision of 16 April 2018 declared that Libya cannot be considered a "place of safety for landing" due to the serious violations of human rights that migrants suffer in the country.

The possible forced return to Libya of people rescued at sea would therefore amount to a serious violation of international, European and domestic law. In particular, it would be a violation of the principle of non-refoulement (forced return) enshrined in Art. 33 of the 1951 Geneva Convention, as well as a breach of Art. 3 of the [European Convention on Human Rights](#) (hereinafter ECHR), since in that country they would be exposed to torture or inhuman or degrading treatment or punishment, and Art. 4 of Protocol No. 4 to the Convention, which prohibits the collective expulsion of foreigners. Moreover, in the European Union, [Regulation \(EU\) No. 656/2014](#) provides that no person shall be disembarked in a country where they would be at risk of suffering serious human rights violations and further provides that persons rescued at sea should be given the opportunity to express any reasons for believing that disembarkation in a certain place would be in violation of the principle of *non-refoulement*.

It should be noted that the violation of the aforementioned provisions occurs not only if a ship directly takes the persons rescued at sea to a country where their life or freedom would be threatened, but also if the ship hands over the rescued persons to the authorities of such a country. This last hypothesis would occur, for example, if an Italian ship transhipped the rescued migrants onto Libyan Coast Guard ships or patrol boats headed to Libya (see [Asso 28 case](#) and [Open Arms case](#)).

If rescued persons are handed off to the Libyan authorities, shipmasters may also incur criminal and civil liability. Rescued persons who are forcibly returned

to Libya can not only bring an action – even as a matter of urgency – before the European Court of Human Rights for the violation of the aforementioned provisions, but also report the shipmaster to the authorities of the flag State of the ship that carried out the refoulement and request compensation for the damage suffered.

And what about Tunisia?

Although Tunisia has ratified the 1951 Geneva Convention, and despite Art. 26 of the Tunisian Constitution guaranteeing the right to political asylum, there is no national asylum system in the country. The country is working on a draft law on asylum, but it does not seem that the final version will be finalised any time soon. In the absence of effective legislation on asylum law, therefore, the UNHCR is the Agency that identifies asylum seekers and determines who has the right to be granted refugee status.

However, the [Tunisian legal framework](#) does not provide any protection for refugees and asylum seekers, and they do not even have the right to a residence permit (see the Sarost 5 case). Another problematic aspect is the detention of foreigners in Tunisia, as there are [no legislative provisions](#) concerning the detention of foreigners who are found to be staying illegally on national territory. As a result, people seeking international protection may be detained for having entered or residing illegally in Tunisia.

Both [Amnesty International](#) and [Human Rights Watch](#) have long expressed concerns about the actual extent of the recognition of human rights in Tunisia, despite some recent progress. In particular, these organisations have highlighted the use of torture and the ill-treatment of prisoners in a general context of impunity, the use of arbitrary restrictions of freedom of movement, and the total lack of protection of LGBTI rights.

In any case, shipmasters who, after having rescued people at sea, intend to land in Tunisia have the obligation to request that those they have rescued who come from or have fled Tunisia and show their willingness to apply for asylum are not disembarked in the country.

5 What happens if the master of a ship in distress enters territorial waters?

All ships flying the flag of another State enjoy the right of innocent passage through the territorial sea of a coastal State (Art. 17 of the [Montego Bay Convention](#)).

The innocent passage of a foreign ship through States' territorial waters must be continuous and expeditious, and does not include the possibility for the ship to stop at any port facility. However, in case of force majeure or distress (i.e. in the event that the shipmaster assesses that the people on board are threatened by a serious and imminent danger and need immediate assistance), Art. 18, para. 2 of the [Montego Bay Convention](#) is applicable: it follows that the coastal State cannot invoke a breach of the right of innocent passage, nor force the foreign ship to leave its territorial waters, for the coastal State has the obligation to allow the ship to enter (or rather, according to the terminology of the Convention, to stop and anchor) its port facilities.

Even if the foreign ship enters a coastal State's port facility without authorisation, this does not constitute an international offence for the ship's flag State and – if the ships land in Italy – the shipmaster does not incur criminal liability, as the latter would be excluded by necessity (Art. 54 of the Italian Criminal Code).

6 Is it possible to prevent private vessels involved in rescue operations from entering ports?

Coastal States, in exercising their sovereignty, have the power to deny access to their ports. International conventions on the law of the sea, while not explicitly foreseeing the obligation for States to allow access to their ports for the ships that have carried out rescue operations, impose and rely on the obligation of solidarity at sea, which would be disregarded if a ship carrying individuals in danger that have just been rescued and need immediate aid was denied access to any port facilities. Denying access to port facilities would constitute a breach of international human rights and refugee protection standards, especially the principle of *non-refoulement* enshrined in Art. 33 of the Geneva Convention.

Refusing to allow access to ports to vessels involved in rescue operations may result in the violation of Articles 2 and 3 of the ECHR (see [Aquarius case](#), [Diciotti case](#) and [Monte Sperone case](#)) if the rescued individuals require urgent medical care and essential supplies (water, food, medicines), and those needs cannot be met due to such access refusal.

Arbitrary and indiscriminate refusal of access to ports for vessels makes it impossible to assess the individual situation of the rescued people on board, and may therefore constitute a violation of the prohibition of collective expulsion provided for in Art. 4 of Protocol No. 4 to the ECHR.

7 Who has the competence in Italy to close ports/prevent ships from landing?

The Port Authority (Capitaneria di Porto) – Coast Guard has the power to decide whether a vessel can be authorised to enter a port (see [Diciotti case](#) and [Open Arms](#) and [Astral case](#)). In this matter, the Port Authority – Coast Guard reports to the Ministry of Infrastructure and Transport.

Access to ports in international waters (see annex 1, p. 6 and question 23, p. 25 of our Guidance on rescue operations in the Mediterranean I) is indeed not unrestricted. Entry into ports is generally regulated by Articles 179 and following of the Italian Navigation Code. These provisions require that a series of communications be sent in advance to the Port Authority regarding the cargo, personnel and passengers of the ship. Once the communications have been received, the Port Authority authorises entry and/or arranges further checks and verifications.

For those ships which have carried out rescue operations at sea, different provisions apply, i.e. those related to rescue operations at sea (rescue being an obligation for States, for shipmasters, and for the Port Authority commander).

According to these provisions, those ships that have rescued people in international waters, coordinated by the MRCC, are to head towards the territorial sea and await the indications of the port of landing, which is selected and

communicated by the MRCC. The MRCC reports to the Central Command of the Port Authorities and reports on all of its activities to the Ministry of Infrastructure and Transport.

8 Can the mayor and the prefect decide to close a port?

Yes, they can do so in exceptional situations. The mayor has the right to close a port or prohibit the landing of a single ship by means of temporary and urgent orders in the case of health or public hygiene emergencies and – after communication to the prefect – to prevent or eliminate serious dangers threatening public safety and urban security (Articles 50, para. 5 and 54, para. 4 of the Consolidated Law on the regulation of local authorities).

9 What can the Minister of the Interior and the police do when a ship that has carried out rescue operations requests to land at an Italian port? Can they prevent the ship from landing?

The Ministry of the Interior has no competence over the closure of ports to ships that have provided relief. The competent authority in this matter is the Minister of Infrastructure and Transport.

In fact, the powers of Minister of the Interior are only those aimed at guaranteeing public order and surveillance, as well as at preventing and combating illegal immigration by sea.²

In this context, the Central Directorate for Immigration and Border Police plays a major role. Created by law N. 189 of 2002, this authority is aimed at coordinating, under the guidance of the Ministry of the Interior, the operational actions of the Navy, the police forces and the port authorities.

² For the definition of the crime of facilitating illegal immigration, see question 16 and annex 4, p. 16 of our [Guidance on rescue operations in the Mediterranean I](#).

However, a 2003 Interministerial Decree from the Ministry of the Interior together with the Ministers of Defense, Economy and Finance and Infrastructures and Transport, which regulates **the fight against illegal immigration, clarifies that the MRCC is the only responsible authority for rescue activities at sea and establishes that rescue activities have priority over any other planned actions.**

Consequently, the Ministry of the Interior is only entitled to intervene, within a limited timeframe, if its actions fall under the provisions of the aforementioned decree. Police forces can also intervene³ when ships are seized or searched, or when alleged smugglers are arrested and detained. Such interventions can only take place upon the decision of the prosecuting judicial authority or, in some cases, on the initiative of the judicial police (without prejudice for the need of validation by the competent judicial authority⁴). However, police forces are limited in their interventions, because rescue operations (including a ship's landing at a port) have priority over the actions carried out by the police.

10 What are the powers of the shipmaster and what should he do when faced with news of alleged criminal offence on board?

The shipmaster is the head of the expedition and the head of all people on board. As the head of all people on board, the shipmaster has several powers, including: hierarchical power over the crew, policing and security powers, health police powers, customs police powers, and judicial police powers.

The shipmaster is obliged to report on his or her judicial police functions to the master of the port when the ship first arrives. If during the trip there have been extraordinary events regarding the ship, the cargo, or the persons on board, the shipmaster must produce a written report informing the judicial authority, the

³ For more information on when Italy has criminal jurisdiction over offenses committed on ships flying a foreign flag, see question 21, p. 22 of our [Guide on rescue operations in the Mediterranean I](#).

⁴ According to Articles 347 and following of the Italian criminal procedure code, criminal police can carry out activities on their own initiative, such as securing evidence, identifying the suspect or other persons, receiving summaries of witness statements, as well as carrying out searches, seizures, and inspections that cannot be carried out again.

Commander of the harbour, or the consul within 24 hours of arrival. When a crime has been committed during the trip⁵ and the staff has proceeded to arrest or apprehend the culprit, according to Art. 1237 of the Navigation Code, the shipmaster, within 24 hours of docking at a port, must hand over “the people who are either arrested or detained, the complaints, lawsuits, reports and all other written accusations, the reports and proofs of offence to the maritime authority or to the authority in charge of inland navigation or to the local aviation authority of the territory; alternatively, on foreign grounds, to the consular authority or, as an alternative, to the captains of the warships that are present.”⁶

11 What should the shipmaster do when people on board show interest in applying for international protection?

The shipmaster is not responsible for the procedures relating to the determination of the status of the rescued persons, which according to the IMO [Circular 194/2009](#) must be carried out after arrival in a safe place. A formal assessment of refugee status is not possible at sea, as also indicated in paragraph 6.20 of the [IMO Rescue Guidelines at sea](#).

However, if the rescued persons manifest the will to request international protection, the shipmaster must inform the MRCC and the UNHCR. The shipmaster may also be invited by the State that is in charge of the SAR or the coastal State to facilitate the process of requesting international protection, obtaining information on the name, age, sex, health conditions, and any particular

⁵ Art. 1236 of the Navigation Code also prescribes that the officers and agents of the Port Authorities and of the administration of inland navigation, as well as the crew members, are obliged to report to criminal police officers, as soon as they are informed, the offenses for which they should proceed on their own motion (*ex officio*) that have been committed in the port or on board, even during navigation.

⁶ As established in the National SAR Plan, during any rescue operations, in order for the Maritime Authority to be able to fulfil the duties referred to in Art. 578 of the Navigation Code, anyone is obliged to collect and make available all the information that is useful to carry out the planned summary investigation. If, in the course of such activity, alleged criminal offences emerge, they must be immediately reported to the competent judicial authority. In any case, the evidence will have to be kept available not only for the development of any administrative inquiries, but also for any requests by the judicial authority.

medical needs of individuals. Following disembarkation, it will then be the duty of the State to ensure that the will to request international protection is formalised within 3 days.

In this case, the shipmaster must take into consideration the safety of the asylum seeker, avoiding to communicate the information obtained to the authorities of his or her country of origin or any other country where his or her life could be in danger. It is also the shipmaster's duty to consider the need to prevent persons who claim to have a justified fear of persecution from being taken to a place where their life and freedom would be at risk ([IMO Guidelines at sea](#), para 6.17). In particular, the shipmaster has the obligation not to request that the persons disembark in their country of origin or in the country from which they have fled (see question 17, p. 18 of our [Guide to solidarity at sea I](#)).

Sheet 1

Coordination between MRCCs

Based on the [International Aeronautical and Maritime Search and Rescue Manual \(Part II\)](#), the "first MRCC" is the first party to receive the emergency alert. The MRCC is responsible for doing all that it can to identify the details of the emergency alert and to organise assistance until it identifies a more suitable MRCC able to respond to the emergency (section 2.25.1).

In fact, if the emergency takes place outside of the SAR area of competence of the first MRCC, the latter must notify the distress to a competent MRCC (section 3.6.5).

When transferring the coordination of an SAR operation to a different MRCC or RSC (Rescue sub-centre), such transfer must be documented in the MRCC or RSC register (section 3.6.5).

Procedures for transferring SMC responsibility (search and rescue mission co-ordinator, Coordinator of the search and rescue mission) to a different MRCC should include:

- a personal discussion among the SAR coordinators of all the MRCCs concerned;
- the first MRCC can invite the other MRCC to take responsibility, or the other MRCC can offer to take responsibility;
- the first MRCC is held responsible until the other RCC formally accepts responsibility;
- all the details of the actions taken among the MRCCs;
- the transfer of responsibility must be registered by both SAR coordinators in the MRCC register;

- the informing of all the SAR facilities that were involved in the transfers.

When the MRCC responsible for the SAR region in which assistance is needed is informed about the situation, that RCC should immediately accept responsibility for coordinating the rescue efforts, since related responsibilities, including arrangements for a place of safety for survivors, fall primarily on the Government responsible for that region ([IMO Guidelines at sea](#), section 6.7).

Sheet 2

The Maltese SAR case

Malta is responsible for an SAR area covering 250,000 square kilometers, an area 750 times larger than the island's surface. This is a vast area not only in terms of the territory, but also in terms of Malta's patrolling capacity. The considerable width of the Maltese SAR area has serious repercussions on Malta's ability to intervene in emergency situations, and appears not to comply with the provisions of paragraph 2.1.8 of the [Hamburg Convention](#), which states that coastal States must work on an SAR area where width is not an issue in guaranteeing a prompt response to emergency calls.

In many cases, the Maltese government has used its links with Italy to patrol its area of responsibility: in practice, the Maltese SAR Regional Coordination Center does not respond to boats when contacted or intervene when requested by the Italian SAR Regional Coordination Center.

The lack of response from the Maltese authorities, however, does not exempt a single vessel that has sighted people in distress from providing help. In fact, following the lack of response (or negative response) of the Maltese SAR, a single vessel will request the intervention of the Italian SAR which will coordinate the rescue intervention.

Malta has ratified both the International Convention for the Safety of Life at Sea and the Hamburg Convention, [but has not accepted the changes](#) made to these regulatory instruments in 2004. These amendments [have clarified](#) the obligations of States when people in distress are within their SAR area. It is specified that these States are required to coordinate rescue activities until rescued persons are taken to a safe place as quickly as possible, and the State responsible for the SAR area, where people have been rescued, has the duty to take all necessary measures to allow rescued persons to disembark in a safe place in the shortest amount of time ([Hamburg Convention](#), section 3.1.9).

Malta raised objections to these changes and stated that they could not accept these rules, as they can be interpreted as imposing on the States the obligation to allow people onto their territory and to offer assistance to all those who have been rescued within their SAR area.

Sheet 3

Rescue operations in the central Mediterranean during the months of June and July 2018: brief reports on individual operations and related infringements.

Between June and July 2018 there were serious violations of current international, European, and national rules on the subject of sea rescue and the right to asylum.

Frequently, these violations have continued without the adoption of formal measures to tackle them. In this document, we try to summarize the most important cases.

- 3.1 The Aquarius case**
- 3.2 The Astral and Open Arms case**
- 3.3 The Vos Thalassa and Diciotti case**
- 3.4 The Monte Sperone and Protector case**
- 3.5 The Sarost 5 case**
- 3.6 The Asso 28 case**

3.1 The Aquarius case

On the night of the 9th and 10th of June the Aquarius rescued 629 people, including 123 unaccompanied minors, 11 children, and 7 pregnant women, the result of six different rescue operations, all carried out under the coordination of the **Port Authority – Coast Guard** on behalf of the Italian National Maritime Rescue Coordination Center (MRCC). 229 people had been rescued from the shipwreck of two boats directly by members of the Aquarius, while the remaining ones – rescued by ships of the Italian navy and coast guard on 9 June – had been transferred on board the ship following the request of the Italian MRCC.

Although Italian military vehicles were used in rescue and transshipment operations, and the Italian National Maritime Rescue Coordination Center (MRCC) coordinated all the operations from the beginning, the Italian government subsequently denied a safe haven to those rescued, asking Malta to take on the responsibility instead.

When the ship was stranded at sea between Italy and Malta, serious violations of human rights took place, in that people were forced to remain on board. Such violations, especially in the case of the most vulnerable individuals, could be seen as a case of inhuman and degrading treatment prohibited by Art. 3 of the ECHR, and against the interests of minors (Art. 3 of the Convention on the Rights of the Child).

The Aquarius, after a new transshipment of those rescued onto Italian military vehicles, and after the involvement of the Spanish government, was finally able to arrive in Valencia on 17 June.

3.2 The Astral and Open Arms case

On 29 June, following the news that 60 people had been rescued by two ships from the NGO Proactiva Open Arms, the Minister of Infrastructure and Transport announced that, "due to a formal rule signed by the Ministry of the Interior and for reasons of public order", he had established "a ban on docking in Italian ports for the NGO Open Arms, in full compliance with Article 83 of the Navigation Code."

However, to this date no formal decisions aimed at restricting the two ships' access to Italian ports have been adopted by either the Ministry of Infrastructure and Transport or by the Ministry of the Interior.

Furthermore, on June 30th, in an interview with the Corriere della Sera, the Minister of the Interior said: "we deny the right of these ships [of the NGOs] to dock even when they are not carrying migrants. Foreign ships financed by foreign powers will no longer touch land in Italy."

The decision to deny the Astral and Open Arms, without formal provisions, entry into territorial waters for reasons of public order, in view of the alleged hidden funding received by the NGOs, does not seem entirely legitimate.

3.3 The Vos Thalassa and Diciotti case

On 12 July, the ship Diciotti of the Italian Coast Guard arrived in Trapani, where it disembarked 67 people who had been rescued a few days before from the merchant vessel Vos Thalassa. Despite being an Italian military vehicle, the Diciotti was blocked by the Ministry of Interior and forced by an institutional bout of arm wrestling to wait several days before receiving instructions about where it could dock.

When the Minister of Infrastructure and Transport finally assigned the port of Trapani, the people who had been rescued - among whom were also two unaccompanied migrant minors, four minors accompanied by their parents, and two women with serious health problems - were detained on board the Diciotti until late in the evening of 12 July, without being able to touch ground.

The Minister of the Interior claimed that the Vos Thalassa had requested the transshipment due to an episode of misbehaviour by some of those rescued, described as a "mutiny" of "troublemakers", and asked for a guarantee of arrest after arrival, but without any provision from judicial authorities.

The decision to retain the 67 survivors on board the Diciotti on the basis of these motivations, depriving them of personal freedom in the absence of a provision from the competent judicial authorities, is illegitimate and unjust as regards the rights of the rescued persons. It should also be pointed out that the Ministry of the Interior has no jurisdiction on whether to deny entry to ships that have provided rescue, as this is the responsibility of the Corps of the Port Authority - Coast Guard which, in this matter, reports to the Ministry of Transport.

3.4 The Monte Sperone and Protector case

Between the 14th and 15th of July, the [Monte Sperone vessel](#), operating under the direction of the Italian Guardia di Finanza (Italian Financial Police), and the British naval vessel Protector, operating as part of Frontex, were the protagonists of an SAR operation coordinated by the Italian MRCC off the coast of the island of Linosa, where they welcomed about 450 people who had been on board an overburdened boat that had departed from Libya.

The two ships had to wait two days in Italian territorial waters before they were given instructions regarding where to dock: after the evacuation of some minors, women, and people with health conditions, in fact, only in the late evening of July 15th was the debarkation of all people completed, including 128 unaccompanied minors and three minors accompanied by their parents.

In this case as well, being forced to remain on board while the ships awaited instructions on where they would be allowed entry amounts to a serious violation of human rights.

As in the case of the Aquarius, such violations - especially as concerns the most vulnerable individuals - could be seen to be cases of inhuman and degrading treatment prohibited by Art. 3 of the ECHR and to be contrary to the welfare of minors (Art. 3 of the Convention on the Rights of the Child).

Furthermore, the measures imposed by the [Hamburg Convention](#) (paragraph 3.1.9) which point out the obligation to take all necessary measures to allow rescued persons to disembark as fast as possible in a safe place, and the rules that compel Italy to allow the docking of vessels operating in Italy, of joint operations coordinated by Frontex, for which Italy is a host Member State ([Regulation \(EU\) No. 656/2014](#), Article 10, paragraph 1).

3.5 The Sarost 5 case

On **16 July**, the Sarost 5 - which belongs to a company that runs an oil extraction platform off the Tunisian coast - rescued 40 people who had spent five days without food and water on board a damaged vessel.

After 22 days at sea, during which the vessel was stranded for 17 days off the Tunisian coast, the 40 persons - including at least two pregnant women, a wounded man, and a prominent number of unaccompanied minors - were finally disembarked on August 1 at the port of Zarzis. The Red Crescent, the IOM, and the UNHCR were present to provide help. The rescue coordination was negotiated between Malta and Tunisia, and saw Italy and France avoid any responsibility whatsoever. In this case, there was a delay in terms of the application of those measures imposed by the [Hamburg Convention](#) (paragraph 3.1.9) which point out the obligation to take all necessary measures to allow rescued persons to disembark as expeditiously as possible, in a safe place.

Moreover, not all international human rights organizations consider Tunisia a safe haven as there is evidence of the use of torture and ill-treatment against prisoners in a general context of impunity, the use of arbitrary restrictions on freedom of movement, and a lack of a national asylum system.

3.6 The Asso 28 case

On July 30th, a merchant vessel flying the Italian flag, the Asso 28, rescued 108 migrants who had left Libya on board an inflatable raft.

According to the shipowner of the Asso 28, the Italian ship would have been contacted by the Libyan Coast Guard to rescue the boat in distress, which was located about 57 nautical miles from Tripoli – therefore in international waters but almost certainly within the Libyan SAR area. According to the shipowner, the Asso 28 welcomed a Libyan agent on board and, working together with the local Coast Guard, once it had rescued the migrants, the vessel brought people back to Libya.

Sending people rescued at sea to Libya would amount to a very serious violation of international, European, and internal legislation, both in terms of laws applied to regulate movements at sea, which point out the obligation to bring rescued persons to a "safe place", and in terms of human rights and the protection of asylum seekers: Libya has never signed the 1951 Geneva Convention, nor does its internal legal framework provide any form of protection for refugees.

For the same reason, on 16 April 2018, the Preliminary Hearing Judge of Ragusa rejected the request for the preventive seizure of the ship Open Arms, stating that Libya cannot be considered a "safe place for disembarking people" because of the serious violations of human rights to which migrants are exposed there.

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.

[Regulation \(EU\) n. 656/2014 of the European Parliament and of the Council](#) of 15 May 2014 establishes rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex (see question 12 of our [Guidance on rescue operations in the Mediterranean I](#)), such as operation Themis.

This Regulation must be applied in full compliance with the principle of non-refoulement, in accordance with which “no person shall, in contravention of the principle of non-refoulement, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another country in contravention of the principle of *non-refoulement* (Article 4). The same provision also specifies that each of the persons rescued must be given “an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of *non-refoulement*.”

This Regulation does not affect the obligations of the authorities responsible for search and rescue activities, including that of ensuring that coordination and co-operation are carried out in a manner that allows for those who are rescued to be transferred to a place of safety. In particular, Art. 10, para. 1 of the Regulation clarifies that the host Member State is obliged to allow disembarkation at its ports and to indicate a safe port within its own national territory in case this option is the most reasonable when considering the safety of the people rescued.

GUIDANCE ON RESCUE OPERATIONS IN THE MEDITERRANEAN II

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