

## UNHCR Submission SG Report “Oceans and the Law of the Sea”

UNGA Resolution 77/248 of 30 December 2022, “Oceans and the law of the sea”.

In the absence of safer means to seek international protection, refugees and other persons under UNHCR’s mandate continued to resort to dangerous journeys by sea in many parts of the world, including in the Mediterranean Sea, the Caribbean, the Gulf of Aden, the Indian Ocean, the Bay of Bengal and in the Andaman Sea. They often moved alongside migrants seeking a better life, using the services of smugglers and, in many instances, being exposed to the risks of being trafficked, kidnapped for ransom or subjected to inhuman and degrading treatment.

During the reporting period, UNHCR continued to pursue and support protection at sea through i) advocacy for and work in partnership to promote effective, cooperative and protection-sensitive approaches to search and rescue and disembarkation; ii) operational activities at places of disembarkation or arrival by sea; and iii) supporting access to asylum and other longer-term action on addressing the drivers of dangerous journeys.

In this context UNHCR continued to engage in dialogue with the International Maritime Organization (IMO) and the International Chamber of Shipping (ICS). This entailed both organizations being included and updated on all UNHCR correspondences with shipping companies in relation to Search and Rescue (SAR).

UNHCR led advocacy efforts through the Inter-Agency Group on the Protection of Refugees and Migrants moving by Sea, an informal discussion group consisting of UN and other international entities with different mandates and expertise relevant to protection at sea. The group analysed SAR practices and identified gaps in existing responses to protection concerns in movements by sea in different regional settings. UNHCR also intervened at the Maritime Safety Committee (MSC) Session 106 on 2 November 2022 to acknowledge the role of the private shipping sector in rescue at sea, to advocate for the development of regional disembarkation mechanisms and to encourage States to discuss the need to further define the concept of “place of safety” in international maritime law.

In November 2022, UNHCR participated with in the organization of a side-event on “Law enforcement in sea operations: the question of non-penalization”, which was sponsored by the Swiss Government. In December 2022, UNHCR released guidelines on legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement and access to asylum.<sup>1</sup>

UNHCR shared recommendations with the Spanish and Swedish Presidencies of the Council of the European Union to advance negotiations on the Pact on Migration and Asylum, including such aspects as protection-sensitive border management, fair and efficient asylum procedures based on solidarity and responsibility sharing principles.<sup>2</sup>

### Asia Pacific

Most perilous maritime movements in the Asia Pacific region occurs across the Andaman Sea and Bay of Bengal, predominantly with stateless Rohingya refugees departing from Myanmar and from refugee camps in Bangladesh. They risk their lives at sea due to the absence of alternative safe and legal pathways and persistent structural challenges in Myanmar and in countries of asylum in Bangladesh, including lack of access to essential services, increased insecurity and limited opportunities to develop self-reliance and resilience. From September 2022 until April 2023, about 3,350 individuals have been recorded leaving or attempting to leave Bangladesh or Myanmar by boat, roughly half of those moving being women and children. During the same period, 324 individuals were reported as dead or missing.

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<sup>1</sup> UN High Commissioner for Refugees (UNHCR), *Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum*, 1 December 2022, available at: <https://www.refworld.org/docid/6389bfc84.html>

<sup>2</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR's Recommendations for the Swedish and Spanish Presidencies of the Council of the European Union (EU)*, January 2023, available at: <https://www.refworld.org/docid/63bd99904.html>

During the reporting period, the Government of Indonesia rescued eight boats carrying Rohingya stateless refugees and allowed an estimated 918 individuals to disembark and ensured protection screening and humanitarian assistance. The proactive and life-saving intervention by the Government of Indonesia is a much appreciated act in line with the spirit of the SOLAS and SAR conventions and consistent with the principle of non-refoulement. UNHCR has however been made aware of other instances, elsewhere in the region, where Rohingya refugees found to be in distress at sea are detained upon arrival and subjected to refoulement.

UNHCR remains also concerned about the risks to persons of concern at the hands of traffickers and smugglers and calls for greater access to safe and legal pathways. The Anti-Trafficking Working Group (ATWG) in Cox's Bazar, which is co-chaired by UNHCR and IOM, developed messages to raise awareness about the risks and dangers that may arise before, during and after irregular onward sea movements from Bangladesh. These messages are widely disseminated across all refugee camps in Bangladesh.

In Malaysia, during the reporting period, UNHCR and its partners have maintained a dialogue on preparedness, identifying relevant expertise and capacities to deploy in the event of larger numbers of new arrivals by sea.

In Myanmar, UNHCR remains an active member of the Human Trafficking Working Group chaired by IOM. As part of the UN-led Protection Cluster, key awareness raising messages related to irregular (including maritime) movements and trafficking have been disseminated to communities. From September 2022 until April 2023, over 2,300 Rohingya were detained in Myanmar for violation of immigration laws, including victims of trafficking that were intercepted at sea or forcibly returned.

At the regional level, UNHCR continued to work with States and partners to establish a comprehensive regional response, prioritizing interventions to reduce loss of life at sea through efficient search and rescue, protection sensitive responses upon disembarkation and advocating for access to asylum procedures. Notably, UNHCR continued its advocacy with regional platforms such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) to highlight the importance of a predictable and equitable mechanism for disembarkation of refugees in distress at sea.

### **Mediterranean Sea**

During the reporting period from September 2022 to April 2023, Italy witnessed a significant proportion of sea arrivals across the Central & Western Mediterranean Sea Routes, and North-West Africa Maritime Route. Through the Central Mediterranean route a total of 80,315 people,<sup>3</sup> with 406 sea arrivals in Malta and 18,613 sea arrivals in Spain. Along the Eastern Mediterranean route, a total of 12,758 people arrived in Greece by sea in 2022 (most at the eastern maritime border with Türkiye), an increase from 4,331 in 2021. From January to April 2023, some 3811 people arrived by sea in Greece.<sup>4</sup> Furthermore some 3,300 people are known to have attempted to cross the Mediterranean Sea from Lebanon and Syria, with 1,100 reaching Italy and some arrivals by sea to Italy from Türkiye and Algeria.

Tunisia was the preferred departure point for refugees and migrants to Europe with 72,283 people followed by Libya with 54,888 people in the reporting period. The authorities in Tunisia and Libya have continued to intercept and disembark refugees and migrants at sea.

UNHCR has repeatedly underlined that Libya is not a safe place for disembarkation following rescue at sea,<sup>5</sup> given the systematic exposure of disembarked refugees and migrants to human rights violations in the country. UNHCR has also expressed its concern over unlawful pushbacks taking place at the sea borders of Greece<sup>6</sup>.

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<sup>3</sup> Meaning departures from North Africa (Egypt, Libya, Tunisia, and Algeria) to Italy and Malta.

<sup>4</sup> UNHCR, Operational Data Portal: Mediterranean situation, available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5179>

<sup>5</sup> <https://www.refworld.org/docid/5f1edee24.html>

<sup>6</sup> UNHCR - News Comment: UNHCR warns of increasing violence and human rights violations at European borders

Between September 2022 till April 2023, some 1,300 people are reported to have died in the Central Mediterranean, an increase compared to 1,000 in previous reporting period.

Some protection challenges include the absence of state-led search and rescue (SAR), or any EU coordinated state-led SAR in the Mediterranean Sea, notwithstanding the very extensive State and EU resources invested in maritime border control in the region. This void has led to NGOs and merchant vessels being compelled to take increasing responsibility to save lives. While UNHCR welcomes calls for some self-regulation of SAR NGOs, their conduct should not be criminalized by States, as their rescue efforts are vital for saving lives at sea. Since 2023, SAR NGOs have been assigned distant ports by the Italian authorities for disembarkation, survivors often remain stranded for days on board vessels unsuitable for long-term accommodation, exposing them to further risks and vulnerability. UNHCR continues to raise concern about Malta's strict definition of 'distress' and non-adoption of the 2004 SAR amendments, resulting in failure or refusal to coordinate rescues; instructions to merchant vessels to monitor rather than rescue; and non-responsiveness to distress calls in the apparent expectation that the boats will be rescued by the Italian Coast Guard. The safe disembarkation of persons rescued at sea continues to be an *ad hoc* and unpredictable process, due to lengthy delays or the absence of responses by States approached with requests to disembark.

UNHCR has publicly and repeatedly underlined that persons rescued at sea must be disembarked in a place of safety, where their lives are no longer threatened and their basic human needs are met.<sup>7</sup> Despite this, in July 2022, the anchor handling vessel *VOS TRITON* [sailing under the flag of Gibraltar / IMO No. 9585766], reportedly rescued some 100 persons in distress at sea in international waters and handed them over to the Libyan Coast Guard (LCG), which returned them to Libya. In September 2022, the merchant vessel *SHIMANAMI QUEEN* [sailing under the flag of Panama / IMO: 9589786] disembarked 23 persons in Egypt, following their rescue in the Maltese Search and Rescue Region (SRR). The *SHIMANAMI QUEEN* was reportedly instructed by the Maltese Maritime Rescue and Coordination Centre (MRCC) to disembark the 23 persons, in Egypt. Many disembarked refugees and migrants, particularly those in Libya, are transferred directly to detention centres, while others vanish without a trace. Some refugees and migrants are released from custody to again attempt a dangerous sea journey. UNHCR has limited meaningful access to disembarkation points to identify persons in need of international protection, including victims of trafficking, Unaccompanied and Separated Children (UASCs), and other persons with specific needs. Two serious incidents that occurred in the reporting period includes on 26 October 2022, the SAR NGO Sea-Watch received threats from the LCG to shoot the aircraft *SEA BIRD* down with missiles.<sup>8</sup> The European Commission announced an investigation on this incident.<sup>9</sup> On 25 March 2023, the SAR NGO SOS Méditerranée stated that the LCG shot in the direction of its SAR vessel, the *OCEAN VIKING*, while both were in the presence of a boat in distress with 80 persons on board.<sup>10</sup> The LCG subsequently intercepted and returned the persons to

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<sup>7</sup> See: UNHCR, *Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum*, 1 December 2022, available at: <https://www.refworld.org/docid/6389bfc84.html>; Inter-Agency Group, *Joint Statement on Place of Safety*, May 2022, available at: <https://www.unhcr.org/media/40227>; and UNHCR, *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, September 2020, available at: <https://www.refworld.org/docid/5f1edee24.html>.

<sup>8</sup> Sea-Watch, *BREAKING: The so-called Libyan coast guard threatens our airplane crew with force of arms in the Maltese search and rescue zone: "Get away from Libyan territory, otherwise we will shoot you by some missiles." The EU's partner's at work in violation of international law*, 26 October 2022, available at: [https://twitter.com/seawatch\\_intl/status/1585254002404753414?s=20](https://twitter.com/seawatch_intl/status/1585254002404753414?s=20).

<sup>9</sup> Sea-Watch, *Hey @EU\_Commission, if you need help verifying the video, let us know. We can't wait for the promised consequences. In the meantime, how about you get started working on the consequences for the 100,000+ illegal pullbacks to Libya?* 27 October 2022, available at: <https://twitter.com/i/status/1585684067659710466>.

<sup>10</sup> SOS Méditerranée, *SOS Méditerranée condemns Libyan coastguard firing gun shots, deliberately endangering crew and persons in distress in the Mediterranean*, 25 March 2023, available at: <https://en.sosmediterranee.org/news/sos-mediterranee-condemns-libyan-coastguard-firing-gun-shots-deliberately-endangering-crew-and-persons-in-distress-in-the-mediterranean/>. Also see: Sea-Watch, *Shots fired during rescue operation! Today we witnessed the attack on the crew of*

Libya. The UNHCR Special Envoy for the Central and Western Mediterranean Situation stated, “Threats against aid workers at sea or on land are unacceptable. Any support to Libyan Coast Guards must be conditional to serious improvements of human rights for migrants & refugees which requires effective monitoring.”<sup>11</sup>

UNHCR has convened monthly consultations with the “Central Med SAR Network”, which includes NGOs, UN agencies (IOM and OHCHR), and international organizations since June 2022. Through this forum, several advocacy initiatives have been made, including with the UN Resident and Humanitarian Coordinator in Libya on the banning of NGOs flying reconnaissance aircraft above the Libyan Search and Rescue Region (SRR). From December 2022, UNHCR has been communicating its concern to shipping companies and shipmasters that fail to abide by their international maritime law obligations to rescue or assist persons in distress at sea. Often shipmasters follow instructions from Migrant Rescue and Coordination Centres in Europe with the understanding that they have no other options. UNHCR and IOM, in the spirit of the global Framework of Engagement signed in June 2022<sup>12</sup>, have been working towards further collaboration on SAR in the Central Mediterranean Sea and the mixed movements of refugees and migrants, particularly on increasing data sharing and producing joint products. In Mauritania, UN agencies worked with national authorities to develop Standard Operating Procedures on disembarkations following rescues and interceptions.

### **Gulf of Aden**

Despite ongoing conflict, humanitarian crisis, and increasing risks of exploitation and abuse, the number of mixed movements from and to Somalia in 2022 and the beginning of 2023 has been returning to pre-pandemic levels, as 41,453 refugees and migrants arrived in Yemen between January and March 2023, compared to 19,652 during the same period in 2022. Figures related to the entire reporting period confirmed this upward trend with a significant increase in the number of refugees and migrants crossing the sea to Yemen, mostly Ethiopian nationals.<sup>13</sup> In the reporting period, some 87,100 people arrived in Yemen after crossing the sea from East Africa, in comparison to 40,600 between September 2021 and April 2022. In terms of patterns, a noteworthy shift was observed in movements toward coastal embarkation points, from Obock, Djibouti being the most common to Bari region, Somalia. The change could be due to varying weather conditions and sea tides, as well as greater patrolling of the Djiboutian Coast Guard.

In 2022, UNHCR in partnership with University of Hargeisa Legal Clinic was involved in nine Somali government capacity-building training sessions on refugee law and internal protection of 493 government staff (including 6 coast guards), including rescue at sea.

In Yemen, UNHCR and IOM are working together on a joint strategy on responding to mixed movements by sea in a way that protects the rights of all persons and takes into account the specific circumstances of persons in need of international protection.

No maritime movements out of Sudan by sea have been observed during the reporting period. Legal partners were present in the area and conducting situation monitoring. Since the 15th of April 2023, when conflict erupted in Khartoum and other parts of Sudan, Port Sudan and surrounding areas have

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*@SOSMedIntl and people in a boat in distress. After a distress call from @alarm\_phone, our search plane Seabird, Ocean Viking, and a ship of the so-called Libyan Coast Guard were on the scene, 25 March 2023, available at: <https://twitter.com/i/status/1639695334057050114>.*

<sup>11</sup> Vincent Cochetel, *Threats against aid workers at sea or on land are unacceptable. Any support to Libyan Coast Guards must be conditional to serious improvements of human rights for migrants & refugees which requires effective monitoring*, 27 March 2023, available at: <https://twitter.com/cochetel/status/1640255601648205824?s=20>.

<sup>12</sup> UNHCR, *Serving and Protecting Together: IOM/UNHCR Framework of Engagement*, 30 June 2022, available at: <https://www.refworld.org/docid/6311ce0c4.html>.

<sup>13</sup> IOM Displacement Tracking Matrix

become a safe haven for persons of different profiles. As such, UNHCR has been monitoring the developments and reports were received on various movements through the sea and land borders.

### **West Africa-Atlantic**

During the reporting period, from September 2022 till April 2023, some 8,300 refugees and migrants have crossed from the African coast to the Canary Islands, a significant reduction compared to 19,700 during the same period in previous years.

The identification of individuals that perish at sea remains an ongoing challenge along this route. In furtherance of UNHCR's commitment to advocacy and dissemination of information, a guidance paper titled "*Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum*"<sup>14</sup> was shared with the national asylum authorities in Gambia and Senegal in February and March 2023.

In Senegal, UNHCR had attended a workshop along with relevant authorities, civil society organizations and other UN agencies to develop standard operating procedures (SoPs) on disembarkation and referral of persons rescued at sea. IOM has facilitated the workshop and UNHCR contributed through relevant provisions that would ensure the systematic screening of international protection needs and referral to national asylum authorities. A significant outcome of the workshop was the development of some draft SoPs.

### **Western Indian Ocean**

The Union of the Comoros' proximity to French territory (Mayotte) and strategic location within the Indian Ocean's Mozambican channel - nestled between Madagascar and Mozambique - make it attractive as a transit hub for migrants in their attempts to reach Mayotte. In recent years, there have been increasing numbers of migrants, asylum seekers and refugees who find themselves stranded in Comoros in their attempts to reach Mayotte. On 12 March 2023, 34 Malagasies lost their lives when a boat destined for Mayotte capsized off the coast of Madagascar.<sup>15</sup>

During the reporting period, the Union of the Comoros returned 11 Somali nationals to Tanzania despite interventions from UNHCR and the UN Resident Coordinator. Both the International Organization for Migration (IOM) and UNHCR were denied access to the group. On 8 January 2023, a boat of 30 people (17 Congolese and 13 Burundians) including men women and 11 children, were intercepted around Moheli, in the Comoros. While UNHCR had access to the people in order to register them since they sought asylum, the government ignored UNHCR's continued advocacy intervention to release the most vulnerable individuals and children. Men, women and children were all confined in a small space with poor diet, no access to medical care. On 9 January 2023, 11 Pakistani nationals were intercepted by the Comorian coastguard and placed in detention. The authorities publicly announced that the group comprised of fishermen who would be repatriated to their home country. IOM was denied access to this group and no further information was available on their whereabouts. On 3 March 2023, 61 Burundian, Rwandan, Congolese (DRC) and Somali nationals, including 18 children (both unaccompanied and accompanied), were stranded on Moheli island. They were held in the same Gendarmerie, as the 30 asylum seekers and exposed to all the serious protection concerns. Some attempted to escape and were faced with severe police mistreatment, including beating and being pointed with a gun with the threat of being shot. In March 2023, all 91 detainees were transferred to Moroni with the intention of returning them to Tanzania, but following Tanzania's refusal to readmit them, they were released.

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<sup>14</sup> UN High Commissioner for Refugees (UNHCR), *Legal considerations on the roles and responsibilities of States in relation to rescue at sea, non-refoulement, and access to asylum*, 1 December 2022, available at: <https://www.refworld.org/docid/6389bfc84.html>

<sup>15</sup> A total of 24 people survived. See <https://www.africanews.com/2023/03/15/madagascar-death-toll-rises-to-34-in-shipwreck-near-mayotte/>

Other Indian Ocean islands such as Mauritius and Seychelles have also reported individual asylum-seekers arrivals and could be impacted by this emerging mixed movements route from continental Africa towards the Indian Ocean islands.<sup>16</sup> As of December 2022, 14 individuals have been refouled by Seychelles and Comoros authorities which includes refugees and asylum seekers. While UNHCR is not present on the island, efforts were made to prevent the refoulement through formal communications with the government, with the support of other UN agencies present in the islands, without success. UNHCR will organize a meeting of the Inter-Agency Group on Protection at Sea specifically focusing on the Western Indian Ocean route in July 2023 to discuss ways to address challenges on protection at sea issues along the Indian Ocean routes.

UNHCR and IOM agree to joint effort to collect better data on the route that goes from the border between Mozambique/Tanzania to Mayotte. Both agencies agreed that a high-level meeting should take place with the French Authorities in Mayotte once the study is conducted to gather more information and advocate for protection and solutions of refugees and stateless persons.

### **Americas**

UNHCR and the US Coast Guard established a regular information sharing mechanism as regards overall trends, which represents a positive development particularly in view of the large increase in maritime interceptions in 2022 and 2023. During the reporting period the U.S. Coast Guard conducted a number of maritime interceptions that led to the apprehension of considerable numbers of both Cubans and Haitians moving by sea.<sup>17</sup> During the October 2022 – April 2023 period, almost 300 more Cubans have already been intercepted than in the period comprised between October 2021 and September 2022, hitting levels nearly eight times higher than in the previous year. Interceptions of Haitians in recent months also appear poised to outpace the ones reported in previous years.

Comparable increases in maritime movements were also reported by the Bahamas. Up to early December 2022, the Royal Bahamas Defense Force recorded the apprehension of 3,249 persons. Of that figure, 2,620 people were Haitians. Despite the large numbers of persons apprehended, the government granted asylum to only four. Available statistics shared by the Bahamian authorities indicate an overall rise in maritime movements along the route towards Bahamas.

On 14 December 2022, a meeting of the Inter-Agency Group on the Protection of Refugees and Migrants Moving by Sea was dedicated to the Caribbean routes. Representatives of the Dutch Caribbean and Trinidad & Tobago Coast Guards intervened sharing their experiences. While recognizing the ongoing efforts of the competent Coast Guards, UNHCR notes the need to continue to work closely with the authorities of several island states in the region to support the development of systems to ensure the identification of asylum-seekers and of other people in vulnerable situations.

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<sup>16</sup> Asylum-seekers arriving in Mauritius and Seychelles travel by air and claim asylum on arrival. Additionally, these countries are located to the east and north-east of Madagascar, which makes boat arrival from mainland Africa very challenging.

<sup>17</sup> <https://www.news.uscg.mil/Press-Releases/Article/3302743/coast-guard-repatriates-311-people-to-haiti/>