

Disembarkation of migrants rescued at sea - II.

The shipmaster and his crew are not trained to assist migrants rescued at sea in their special needs. Furthermore, the financial pressure on the master and owner of the ship, due to the delay of the ship, can be enormous. In some cases, compensation for expenses, delay, and diversion – together with consequential losses – can be provided through P&I Clubs. However, with today's ever-increasing emphasis on swift deliveries and fast turnarounds, the economic pressures on seafarers sometimes override humanitarian principles.

Jasmine Coppens
(Ghent University)



Can a ship that carries persons rescued at sea be seen as a ship in distress?

In May 2007, a group of 27 boat people were rescued by the Italian Navy after they had spent three days and nights clinging to tuna pens being towed by a Maltese fishing vessel, the "Budafel". The captain of this vessel told the media that he refused to divert his ship to disembark the men because he was afraid of losing his valuable catch of tuna.

By failing to institute co-ordinated, well-organized systems for receiving and processing asylum-seekers and migrants, States are putting seafarers in an intolerable position: damned if they do, and damned if they don't.

Consequently, in practice some shipmasters will ignore migrants at sea – thus violating international law – because they know that their entrance into ports will be refused. Human Rights Watch, one of the world's leading independent organizations dedicated to defending and protecting human rights, recorded several testimonies of migrants at sea.

In August 2008, Abassi – a 21-year-old Nigerian – drifted on an inflatable boat in international waters for five days: "One side of the boat had sunk and the other was still floating. There were 85 of

us clinging to it. There was nothing to eat and by the second day we had no water. People were drinking sea water and got sick. Three people died. On the fourth day we saw a helicopter. The helicopter saw us and waved. The helicopter did not drop food or water, and no boat came to rescue us. Five hours

later we saw a ship. It did not come to help. It stopped and spent a few hours standing there. The boat just watched."

NEW IMO CIRCULAR

In the beginning of 2009 the Facilitation Committee of the International Maritime Organization (IMO) approved a non-binding circular on "Principles relating to administrative procedures for disembarking persons rescued at sea". This circular could lead to more harmonised, efficient and predictable procedures.

However, one of the principles is quite far-reaching. When disembarkation cannot be arranged swiftly elsewhere, the government of the search-and-rescue region where the persons were found should accept to disembark the persons rescued. This means that coastal States have the ultimate responsibility. The biggest advantage is the legal certainty for the ship and the rescued people.

«By failing to institute systems for receiving and processing asylum-seekers and migrants, States are putting seafarers in an intolerable position»

Initially, the ultimate objective was to amend the SOLAS and SAR Conventions, taking into account these principles, as appropriate. However, States indicated that they would not agree with such an obligation. As a matter of fact, this is also the reason why the International Convention relating to Stowaways of 1957 remains unable to obtain the required number of ratifications.

Its Article 2(1) stipulates: "If on any voyage of a ship registered in or bearing the flag of a Contracting State a stowaway is found in a port or at sea, the Master of the ship may, subject to the provisions of paragraph (3), deliver the stowaway to the appropriate authority at the first port in a Contracting State at which the ship calls after the stowaway is found, and at which he considers that the stowaway will be dealt with in accordance with the provisions of this Convention."

PLACES OF REFUGE

Maybe the concept of places of refuge for ships in distress could provide a solution to the disembarkation problem. But can a ship that

carries persons rescued at sea be seen as a ship in distress? According to the United Nations International Law Commission, when human life is at stake or when the physical integrity of a person is being threatened, the ship is in distress. This is not the case when only a few persons are ill, but when an epidemic disease spreads among the persons rescued and the crew, the ship itself can be regarded as being in distress.

Another example is when the shipmaster is being overpowered by the persons rescued, as was the case with the MV "Tampa" in August 2001. The captain of this Norwegian container ship rescued some 438 asylum seekers from drowning in international waters between Australia and Indonesia. The captain first headed towards Indonesia. This reportedly elicited threats from some of the migrants, who insisted on being taken to Australia.

Finally, we must not forget that – according to international law – the shipmaster can decide NOT to provide assistance when there is a serious danger to the ship or its crew. Therefore, only in a few cases the ship will actually be regarded as a ship in distress. If this is indeed the case, the place of refuge should meet the requirements of the "place of safety" as mentioned in the second paragraph.

CONCLUSION

The disembarkation of persons – and especially migrants – rescued at sea remains a very sensitive issue, because States simply do not have a legally binding duty to grant these people access to their territory. Thus States would have to surrender part of their sovereignty to change the current situation.

The discussions within the IMO show us that this is not likely to happen in the next couple of years. However, States should take steps to improve and amend the legal framework. If States would accept a responsibility to disembark persons in the long term, this responsibility would not only be beneficial to the migrants themselves, but certainly also for the shipmasters and their crew.

(The first part of this article was published in our edition of 29 December)

www.maritieminstituut.be

Kortje 1

Kortbericht

Kortje 2

Kortbericht

Kortje 3

Kortbericht

Kortje 4

Kortbericht

Americold Realty Trust buys Versacold

Americold Realty Trust has acquired Versacold International Corporation's warehouses and operations in the US, Australia, New Zealand, Argentina, as well as one Canadian subsidiary. This strategic acquisition combines two leading temperature-controlled warehouse companies. Americold's portfolio now consists of 182 temperature-controlled warehouses located in the US (152), Australia (9), New Zealand (9), China (7), Argentina (2) and Canada (3) and represents over 1 billion cubic feet of total storage space.



The disembarkation of persons – and especially would-be immigrants – rescued at sea remains a very sensitive issue.