



IMO
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**A LAW FOR THE INCORPORATION OF THE
INTERNATIONAL CONVENTION ON
MARITIME SEARCH AND RESCUE, 1979, AS
AMENDED INTO THE LAWS OF TUNISIA
AND TO PROVIDE FOR THE EFFECTIVE
IMPLEMENTATION THEREOF.**

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List of Acronyms

IMO: International Maritime Organization.

SOLAS: Safety of Life At Sea.

SAR: Search and Rescue.

UN: United Nations.

UNCLOS: United Nations Convention on the Law Of the Sea.

IMCO: Intergovernmental Maritime Consultative Organization.

MSC: Maritime Safety Committee.

NCSR: Navigation, Communications and Search and Rescue.

ICAO: International Civil Aviation Organization.

ITU : International Telecommunications Union.

IMSBC : International Maritime Solid Bulk Cargoes.

GMDSS : Global Maritime Distress and Safety System.

EPIRB: Emergency Position Indicating Radio Beacons.

SART: Search And Rescue Transponder.

VDR: Video Data Recorder.

AIS: Automatic Identification System.

ISM: International Safety Management.

HSC: High Speed Craft.

RCC: Rescue Coordination Centre.

RSC: Rescue Sub Centre.

IAMSAR: International Aeronautical and Maritime Search And Rescue.

JWG: Joint Working Group.

MERSAR: Merchant Ship Search And Rescue.

IMOSAR: International Maritime Organization Search And Rescue.

INMARSAT : International Maritime Satellite

IHO: International Hydrographic Organization.

WMO: World Meteorological Organization.

NAVAREA: Navigation Area.

METAREA: Meteorological Area.

EU: European Union.

FIR: Flight Information Region.

MoU: Memorandum of Understanding.

NGO: Non-Governmental Organization.

EUNAVFOR MED: European Union Naval Force Mediterranean.

COVID: Corona Virus Disease.

FAL: Facilitation Committee.

FSI: Flag State Implementation.

COMSAR: Radiocommunications and Search and Rescue.

COSPAS- SARSAT: Cosmicheskaya Sistyema Poiska Avariynich Sudow- Search and Rescue Satellite.

SRR: Search and rescue Region.

AIP: Aeronautical Information Publication.

SARP: Standards and Recommended Practices.

SDG: Sustainable Development Goals.

NMTP: National Maritime Transport Policy.

Introduction

The assistance to persons in distress at sea is one of the old established common principles of the international maritime customary law related to the safety of life at sea. Throughout the history, the international maritime community has established many rules and regulations as a response to the most tragic maritime incidents to improve the safety standards that cover shipbuilding and the necessary communication means to be used by a well-trained crew. The International Maritime Organization (IMO) has taken the lead in improving the safety and security standards since its establishment in 1948. It has succeeded to promulgate the most important treaties like the International Convention for the Safety of Life at Sea (SOLAS 1974) and the International Convention on Maritime Search and Rescues (hereinafter referred as SAR Convention 1979). The reaction of States towards these treaties varies from being reluctant to the eagerness to adhere and implement their different provisions.

The geographical position of Tunisia in the Central Mediterranean Sea, very near to its central migration route, has highlighted the great importance of upholding safety and security standards and the obligation to render assistance to persons in distress at sea. Although the adherence of Tunisia to the SAR Convention was done as back as in 1998, the implementation of the provisions of the said Convention basically, the final delimitation of the SAR zone of responsibilities and the organization of the SAR operations, have not been done till this date. The purpose of this work is to study the regional practices towards SAR obligations and then to assess the execution of the SAR Convention provisions in Tunisia among all the stakeholders in the aim to propose a cooperation and coordination mechanism between all the involved parties for the effective implementation thereof.

This work will be divided into three main parts. First it will briefly describe the international conventions relating to the obligation of rendering assistance to persons in distress at sea. At a second stage, it will study the regional States policies and the SAR practices in the central Mediterranean with a special focus on the challenges. Finally, it will describe the actual organization of search and rescue in Tunisia and the main reasons for the adoption of this law for the effective implementation of the SAR Convention.

1-IMO Search and Rescue Legal framework

The United Nations Convention on the Law of the Sea of 1982 (UNCLOS) codified several customary international law and international maritime customs. One of such crucial customary rule is assisting seafarers whose life is at risk. Article 98 of UNCLOS states that “every State shall require the master of a ship flying its flag in so far as he can do so without serious danger to the ship, the crew or the passengers to render assistance to any person found at sea in danger of being lost; to proceed with all possible speed to the rescue of persons in distress, if informed of their need for assistance, in so far as such action may reasonably be expected of him”. In addition, “every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements, cooperate with neighbouring States for this purpose”.¹ The said Convention which was adopted in Montego Bay conference on 10 December 1982 entered into force on 16 November 1994 and has reached as of now 168 countries which have adhered to it.² The 1982 UNCLOS, considered as the constitution of the oceans, did not contain provisions related to maritime migration or human rights apart from the articles related to the prompt release of fishing vessel under article 292.

Besides the provisions of the 1982 UNCLOS, IMO has taken the lead in the promulgation of international treaties dealing with the promotion of safety of life at sea. Firstly, it was established in 1948 under the name of Intergovernmental Maritime Consultative Organization (IMCO) then in 1982 the name of the organization was amended to the International Maritime Organization. This UN specialized agency has gained more power and has devoted great importance to the safety of navigation, as witnessed by the adoption of several conventions and by the efforts that have been made for their implementation. From a chronological point of view, the most important IMO conventions in the field of promoting safety at sea are the SOLAS 1974, the SAR Convention 1979 and the Salvage Convention of 1989.

In addition to that, IMO has also developed and adopted other treaties related to maritime safety like the international collision regulations and global standards for seafarers, as

¹United Nations Convention on the Law of the Sea(Signed 10 December1982, entered into force 16November1994)1833 UNTS 3.

²Adherence by states to the 1982 UNCLOS

<https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&Chapter=21&Temp=mtdsg3&clang=_en>accessed 06 December 2020.

well as international conventions and codes relating to the facilitation of international maritime traffic, load lines, the carriage of dangerous goods and tonnage measurement. The IMO's senior technical body on safety-related matters is the Maritime Safety Committee which is supported in its work by a number of Sub-Committees. The search and rescue organization is under the responsibilities of the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR) aided in its duties mainly by two working groups which are the ICAO/IMO Joint Working Group on Harmonization of Aeronautical and Maritime Search and Rescue and the Joint IMO/ITU Experts Group on Maritime Radio-communication Matters.

1.1-International Convention for the Safety of Life At Sea (SOLAS) 1974

The outcomes of the investigations of the Titanic disaster in 1912 have reached many conclusions that covered new shipbuilding standards, maritime radio-communication standards and enhancement of the safety measures by the deployment of the so called iceberg patrols. Two years later, the first SOLAS Convention was adopted in 1914 in London where the fourteen contracting parties mainly tackled the issues of radio-communication, lifeboat and passenger shipbuilding standards.³ The second version was adopted in 1929, where the contracting parties amended some provisions on shipbuilding and the use of radiotelegraphy to focus on the international regulations for preventing collisions at sea.⁴ The third SOLAS was adopted in 1948 with a larger number of contracting parties who went in-depth to the technical features of the 1929 Convention with some recommendations to the newly established IMCO. The SOLAS convention of 1960 was the first challenge for the new established IMCO and it was adopted during a conference referred to as IMCO/SAFCON 1960 where the new version of the Convention, which entered into forces after 5 years, incorporated numerous technical improvements.

The current version of the SOLAS Convention was adopted on 1 November 1974 and entered into force on 25 May 1985.⁵ The SOLAS Convention has reached 165 contracting parties up to December 2020 among them the Republic of Tunisia which acceded to the convention on 06 November 1980 by the Law number 22 of 23 May

³ Andrew Furusest. Washington, 'Safety of life at sea: analysis and explanatory notes of the London Convention on Safety of Life at Sea in relation to the American Merchant Marine', (1914), Harvard University Collection Development Department, Widener Library, HCL.

⁴ SOLAS 1929 UK Treaty Series No. 32 (1932).

⁵ International Convention on the Safety of Life at Sea (Signed 01 November 1974, entered into force 22 May 1985) 1184 UNTS 18961.

1980.⁶ The said convention has been amended on many occasions, and among the latest ones that have entered into force in January 2021 was the 2019 amendment to the International Maritime Solid Bulk Cargoes (IMSBC) code adopted by the Resolution MSC.462 (101).⁷

Briefly, the SOLAS Convention as amended is composed of fourteen (14) Chapters, some parts of which are related to search and rescue as follows:

Chapter IV –Radiocommunications :

Chapter IV incorporates the Global Maritime Distress and Safety System (GMDSS). All passenger ships and all cargo ships of 300 gross tonnage and upwards on international voyages are required to carry equipment designed to improve the chances of rescue following an accident, including satellite emergency position indicating radio beacons (EPIRBs) and search and rescue transponders (SARTs) for the location of the ship or survival craft. This Chapter provides the features of the shore stations communication equipment that are provided by contracting countries and the compatible ship borne equipment in order to establish a continuous and reliable communication channel according to the radio regulations of the International Telecommunication Union (IUT).

Chapter V - Safety of navigation

Chapter V, in contrast to the whole Convention, has a general scope since it applies to all ships engaged on international voyages and identifies some navigation safety services to be ensured by contracting parties. The governments are responsible for fulfilling duties in certain areas including the maintenance of meteorological services for ships, the ice patrol service, routing of ships, and the maintenance of search and rescue services. This Chapter also recalls the general practice for masters to proceed to the assistance of those in distress and highlights that, under the supervision of contracting governments, all registered ships shall be sufficiently and efficiently manned from a safety point of view. The Chapter makes mandatory the carriage of voyage data recorders (VDRs) for post incident investigations and automatic ship identification systems (AIS) as navigation aid.

Chapter IX - Management for the Safe Operation of Ships

Chapter IX, makes mandatory, the International Safety Management (ISM) Code, which requires a safety management system to be in force by the shipowner.

⁶Status of IMO Treaties 2020.

<<https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>>accessed 08/01/2021.

⁷ IMO Resolution MSC.462(101) adopted on 13 June 2019.

Chapter X - Safety measures for high-speed craft

Chapter X deals with the International Code of Safety for High-Speed Craft (HSC Code).

Chapter XI - Special measures to enhance maritime safety and security

Chapter XI-1 clarifies requirements relating to authorization of recognized organizations (responsible for carrying out surveys and inspections on Administrations' behalfes); enhanced surveys; ship identification number scheme; and port State control on operational requirements. Part 2 of this Chapter deals with maritime security and enshrines the International Ship and Port Facilities Security (ISPS) Code.

Chapter XIII - Verification of compliance

This Chapter has great importance since it is dealing with the verification of State compliance to IMO treaties in a manner as to support States in the weak areas. The IMO Member State Audit Scheme has become mandatory from 1 January 2016.

Chapter XIV - Safety measures for ships operating in polar waters

Chapter XIV makes mandatory, from 1 January 2017, the Introduction and part I-A of the International Code for Ships Operating in Polar Waters (the Polar Code).

1.2-The International Convention on Maritime Search and Rescue 1979

The Search and Rescue Convention was adopted at a conference in Hamburg in 24 April 1979 and has entered into force in 22 June 1985.⁸ Among the 113 contracting States,⁹ the Republic of Tunisia has acceded to the treaty on 31 July 1998 as per the Law number 35 of 25 May 1998. Although the practice of rendering assistance to ships and persons in distress at sea was enshrined in customary international law and international conventions (UNCLOS, SOLAS), the search and rescue system differs from one region to another in term of organization and efficiency. The SAR Convention aimed to establish an international search and rescue plan and to encourage cooperation and coordination between neighbouring States to ensure that the assistance to persons and vessels in imminent danger is delivered regardless of their nationality and the place where the incident occurs. To do that, the IMO's Maritime Safety Committee (MSC) divided the

⁸International Convention on Maritime Search and Rescue (Signed 24 April 1979, entered into force 22 June 1985)1405 UNTS 23489.

⁹Status of IMO Treaties 2020.

<<https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>>accessed 08/01/2021.

world's oceans into 13 search and rescue areas, in each of which the majority of countries have delimited their search and rescue regions for which they are responsible with the existence of some overlapping zones and non-delimited ones. That is why the MSC has conducted many regional meetings and conferences especially for the regions where no agreements between States have been reached, and a provisional search and rescue plan was completed after the Fremantle Conference (Australia) held in September 1998 for the Indian Ocean region.

The SAR Convention is organized so as the technical requirements are contained in the five Chapters of the Annex. The coastal States are responsible for providing adequate SAR services in their SAR zone of responsibility by the establishment of rescue coordination centres and sub-centres and by setting the operating procedures to be followed in case of emergencies and during SAR operations. Parties are also encouraged to enter in agreement with their neighbouring States regarding the delimitation of SAR regions, and cooperate in terms of facilities, training and procedures. To this end, the cooperation may extend to the entry of rescue units from other Parties into the territorial waters of a State.

Faced with the above-mentioned requirements, States were reluctant when it comes to the adherence to the SAR Convention, and many of the world's coastal States had not accepted the obligations imposed by the Convention. To overcome that, IMO went for the amendment of the Convention to attract more States to accept it and a revised Annex to the SAR Convention was adopted in May 1998 and entered into force in January 2000.¹⁰

Generally, the revised technical Annex of the SAR Convention deals with the responsibilities of State parties and highlights the importance of the regional approach and coordination between maritime and aeronautical SAR operations. Paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 and 3.1.3 of the existing text of the Annex to the 1979 SAR Convention had not been changed because, according to article III(2)(e) thereof, amendments to these paragraphs could only be effected by means of the explicit amendment procedure.¹¹

¹⁰ IMO Resolution MSC (70)69 adopted on 18 May 1998.

¹¹ - Paragraphs 2.1.4, 2.1.5, 2.1.7 related to the delimitation of the SAR region;

- Paragraphs 2.1.10 related to providence of assistance at sea in all circumstances;

- Paragraphs 3.1.2 and 3.1.3 related to the cooperation between states in conducting SAR operation in Territorial sea of the other state.

The five Chapters of the amended annex are briefly organized as follows:

Chapter 1 - Terms and Definitions

This Chapter updates the original Chapter 1 of the same name.

Chapter 2 - Organization and Co-ordination

The Chapter makes clear the responsibilities of Governments. It requires Parties, either individually or in co-operation with other States, to establish basic elements of a SAR service, and states:

Contracting parties are required either individually or in cooperation with other states to ensure the core elements of a SAR service in the area of responsibility. Those elements include:

- Appropriate legislation;
- Designation of the responsible authority;
- Management of the available resources;
- Means of communication;
- Coordination and standards of operations;
- Improvement of SAR services by national (between agencies) and international cooperation and training.

Established SAR regions within each sea area should be contiguous, and parties should accept responsibility for providing SAR services in the regions delimited by agreement with other countries and without prejudice to maritime boundaries.

The country shall use the available facilities to ensure a 24/7 SAR service, regardless of the nationality or status of the person who is or appears to be in distress and to forward to the Secretary General information about SAR services with the "closest practicable coordination between maritime and aeronautical services".

Chapter 3 - Co-operation between States

This Chapter requires Parties to "co-ordinate search and rescue organizations, and whenever necessary, co-ordinate search and rescue operations with those of neighbouring States". It also says that "unless otherwise agreed between the States concerned, a Party

should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory for rescue units of other Parties solely for the purpose of search and rescue".

Chapter 4 - Operating Procedures

The Chapter states that each Rescue Co-ordination Centre (RCC) or Rescue Sub-Centre (RSC) shall take all the preparatory measures for the prompt response to all emergencies in its area including updated information about search and rescue facilities, communications and detailed plan for the conduct of SAR operations. Parties either individually or in co-operation with others shall ensure that they are capable on a 24-hour basis of receiving distress alerts by the appropriate RCC or RSC. The modus operandi from the reception of the distress alert up the termination of the SAR operation was detailed.

Chapter 5 - Ship reporting systems

This Chapter recommends that ship reporting systems may be established either individually by Parties or in co-operation with other States, where this is considered necessary, to facilitate search and rescue operations. Vessels are encouraged to send their reports about positions for search and rescue purposes, and those reports can be disseminated to other parties in case of loss of contact. The aim of this reporting system is to reduce the intervention time frame by SAR units.

After the Norwegian MV Tampa incident in 2001¹², the SAR and SOLAS conventions were amended on 2004 for the purpose of solving the problem of safe place for rescued person after being disembarked from the assisting ship.¹³ The said amendment of SAR convention, which aim to enhance the coordination between states to release masters who have assisted persons in distress at sea from their obligations, entered into force on 1 July 2006. In this regard the reaction of states to the 2004 amendment varies from persistent objection (Malta) to acceptance (Tunisia and Italy). Besides to that IMO has adopted some non binding instruments which came out with the 2004 amendments to the SAR and SOLAS conventions. The guidelines on the treatment of persons rescued at sea have

¹² On 26 August 2001 a Norwegian MV Tampa was asked by Australian Coast Guard to rescue 438 asylum seekers in distress on board a small Indonesian fishing vessel on the international waters. The request of the captain of MV Tampa to disembark rescued persons at Christmas Island was rejected by the Australian Authorities. After eight days of waiting the captain decided to enter the Territorial sea of Australia which led to a diplomatic incident between Australia and Norway after boarding the MV Tampa by Australian forces 4 NM of the Christmas Island coasts.

¹³ IMO Resolution MSC (155)78 adopted on 20 May 2004.

defined clearly the definition of a place of safety where the SAR operation would end up.¹⁴ Unfortunately, the SAR convention amendment of 2004 did not give a clear definition of a default state of disembarkation of rescued persons in distress at sea. It only put the primary responsibility of cooperation and coordination to ensure that the rescued persons are disembarked and taken to a place of safety, on the shoulders of the contracting government responsible for the search and rescue region.

IAMSAR Manual

In parallel to the revision work of the SAR convention, the IMO and the International Civil Aviation Organization (ICAO) have jointly published the International Aeronautical and Maritime Search and Rescue Manual (IAMSAR) through the work of the joint group on the Harmonization of Aeronautical and Maritime Search and Rescue (IMO/ICAO JWG) created on 1993 to assist ICAO and IMO in developing provisions regarding new search and rescue techniques and procedures where both aeronautical and maritime interests were involved. It is important to recall that the IMO/ICAO JWG has no power to make recommendations to States, nor to any organization other than ICAO and IMO.

The first edition of the IAMSAR Manual was adopted in November 1999. It comes to replace the two previous manuals developed by IMO which are the IMO Merchant Ship Search and Rescue Manual (MERSAR) of 1971 and the IMO Search and Rescue Manual (IMOSAR) of 1978 which provided guidance to on scene ships and government, respectively, in executing and implementing SAR operations and services.

The IAMSAR Manual is divided into three volumes as follows:

- Volume I : Organization and Management, deals with the global concept of SAR plan and the intergovernmental cooperation for the effectiveness of SAR services.
- Volume II : Mission Coordination, is about the planning and organizing of SAR operations, it is to be handled by field units and rescue centres as well.
- Volume III : Mobile Facilities, is used by all mobile units that can conduct the SAR operations including merchant ship which can perform the role in scene coordinator of SAR services.

The ICAO/IMO JWG is responsible for doing the preparatory work to amend the IAMSAR Manual and the Sub-Committee on Navigation, Communications and Search and Rescue (NCSR) endorses it before finally being adopted at three-year intervals, by

¹⁴ The guidelines on the treatment of persons rescued at sea Resolution MSC.167 (78) adopted on 20 May 2004.

the MSC, along with the adoption process in place at the ICAO. In its last meeting on October 2020, the ICAO/IMO JWG dealt with the amendments of the IAMSAR Manual that will take effect in 2022 by including the introduction of iridium as IMO recognized mobile satellite service providers other than INMARSAT among other amendments.¹⁵

Besides the cooperation between IMO/ICAO and IMO/ITU, the International Maritime Organization has extended its cooperation with the International Hydrographic Organization (IHO) and the World Meteorological Organization (WMO). The first collaboration led to the establishment of the World Wide Navigational Warning Service where the globe is subdivided into sixteen NAVAREAs (Now the number was increased to be twenty one)and each coordination centre will be responsible for the broadcast of maritime safety information and Navigational warning through NAVTEX, SAFETY NET and HF Morse.¹⁶Through the cooperation with the WMO, the World Wide Met-Ocean Information and Warning Service was established using the same subdivision of the globe to twenty one METAREAs which have the same boundaries as the NAVAREAs. In this regard the Hydrographic Institute of the Spanish Navy is the NAVEARA III coordinator for the Whole Mediterranean Sea and the METAREA III coordinator is Hellenic National Meteorological Service of Greece.¹⁷

1.3-Salvage Convention 1989

The Salvage Convention, adopted on 28 April 1989 and entered into force after 7 years, came to replace the Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea, 1910.¹⁸

The IMO aimed to unify certain rules related to the salvage of vessels and other properties at sea for the important role of marine environment protection.

Although this Convention is related to the enhancement of safety measures at sea, it is not directly related to the safety of life at sea, like the case of the SAR and SOLAS conventions, since its provisions are about recovering of properties more than the rescue of life. Its application comes at the second level of intervention, after rescuing the persons in distress, to recover the vessels and protect the environment from the substances carried on board. In other words, this Convention is targeting mainly the wrecked ships but it did not deal with the problems relating to the rescue of illegal migrants at sea.

¹⁵Report of the twenty-seventh meeting of the ICAO/IMO joint working group on harmonization of aeronautical and maritime search and rescue 12 to 15 October 2020.

¹⁶IMO Resolution A 706(17) adopted on 6 November 1991.

¹⁷COMSAR.1/Circ.58/Rev.1 of 31 October 2018.

¹⁸ International Convention on Salvage (Signed 28 April 1989, entered into force 14 July 1996) 1953 UNTS 33479.

The accession to the Salvage Convention by the Republic of Tunisia was effected by the deposit of an instrument on 5 May 1999.

The instrument of accession contained the following reservation:

“Tunisia reserves the right not to apply the provisions of the International Convention on Salvage, 1989:

- (a) When the salvage operations are carried out in internal waters and when all the ships involved are internal navigation ships;
- (b) When the salvage operations are carried out in internal waters and no ship is involved;
- (c) When all the parties concerned are Tunisian;
- (d) When maritime cultural property of prehistoric, archaeological or historic interest lying on the seabed is involved”.

The Convention entered into force for Tunisia on 5 May 2000, in accordance with the provisions of article 29. As of December 2020, the number of contracting parties has reached 71 countries.¹⁹

2- The Maritime SAR Organization in the Central Mediterranean Sea

The SAR organization for the Central Mediterranean, which includes Tunisia, is known for its controversial situations when it comes to the organization and the execution of SAR responsibilities. The SAR regions, in most cases, are declared unilaterally without any agreement between neighbouring States as per the provisions of the 1979 SAR Convention. The successful implementation of SAR provisions in the laws of Tunisia requires a deep understanding of the Mediterranean region’s SAR practices, different interpretations of States and the challenges faced at regional level.

The search and rescue services in the Mediterranean basin are associated mainly with irregular migration manifested by three migration routes from the southern coast to Europe, rather than the ordinary marine accidents and ship distress at sea. On the other hand, the international maritime law is sometimes facing a clear violation of its provisions by the new developments which were unforeseen at the time of its draft and, unfortunately, no appropriate amendments are done since the same legislation applies for these newly developed cases which link the maritime law to the human rights and migration law at the same time. More specifically, the actual SAR legal framework presents legal vacuum (for EU) and some interpretative doubts which require a proper

¹⁹ Status of IMO Treaties

2020<<https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>> accessed 08/01/2021.

implementation by States Parties, and need the conclusion of regional or bilateral agreements concerning the delimitation of SAR zones and the coordination of their activities.

2.1-Regional Cooperation for SAR

With the aim of establishing a regional agreement in the Mediterranean basin, a provisional plan was adopted by IMO in the 1997 Conference of Valencia, as a framework of reference for the Mediterranean Sea and the Black Sea, encouraging additional specification by different parties and integration by means of more detailed bilateral and regional agreements.²⁰ Unfortunately, the discussions carried out in Valencia among the States of Central Mediterranean (Algeria and Libya were absent) were unfruitful, and did not allow to reach a consensus. That was not the case for the other part of the Mediterranean basin, where for the Ionian and Adriatic seas a consensus was reached during the talks in Valencia and a satisfactory treaty-based regime was defined by the interested States in 2000. The overlapping zone between Turkey and Greece is considered to be the only non-resolved issue in that part of the Mediterranean Sea.²¹

In particular, the area delimited by the coasts of Italy, Malta, Libya and Tunisia raises various problems. Both Malta and Italy have unilaterally established SAR zones, partially overlapping.²² The oversized Maltese SAR zone which is bound to the Flight Information Region (FIR), reaches the limit of the territorial waters of Tunisia to the west and the Crete Island to the east, and includes the Italian islands of “Lampedusa” and “Lampione” and the surrounding territorial waters, which put some question about the capacity to cover all this zone of responsibility. Basically, this large FIR is inherent from the British Royal Navy which was managing a huge area and where Maltese FIR was covering the Central Mediterranean and reach the land borders of some Central African countries like Chad. The actual Maltese FIR is managed by Euro Control which is an EU organ responsible for managing the FIR of all EU member states.

From another perspective, the Central Mediterranean countries have deployed important efforts to reach an agreement between each other as they have acknowledged the importance of regional cooperation and agreement in SAR matters to overcome the issues related to overlapping SAR zones for some States and the absence of a declared SAR

²⁰ General Agreement on a Provisional SAR Plan, adopted during the IMO Conference held in Valencia (8-12 September 1997), as Ann. 1 to the Res. 1.

²¹Ibid.

²²Availability of SAR Services SAR.8/Circ.317 June 2011.

zone for others. In that regard, and with the aim to ensure the efficient control of its large SAR zone, Malta signed an agreement in 2008 with Greece on the assistance and cooperation for the search and rescue services in the eastern part of the Maltese SAR zone. This agreement, which is considered as a delegation of authority of SAR activities over a broad portion of the eastern Maltese SAR region, did not enter into force up to now.²³

To improve cooperation, and despite some rounds of negotiations between Malta and Italy, the continuous meetings were not fruitful to reach an agreement for cooperation and coordination on SAR matters up to now. Nevertheless, an agreement was reached between Libya and Malta on 18 March 2009, where a Memorandum of Understanding (MoU) signed was signed in the field of search and rescue aiming to coordinate related operations within their respective SAR regions after the accession of Libya to the maritime SAR convention in 2005. This agreement was not published and no information on its status is available on the Maltese Ministry of Foreign Affairs website.

Back in 2007, Libya and Italy signed a MoU implicitly related to search and rescue which was about the control and the fight against illegal migration, human trafficking, fuel smuggling and reinforcement of border security in the Central Mediterranean known as the “push back” agreement which was widely criticized by the Refugee and Human Rights organizations. More recently, in December 2017, Libya has delimited its area of SAR and the declared zone was accepted by the IMO in June 2018.²⁴ In 2020, Libya signed two updated MoUs with Malta and Italy, respectively, in relation to SAR services. These steps were protested by Non-Governmental Organizations (NGOs) where “Statewatch & Osservatorio Solidarietà” have addressed IMO on 31 March 2020 through an open letter, requesting the Organization to repeal the Libyan SAR zone and stating that violation of international law and unethical State practices were observed in the SAR area considered to be an illusion.²⁵

Up to the northern part of the central Mediterranean where the flow of illegal migrants is less important, an agreement in SAR activities was signed between Algeria and Italy to

²³Agreement between Malta and Greece in the field of SAR
<<https://foreignandeu.gov.mt/en/Treaties%20Series/Pages/Treaties%20Documents/Greece---Agreement-on-Cooperation-in-the-Field-of-Search-and-Rescue.aspx>> accessed 12/01/2021.

²⁴Delimitation of Libyan SAR region
<<https://gis.imo.org/Public/COMSAR/RCC.aspx?CID=LBY&Action=View&ID=2032>>, accessed 12/01/2021.

²⁵Contested Libyan SAR region <<https://www.statewatch.org/news/2020/june/press-release-hundreds-of-ngos-and-individuals-call-for-the-revocation-of-libya-s-maritime-search-and-rescue-zone>>accessed 12/01/2021.

enhance the efficiency of the provided services in the area.²⁶At this level, it is important to mention that Tunisia, although concerned within the central Mediterranean migration route, did not enter into any agreement with the neighbouring states regarding the provision of SAR services or the delimitation of its SAR zone of responsibility.

The efforts of Italy to establish more cooperation in fighting illegal migration were extended and an agreement with Tunisia was signed right after the 2011 events. That year had known a drastic increase in the number of Tunisian illegal migrants who reached the Italian shores which was estimated to be around **27963** illegal migrants according to the Frontex agency.²⁷ The said agreement was not published and it covers only technical aspects to support the capacities of Tunisian law enforcement agencies in fighting illegal migration. In addition, it was a result of pressure exerted by media and political parties in Italy which accused Tunisia for not being able to control its maritime boundaries and suggesting at the same time to deploy Italian warships in the Territorial sea of Tunisia to help in pushing back illegal migrants. The answer of the Tunisian Government was clear that she would not allow any interference in its domestic affairs and only to accept in return to deport Tunisian illegal migrants through a weekly flight from Italy to Tunisia despite the criticism of this forced return by the civil society. In this regard, the efforts deployed by the law enforcement agencies and mainly the Coast Guard for securing and patrolling the maritime borders, have contributed in the decrease of number of illegal migration operations which were shifted to the Libyan coasts due to the deteriorated security situation since the fall of Kaddafi regime in 2011.

Recently, Tunisia has become a host country for sub-Saharan migrants and their number has been growing particularly after the abolition of visa requirements for a number of Sub-Saharan countries. This change leads to the increase of Sub-Saharan illegal migrants who depart from the Tunisian coasts to Italy especially after the 2018 agreement between Libya and Italy by which the Libyan Coast Guard increased patrols to pushback illegal migrants. The preferred departure point has become from Tunisian Coasts or from the Tunisian/Libyan land border which allow shorter and safer trip to Italian shores and more specifically to the two islands of Lampedusa and Pantelleria. From a practical point of view, the majority of the intercepted operations of illegal migration were considered to be rescue operations due to the non-seaworthiness of the used boats and the threats that they represent to the life of migrants. In 2020 the Coast Guard, occupying the front line in

²⁶Notification of agreement between Algeria and Italy for SAR operations SAR.6/Circ.5117 February 2017.

²⁷ 2011 Tunisian illegal migrants in Italy < <https://frontex.europa.eu/media-centre/news/focus/annual-risk-analysis-2012-NOEp8H>> accessed 10 March 2021.

fighting illegal migration and in the search and rescue operations, succeeded to intercept **945** operations with a total of **10474** among them **2257** non Tunisian (mainly Sub-Saharan) which shows that the number of illegal migrants and of intercepted operations doubled by more than three times compared to 2018 and 2019 statistics.²⁸ The post SAR operations investigations revealed that a number of illegal migration operations were organized by Sub-Saharan nationals which can be considered as an important change to be taken into consideration. Finally, according to the Tunisian Forum for Economic and Social Rights, an NGO dealing with illegal migration, the number of Tunisian migrants arriving to the Italian coast has reached 11212 in **2020** against **2592** in **2019** and **4849** in **2018**.²⁹

2.2- SAR convention interpretation issues

When it comes to the legal framework and the different interpretation of the SAR provisions, the definition of a person in distress provided by the provisions of the SAR convention is as follows “a situation wherein there is a reasonable certainty that a vessel or a person is threatened by grave and imminent danger and requires immediate assistance”. Unfortunately, this definition opens the door for many interpretations favouring non-assistance and whether it embraces a self-induced situation of danger (in order to claim rescue by the authorities of a prospective destination country) or the commencement of a risky voyage on an unseaworthy vessel. One of the practices by the public SAR services in the Central Mediterranean is called “the circulation” where a boat overloaded with illegal migrants is provided with fuel and food and accompanied till the boundaries of the destination’s SAR zone without arresting the boat and embark the migrants on board of the SAR service ship, with the presumption that the boat is not in a distress phase. At this level, and with the ambiguities that go with the interpretation of the SAR legislation, the following questions are raised regarding the conduct of Public SAR services toward migration boats:

“Is the SAR ship under the obligation of embarking the persons that their situation is assessed to be in danger, or should she escort the intercepted boat to the port of destination? Or would it be sufficient to merely provide water, food, basic sanitary

²⁸ Tunisian Coast Guard Annual Report 2020.

²⁹ FTDES report 2020 < <https://ftdes.net/rappports/en.octobre2020.pdf> > accessed 10 March 2021.

assistance and fuel and allow the vessel to continue its journey when it is self-evident that an attempt of irregular entry into another State's territory will be realized?"³⁰

From a practical point of view the latter scenario cannot be applied since granting the right of freedom of navigation to a Stateless ship that does not satisfy the minimum standards of safety and seaworthiness is in contradiction with the international maritime law in force even though the migrants express their will to continue their journey to the port of destination.

In this regard and with the aforementioned reasons, the Public SAR intervention unit shall avoid the "turn away eyes policy" and act in good faith and assume responsibility, rather than hope that migrants will sail towards another State's shores safely.

2.3-Safe port and disembarkation policy

It is obvious that the safe port of disembarkation is still a controversial issue where some parties use to distinguish between the humanitarian Law of the sea and the refugee law. The very famous case of "Hirsi Jamaa and others v. Italy" refers to the practice of pushback denounced by the European Court of Human Rights. The court held that Italy was in violation of international law and the Italian practice of push-back to Libya of ships intercepted mainly on the high seas on their prospective route to Italy or to other European shores was exposing them to the threat of human rights violation by disembarking them in an unsafe port.³¹

It is clear from the 2004 amendment of the SAR convention that the SAR state responsible for the area in which the assistance is rendered play a key role in exercising primary responsibility for ensuring that such cooperation and coordination occurs in order that survivors are disembarked and are taken to a place of safety. The difficulty here is that the SAR convention is silent on what does this primary responsibility mean. This gave raise to two school of thoughts reflecting the dispute among Mediterranean states with regard to disembarkation issue. The first view is that the 2004 amendment impose a residual obligation on the SAR state to allow disembarkation into its own territory in case where all the efforts to find a place of disembarkation in another states have failed. This concept of residual obligation was accepted by some states like Tunisia and Italy and was objected mainly by Malta which did not accept to the 2004 amendment.

³⁰ Marcello Di Filippo, 'Irregular migration across the Mediterranean Sea: Problematic issues concerning the international rules on safeguard of life at sea' (2013) SSRN Electronic Journal vol. I(1),53-76.

³¹ Hirsi Jamaa and Others v. Italy(2012) Reports of Judgments and Decisions 2012-II 99.

The second view, adopted mainly by Malta, argue that under customary international law the state with the closest safe port from the location of rescue must accept the disembarkation of rescued persons and the term primary responsibility in this case can be interpreted as the main role in ensuring cooperation and coordination.

More generally, the EU was largely criticized for its called disengagement policy for SAR in the central Mediterranean. In 2018, the disagreement about amending the mandate of the Sophia Operation after the Italian request to revise the rule related to the disembarking of asylum seekers rescued by the mission in Italian ports, has limited the activities of the mission to air patrols and no ship was deployed. Besides, the Frontex joint operation Themis launched in January 2018 is no longer covering the Maltese SAR zone and it is limited to the Italian SAR zone. The conduct of the Frontex joint operation Themis toward SAR is summarized in the letter of the Director General of European Commission to the Frontex executive director where it was mentioned: “With regard to the statement on following procedures and notifying sightings of "distress" at sea to the "Responsible" MRCC (i.e. MRCC Libya) and also to neighbouring MRCCs (i.e. those of Italy and Malta) and EUNAVFOR MED Headquarters, I would like to note that Italy, despite the fact that it cannot be considered a "neighbouring MRCC" because it does not border the Libyan SRR, is supporting the Libyan Coast Guard a lot in particular in acting during the SAR event as a “communication relay”. In that regard, together with Malta, and following the standard practice, it would be appropriate to include Tunisia and Egypt as well”.³² The newly declared Libyan SAR zone in 2017 with the operational and financial support of EU and Italy to the Libyan Coast Guard, are considered to be a progressively disengagement of SAR responsibilities to the Libyan forces for the zone off its territorial waters after being covered by the Italian mission “Mare Nostrum” since 2013. Under the human rights obligations, the concept of disembarkation platforms and controlled centres was elaborated by the EU among other solution like North African disembarkation centres. Nevertheless, the lack of human rights standards was the main concern for the denunciation of this approach. In order to face those controversial and widely criticized policies, a regional Ad-hoc disembarkation and relocation procedure was adopted by some countries out of a treaty or agreement regime. Malta, Italy and Spain were willing to relocate a share of asylum seekers rescued from the sea in order to break the political standoff.³³ In that regard, in 24 July 2018 Tunisia refused for the first

³² Letter to the Frontex Director <[http://www.statewatch.org/news/2019/jun/eu-letter-from-frontex-director-ares-2019\)1362751%20Rev.pdf](http://www.statewatch.org/news/2019/jun/eu-letter-from-frontex-director-ares-2019)1362751%20Rev.pdf)> accessed 13/01/2021.

³³ Sergio Carrera and Roberto Cortinovis, ‘Search and rescue, disembarkation and relocation arrangements in the Mediterranean Sailing Away from Responsibility?’ (2019) No. 2019-10 CEPS Papers in Liberty

time the disembarkation of 40 illegal migrants rescued in the SAR zone of Malta by the Tunisian Vessel ‘SAROST 5’ working for an oil rig in the area. The rescued migrants, who departed from Libyan coasts, spent 11 days in the outer limit of the Tunisian territorial sea before being granted entry to the port of Zarzis after few days. In that case Italy refused to accept the migrants and Malta argued that the nearest point for disembarkation was Tunisia. The objection of Tunisia to the Maltese concept of nearest port for disembarkation was also manifested by the refuse to grant access into a Tunisian port, to an Egyptian supply offshore vessel, which rescued 75 migrants in the SAR zone of Malta in 31 May 2019. Nevertheless, the Tunisian authorities accepted later to disembark the rescued migrant in the port of Zarzis on a humanitarian basis.

Besides the public SAR services provided by countries, the NGOs are playing an essential role in the SAR activities related to illegal migration at the Mediterranean Sea and especially its central part. The policy of certain States towards the work of those SAR NGOs operating at the Mediterranean Sea reflects the political tensions between the EU States mainly Italy and Malta which are at the frontline due to the unbalanced burden of illegal migration flows that are reaching their shores. NGOs involved in SAR activities are not welcomed by the majority of States that are under the pressure of the continuous flow of illegal migration. The States’ reactions against the said NGOs differ from criminal investigations for facilitating irregular entry to the confiscation of vessels and the accusation of collusion with smugglers network.

The Corona virus pandemic has aggravated the complexity of the safe port concept and some countries have used this health situation to establish a hold on receiving illegal migrants and asylum. In this regard, in Italy, an inter-ministerial decree was signed on 7 April 2020 by the ministers of infrastructure and transports, minister of foreign affairs, the interior affairs minister and the and health minister where the first article translated in English states: “For the entire duration of the national health emergency deriving from the spread of the Covid-19 virus, Italian ports do not ensure the necessary requirements to be classified and defined as a Place of Safety, in accordance with provisions in the Hamburg Convention on maritime search and rescue, in cases involving rescues undertaken by naval units flying a foreign flag outside of the Italian SAR zone”.³⁴ The

and Security in Europe <https://www.ceps.eu/ceps-publications/search-and-rescue-disembarkation-and-relocation-arrangements-in-the-mediterranean/> accessed 13/01/2021.

³⁴The Inter-ministerial Decree of 7 April 2020.

<[https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI\(R\).0000150.07-04-2020%20\(3\).pdf](https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI(R).0000150.07-04-2020%20(3).pdf)>. accessed on 13/01/2021.

Libyan and Maltese SAR services have followed the same approach toward the prevailing pandemic situation. The Libyan Coast guard declared that “The Libyan Coastguard now only does coordination work because of COVID-19, we can’t do any rescue action, but we are in contact with Italy and Malta.” As an official answer regarding a tragedy which happened in April 2020 near “Lampedusa” island where a group of migrants were left without any assistance using the excuse of COVID19 to breach the Law of the Sea, the SAR convention and the refugee rights.³⁵ The Tunisian law enforcement agencies, and mainly the Coast Guard, continued to ensure SAR services during the pandemic period where the Coast Guard units have conducted **56** rescue operations during the general lockdown (from March to May 2020)³⁶.

2.4-IMO attempts for elucidating the term safe port of disembarking:

IMO has taken some initiatives to overcome the difficulties related to the disembarkation of rescued persons by trying to push for the adoption of the residual obligation concept. The Facilitation Committee, responsible for the matters related to facilitation of maritime traffic and the arrival and departure of persons from ports, has initiated the discussion on the said topic and adopted in January 2009 a recommendatory circular containing “Principles relating to administrative procedures for disembarking persons rescued at sea”. The circular states that if the successful operation of disembarkation is not reached in an easy manner, the government responsible for the SAR zone where the persons were rescued, should accept to receive them in accordance with immigration regulations and to grant them a controlled place of safety that meet the required standards of human rights.

At the time of the FAL committee meeting, many delegations opposed the form of the draft text which uses the mandatory word ‘shall’, and accordingly the Committee amended the original draft by replacing ‘shall’ with ‘should’, where it appeared. In addition, a group of States, among them Japan, required the insertion of the phrase “in accordance with immigration laws and regulation”, for their own convenience. It important also to emphasize that Australia, Malta and Spain presented strong objections to the provisions of the circular, and went very far by raising the lack of competence of

³⁵ Yasha Maccanico, ‘Mediterranean, As the fiction of a Libyan Search and Rescue Zone begins to crumble, EU States use the Corona virus pandemic to declare themselves unsafe’(2020) <<https://www.statewatch.org/media/documents/analyses/no-360-malta-italy-eu-libya-pushbacks.pdf>>. accessed 13/01/2021.

³⁶ Tunisian Coast Guard Annual Report 2020.

the FAL Committee on the subject matter and that the said resolution is in contradiction with the in force provisions of the SAR and SOLAS Conventions as amended in 2004 .³⁷ A part from the FAL committee circular, that, despite the importance of the initiative has left the situation of uncertainty substantially unchanged, Spain and Italy jointly submitted a document in the framework of the Flag State Implementation (FSI) Sub-Committee, proposing to solve the problem of disembarkation and avoid any doubt or misleading interpretation regarding the identification of responsibility of disembarkation of the rescued persons by States.

The approach consists of amending SOLAS and SAR Conventions, in order to incorporate the protested provisions of the FAL Circular. Malta opposed this proposal, claiming that already “the 2004 amendments were excessively burdensome for the contracting state responsible for the relevant SAR region and that the right solution was for disembarkation to occur in the safe port closest to the location of the rescue”. After a lengthy discussion, the FSI Sub-Committee assumed to be not competent to deal with the joint proposal raised by Italy and Spain and transferred the issue to the other IMO specialized organs which are the MSC and the COMSAR Sub-Committee.³⁸

Finally, in March 2010 and within the framework of activities of the COMSAR, the said proposal to elaborate new amendments to SOLAS and SAR conventions did not find a wide acceptance among States and the balance that was reached by the 2004 amendments of the SAR convention is considered to be satisfactory. The need for more flexibility among States and the necessity of regional or bilateral agreements to overcome different were highly recommended.

In my opinion, there is a crucial need for Tunisia and Malta to enter into an agreement and try to find a balance between from one side, the large area of Maltese SAR and the related lack of capacity to cover it, and from the other side the concept of nearest port of disembarkation adopted by Malta which was not accepted by many Mediterranean countries and which seems against the concept of SAR zone of responsibility.

³⁷ Principles relating to administrative procedures for disembarking persons rescued at sea FAL.3/Circ.194, 22 January 2009.

³⁸ Report to the maritime safety committee and the marine environment protection committee FSI/17/15/1, 13 February 2009.

3- National interest on the implementation of the SAR convention in Tunisia

3.1- Actual maritime SAR Organization in Tunisia

Tunisia has acceded to the International Convention on the maritime Search and Rescue on 31 July 1998 as per the Law number 35 of 25 May 1998 and the treaty entered into force for it on 30 August 1998. Nevertheless, Tunisia did not implement the provisions of the said Convention, especially when it comes to the delimitation of a maritime SAR zone of responsibility with the encouragement of concluding regional agreements with neighbouring States for the delimitation of the zone and for the cooperation and coordination of maritime SAR operations. It is still the only country with a non-delimited maritime SAR zone in the western basin of the Mediterranean as depicted in figure 1 below.

During the IMO conference in Valencia held from 8 to 12 September 1997 for the adoption of a provisional SAR Plan for the Mediterranean Sea and Black Sea, the Tunisian joint delegation made of representatives from the Ministry of Transport and the Ministry of National Defence, declared that the National Service of Coastal Surveillance (NSCS) which is a department of the Ministry of National Defence, is the main Maritime Rescue Coordination Centre (MRCC) with three Maritime Rescue sub-centres MRSC at Bizerte, Kelibia and Sfax. The MRCC is responsible for receiving the COSPAS-SARSAT distress signal.

The SAR facilities that are normally available include the Tunisian Navy warships and other auxiliary vessels with coastal surveillance stations, all along the Tunisian Coasts. In addition to that, the Tunisian Coast Guard, a Department of the National Guard of the Ministry of Interior, is the main law enforcement agency responsible for the safety and security of the Tunisian Maritime spaces and the main actor in SAR activities. The Tunisian Coast Guard performs its different attributions using its vessels with a series of coastal surveillance stations ensuring the radar coverage of all the maritime spaces under the jurisdiction of Tunisia. The two mentioned agencies are supported by the tug boats of the ports and merchant marine office, private tug, customs vessels in doing their SAR activities.

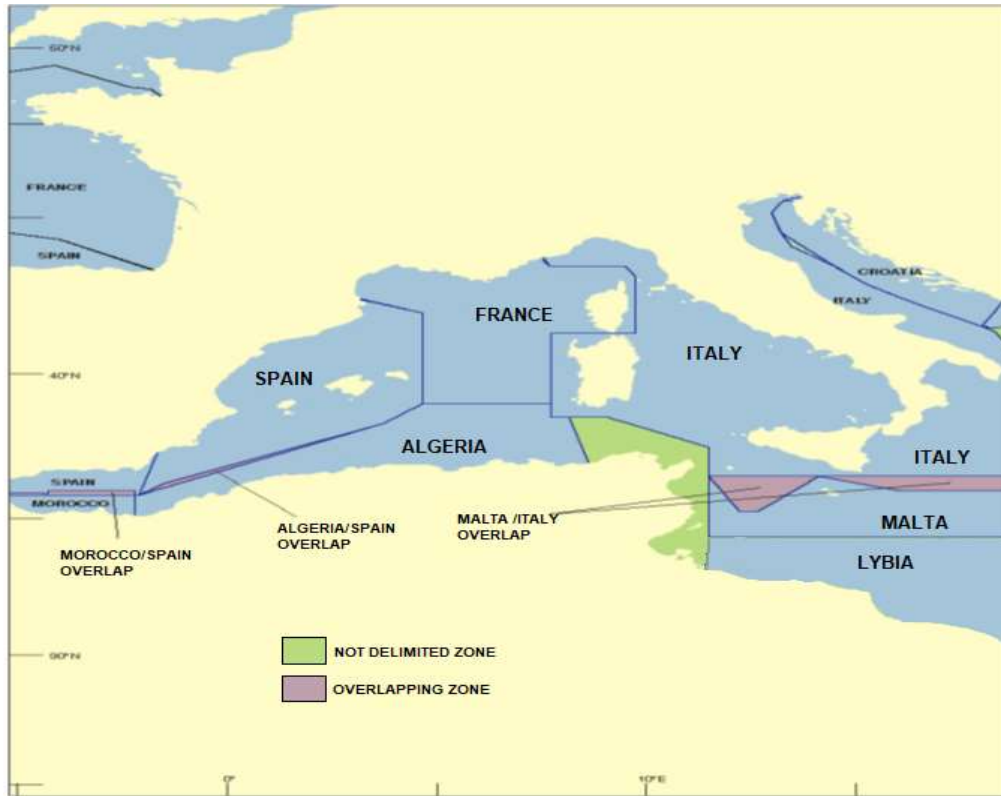


Figure 1: SAR zones in the Western basin of Mediterranean.

It's important to mention that, an upgrade of the coastal surveillance stations of the Tunisian Coast Guard is being implemented since 2018, which covers mainly the extension of the detection range of the Coastal Surveillance RADAR and other sensors, acquisition of Navtex reception equipments and the development of the operational mobility of the deployed units of the Tunisian Coast Guard. Identically, an ongoing project for the Ports and Merchant Marine Office for implementation of three Vessel Traffic Management Systems (VTMS) along the Tunisian Coasts which will contribute to the development of communication means at sea. Under the control of Ministry of Agriculture and Fisheries, the fishing vessels are monitored by a Vessel Monitoring System (VMS) with an extended range using satellite communications.

In summary, apart from the Tunisian navy warship and Coast Guard vessels which are not used exclusively for SAR operations, the different contributing services to the SAR services can be as follows:

- MRCC and MRSC by the Tunisian Navy;

- Hydrographic and oceanographic service by the Tunisian navy;
- Lighthouses and beacons service by the Tunisian navy;
- National Meteorological Institute of the Ministry of Transport;
- Tunisian air force aircrafts and helicopters;
- National Guard Patrol helicopters;
- Vessels of the Tunisian Custom;
- Public Tug boats;
- Private Tug Boats.

First, despite the large number of contributing parties to the SAR services, the main burden is with the Tunisian Coast Guard and the Tunisian Navy, where mainly the SAR operations are related to illegal migration similarly to the other central Mediterranean countries. Second, there is large list of contributors to the SAR activities, however in practice there is lack of coordination between the different departments due to the absence of a national maritime policy that can determine the duties and responsibilities of each department and the mechanism of cooperation among them. In this regard, establishing the State Secretariat of Maritime Affairs in late 2019 marks a turning point towards a unified national maritime policy. The newly created department is responsible for coordinating the actions of different stakeholders and to enhance the implementing process of international maritime conventions into the national law.

Another important event that happened at the beginning of 2020, which the submission of the coordinates of the Tunisian SAR zone of responsibilities to the NCSR committee. As mentioned earlier that the actual zone where Tunisia is exercising its SAR activities, which generally bound with the FIR, is not a delimited area but in another words it is the remaining area from the unilaterally delimited SAR zones of the neighbouring states. Based on the actual situation of migration flow in the central Mediterranean and the operational capacities of the concerned departments to conduct SAR operations, the new submitted Tunisian SAR zone goes beyond the FIR region. As a result, there will be two new overlapping zones (zone 2 and 3) in the central Mediterranean added to the ancient overlapping zone SAR Italy/Malta (zone1), as depicted in figure 2 below. The first one is between Tunisia and Libya, and the second one between Tunisia and Malta. This issue raises the necessity of a regional or bilateral agreement between the concerned States to

organize the intervention within the overlapped areas and ensure an efficient and prompt answer to any distress call.

The Search and Rescue Region/Flight Information Region SRR/FIR was delimited and the intervention plans and the means to assist aircrafts in distress were fixed by the Decree 3333 of 2009 which amend and replace the Decree n° 1975-155 dated 7 March 1975.

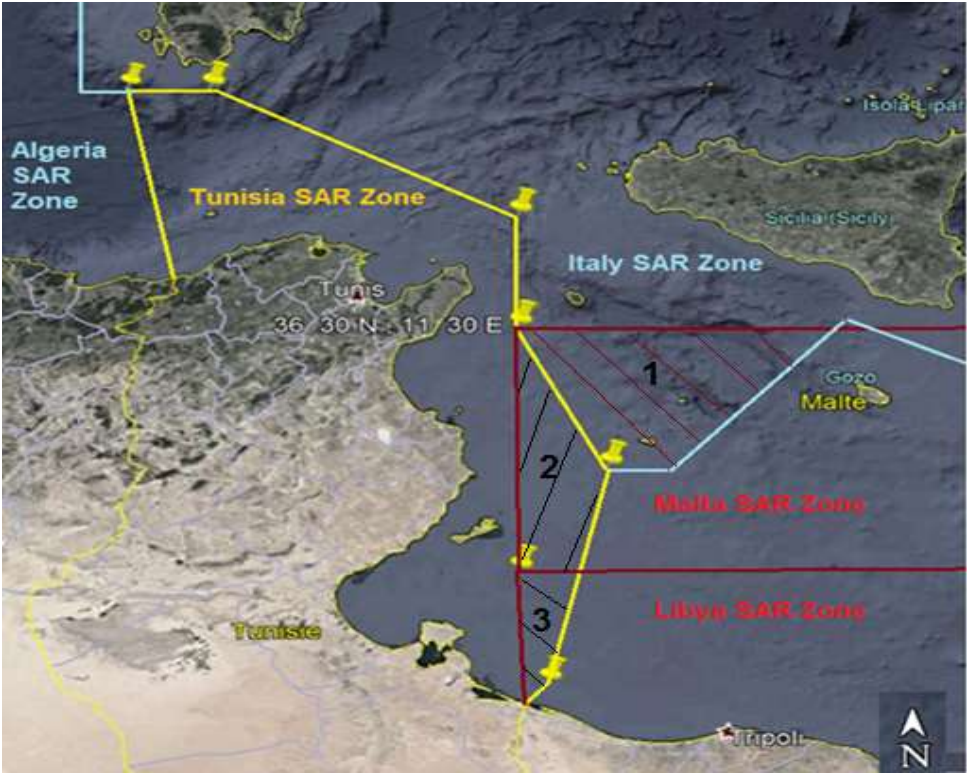


Figure 2: The declared Tunisian SAR zone.

The main two bodies that organize the search and rescue of the aircrafts in distress are the Search and Rescue National Committee and Office of Studies and Coordination of Search and Rescue.³⁹ A more detailed text for the search and rescue of aircrafts in distress is developed in the Aeronautical Information Publication (AIP) which is prepared in accordance with the Standards and Recommended Practices (SARPs) of Annex 15 to the Convention on International Civil Aviation and the Aeronautical Information Services Manual. It contains the basic information essential to the air navigation security in

³⁹ Decree n° 2009-3333 dated 2 November 2009.

Tunisia, and section GEN 3.6 deals with responsible services for the search and rescue of aircrafts within the SRR area and the signals exchanged with ships.⁴⁰

3.2- National interest in the implementation of maritime SAR convention

It is important at this stage to enumerate the main reasons and the advantages of implementing the provisions of the 1979 SAR convention as amended into the Laws of Tunisia. First, from the perspective of public international law, article 26 of the Vienna Convention on the Law of Treaties known as “Pacta Sunt Servanda”, which states that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”.⁴¹ Bearing in mind that the IMO treaties are not self executive and that their effectiveness depends entirely on states actions, the implementation of those treaties by incorporating them into the domestic law is considered to be a critical step toward compliance. Although in a monist country like Tunisia, ratification and publication of the treaty in the national gazette is enough for making all the provisions to be considered within the national law and applicable by the judges, the implementation of the said treaty by a national law will ensure the smooth application and may enhance the coordination and the cooperation process among involved departments responsible for its execution.

Second, under UNCLOS and different IMO treaties, especially those related to safety and security, it is within the responsibilities of coastal State like Tunisia, to ensure safety and security of the maritime spaces under its control. In this respect it shall provide search and rescue services, hydrographical and meteorological warning system, radio-communication services, ship routing and ship reporting system and vessel traffic service. For the efficient use of these established services and procedures, the coastal State shall communicate the relevant information to the IMO.

The aforementioned reasons are mainly related to the responsibilities of Tunisia under international law that need to be fulfilled. From another perspective, the necessity of implementing SAR Convention into the laws of Tunisia is crucial since it falls under the enhancement of safety and security at sea, which is one of the pillars for the realization of sustainable development Goals (SDGS) 2030.

In Tunisia, the maritime transport sector plays an important role in the development and promotion of Tunisia's foreign trade. Indeed, 98% of foreign trade is carried out by sea

⁴⁰ Air Navigation Security in Tunisia

<http://www.oaca.nat.tn/fileadmin/docs/DCCRSIA.Doc/AIP/Generalites/GEN_3_6.PDF> accessed 16 January 2021.

⁴¹ Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980)1155 UNTS 331.

through the seven (07) maritime commercial ports. For example, in 2015 these ports ensured the transit of 28 million tons of goods, 729 thousand passengers and 297 thousand cars.⁴² The National Maritime Transport Policy (NMTP) in Tunisia is based, among others, on the two following axes:

- Updating and upgrading the maritime legal framework;
- Strengthening the safety and security of ships and port facilities, and maritime navigation and protection of the marine environment.⁴³

Thus, the implementation of the SAR Convention is a real asset in the enhancement of the safety and security of navigation which will promote the national maritime transport policy and contribute to sustainable development 2030 set by the United Nations.

Finally, apart from the economic interests, it is important to recall at this level the recent changes in the migration policy of Tunisia which were discussed under part 2.1.1 of this work. Tunisia has become a host country of Sub-Saharan migrants after the recent abolition of visa requirements for a number of countries. In addition, the post investigations of the intercepted illegal migration operations have shown that the year 2020 has known a drastic increase in the number of illegal migrants where 21.5% of them are Sub-Saharan nationals who have changed their migration route from the Libyan coasts to the Tunisian coasts or to the Tunisian/Libyan land borders towards the two nearest islands of Lampedusa (61NM) and Pantelleria (43 NM). A significant increase in the number of intercepted operations by Coast Guard, which were doubled by three times compared to 2018 and 2019, was also remarked in 2020. The investigations also showed that Sub-Saharan nationals are not only participating in the illegal migration operation by paying money to be transported, but some of them are organizing the whole operation which can be considered as an important change in the modus operandi of this organized crime.

3.3- Way forward for the implementation of SAR convention

The assessment of the SAR convention implementation at the regional and national level and the new changes in the illegal migration strategy, make the humanitarian aspect of the necessity of incorporating the SAR convention provisions into the laws of Tunisia. The economic interests are of great interest for successful NMTP in Tunisia. In addition,

⁴²Tunisian National Transport Policy < <http://www.transport.tn/fr/maritime/presentation> > accessed 06 February 2021.

⁴³ Ibid.

it was clear from the assessment that the main actors in the conduct of SAR operations are the Tunisian Coast Guard at the front line, supported mainly by the Tunisian Navy. In 2018, and according to the International Migration Organization, about **20% (4091 out of 19519)** of intercepted illegal migrants at the central Mediterranean Sea were rescued by the Tunisian Coast Guard.⁴⁴ Owing to the certainty that most of the intercepted migrant boats are unseaworthy and present an imminent threat to the life of persons on board, the presented figures reflect the non-balanced burden of SAR operations among all the stakeholders (Coast Guard, Navy, Customs...) which undermine with no doubt the operational capacities of the coast guard in fulfilling other obligations relating to the safety and security at sea especially that there is no dedicated ships for SAR are being used. Besides that, the post SAR investigations are mainly conducted by the Coast Guard which is facing many challenges when it comes to the coordination with the competent authorities responsible (Port Authority, Local Authorities) for ensuring a controlled and safe place for the disembarked rescued persons that meet the required standards of human rights.

In order to ensure the optimal implementation of the SAR convention and a better coordination and cooperation between stakeholders, the following points are to be tackled and involved in the national legislation:

- The establishment of a National Committee for maritime search and rescue within the Ministry of Transport and logistics, gathering all the representatives of different stakeholders, which is responsible for the coordination of maritime search and rescue and for the elaboration of the Tunisian strategy in search and rescue and coordination of the related operations.
- The creation of a National Centre for maritime search and rescue within the General Directorate of Maritime Transport and Trade Ports responsible for the implementation of the national strategy in SAR domain.
- The importance of entering in agreement with neighbouring state especially where SAR region are overlapping taking into consideration the new changes in the illegal migration strategy (Mainly Libya and Malta).
- The subdivision of the SAR zone of responsibility between the Navy and the Coast Guard with regard to maritime search and rescue and the establishment of the Maritime Search and Rescue Sub-centres for that purpose within each department based on the duties and responsibilities and the operational capacities.

⁴⁴ Migrants Intercepted by Tunisian Coast Guard in 2018 <<https://missingmigrants.iom.int/downloads>> accessed 06 February 2021.

- Bearing in mind the importance of the concept of safe port of disembarkation, the regional committees for the fight against calamities, their prevention and the assistance organization chaired by the governor will be responsible for the provision of safe place with the basic necessities and medical assistance for the rescued persons.

Hereafter, the draft of a decree for the organization of maritime search and rescue will be developed in the attached annex.

Conclusion

The 1979 SAR Convention is one of the most controversial treaties, that is facing issues in its implementation by states because of the political aspects related to the delimitation of SAR zone and the issue of disembarkation in a safe port which have been differently interpreted by states when the rescued persons are illegal migrants or asylum seekers. Although the delimitation of the SAR zone of responsibilities has no prejudice on the delimitation of maritime boundaries of states, they are usually overlapping and coincide with the FIR in the Mediterranean Sea.

Although Tunisia has acceded to the 1979 SAR convention on 31 July 1998, its SAR zone of responsibility was not delimited until the beginning of 2020. The coordinates of such zone were submitted to the NCSR and is still pending to the notification of consideration by the IMO. Notably, the establishment of the state secretariat of maritime affairs will boost the implementation of different IMO treaties including the SAR Convention and will contribute to the establishment of SAR strategy which involves all the entities that have responsibilities under SAR obligations. The promulgation of this drafted law may be considered as the first achievement of the said department towards a clear and concise national maritime policy.

Annexe1

Governmental Decree n° .../20.... dated/20... related to the organization of Maritime Search and Rescue services within the Tunisian SAR zone.

The Head of Government,

On a proposal from the Minister of Transport and Logistics,

Having considered the Tunisian Constitution of 2014,

Having regard to the Decree n° 70-101 of 23 March 1970, establishing the National Service of Coastal Surveillance, as amended by Decree n° 95-424 of 13 March 1995,

Having regard to the Decree n°1975-342 of 30 May 1975 relating to the responsibilities of the Ministry of Interior ,

Having considered the Law n° 80-22 of 23 May 1980, relating to the Accession of the Republic of Tunisia to the International Convention on the Safety Of Life At Sea SOLAS 1974,

Having considered the Law n° 85-6 of 22 February 1985, relating to the ratification of the United Nation Convention on the Law Of the Sea UNCLOS 1982,

Having regard to Law n° 91-39 dated 8 June 1991, relating to the fight against calamities, their prevention and the assistance organization,

Having considered the Decree n° 1993-942 of 26April 1993 relating to the ways of development and appliance of the national plan and regional plans of to the fight against calamities, their prevention and the assistance organization and

the composition and functions of national committee and regional committees as amended by the decree 2004-2723 of 21 December 2004,

Having considered the Law n°98-35 of 25 May 1998, relating to the accession of the Republic of Tunisia to the International Convention on Maritime Search and Rescue of 1979,

Having considered the Decree n°2006-1162 of 13 April 2006 relating to the status of the National Guard officers,

Having considered the Law n° 2008-34 of 2 June 2008, promulgating Customs Code,

Having considered the Law n° 2009-48 of 8 July 2009, promulgating the Maritime Ports Code,

Having considered the Decree n° 2009-3333 dated 2 November 2009, fixing the intervention plans and the means to assist aircrafts in distress, as amended by the Governmental Decree n°2019-174 of 18 February 2019,

Having considered the Decree n°2014-409 of 16 January 2014 relating to the responsibilities of the ministry of transport,

Having considered the Decree n°2014-410 of 16 January 2014 relating to the organization of central services of the ministry of transport as amended by the Decree n°2016-97 of 11 January 2016,

Having considered the decree n°2019-144 of 18 February 2019 related to the establishment of a Ministerial Committee and a General Secretariat for Maritime Affairs,

Having considered the opinion of the Minister of National Defence, the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance and the Minister of Public Health, the

Minister of agriculture, aquatic resources and fisheries,

Having considered the opinion of the General Secretariat of Maritime Affairs,

Having considered the opinion of the Administrative Court,

Decreases the following:

CHAPTER ONE

GENERAL PROVISIONS

Article 1 - This Decree determines the maritime search and rescue organization within the zone of responsibility of the Republic of Tunisia.

The coordination and planning of the SAR activities remain with the responsibility of the Committee set out under article 4 of this decree.

The operational execution of search and rescue services in case of distress are ensured by the Coast Guard (Ministry of Interior), National Service of Coastal Surveillance and Tunisian Navy (Ministry of National Defence) , each one in its search and rescue region with the possibility of requisition of other contributing services if required as set out by the National SAR Intervention Plan.

Article 2 - For the purpose of this Decree the following terms, as defined in the convention, mean:

1. "Search". An operation, normally co-ordinated by a rescue co-ordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress;
2. "Rescue". An operation to retrieve persons in distress, provide for their initial medical or

other needs, and deliver them to a place of safety;

3. "Search and rescue service". The performance of distress monitoring, communication co-ordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including co-operating aircraft, vessels and other craft and installations;

4. "Maritime search and rescue region". An area of defined dimensions associated with a rescue co-ordination centre or sub-centre within which search and rescue services are provided;

5. "Maritime Rescue Co-ordination Centre: MRCC". A unit responsible for promoting efficient organization of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region;

6. "Maritime Rescue Sub-Centre: MRSC". A unit subordinate to a rescue co-ordination centre established to complement the latter according to particular provisions of the responsible authorities;

7. "Tunisian SAR Zone of responsibility". The Zone established by article 3.

8. "Distress ". A situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.

9. "Safe Place". is a location where rescue operations are considered to terminate, and where the rescued persons' safety of life is no longer

threatened and where basic human needs are offered.

10. "The committee". The National Committee for Maritime Search and Rescue established under article 4.

11. "National Centre for Maritime Search and Rescue ". The centre established under article 6 and responsible for the elaboration of search and rescue national intervention plan and its execution.

12. "National SAR Intervention Plan". The plan set by the National maritime search and rescue centre established under article 6.

13. "The Convention". the 1979 International Convention on Maritime Search and Rescue as amended.

CHAPTER TWO ORGANIZATION

Article 3-The Tunisian maritime SAR zone of responsibilities is the Sea area contained between the shorelines and the following points:

Point 0: 36.948099 N 08.642080 E ;

Point 1: 38.631781 N 08.136349 E ;

Point 2 : 38. 631781 N 08.855049E;

Point 3 : 37.500000 N 11.500000 E ;

Point 4 : 36.500000 N 11.500000 E ;

Point 5 : 35.250000 N 12.233300 E ;

Point 6 : 33.316766 N 11.730100 E ;

Point 7 : 33.166724 N 11.552300 E.

Article 4 - A National Committee for the maritime search and rescue shall be established under the Ministry of Transport and Logistics.

The Minister of Transport and Logistics or his representative shall chair the committee which shall be composed of the following representatives:

- General Director of maritime transport and trade ports;
- Representative of the General Secretariat of maritime affairs;
- Director of the National Maritime Search and Rescue Centre;
- Three representatives of the Ministry of National Defence(Navy, Air force and National Service of Coastal Surveillance);
- Two representatives of the National Guard (Coast Guard, Aviation Regiment).
- Representative of Civil Protection Office.
- Representative of Ministry of Foreign Affairs.
- Representative of Ministry of Finance (Customs).
- Representative of the Ministry of Agriculture, Water Resources and Fisheries.
- Representative of the Merchant Marine and Ports Office.
- Representative of Ministry of Tourism and Handicrafts.

If necessary, the chair of the committee, reserves the right to invite any other member.

Article 5- The Composition, attributions and duties of the National Committee for maritime search and rescue shall be determined by a ministerial order of the ministry of transport and logistics and contains, inter alia:

- Approval of the national intervention plan related to maritime search and rescue and its unification with aeronautical search and rescue plan with regard to the related International Conventions in force.

- Establishment and review of agreements with neighbouring countries in matters related to maritime search and rescue.
- Actions coordination between all stakeholders in the field of maritime search and rescue.
- Elaborating a consolidated national position regarding the foreign policies and positions of state parties to the Convention and ensure its communication to the International Maritime Organization.
- Representing Tunisia in the international diplomatic conferences and events related to maritime search and rescue.
- Supervision of the work of the National Centre for Maritime Search and Rescue and review of its duties and responsibilities.
- Drafting and reviewing of the national intervention plan for maritime search and rescue.
- Doing the preparatory work of the national committee of maritime search and rescue and serves as its secretariat.
- Coordination with the aeronautical centre of studies and search and rescue coordination.
- Acknowledging and Advising on the request of entry into Tunisian territorial sea by foreign search and rescue units after consulting the Ministry of Interior (Coast Guard) and Ministry of National Defence (Navy).
- Organizing and executing drills and exercises for the improvement of maritime search and rescue services.
- Analyse the needs and contribute to the drafting of bilateral agreements with neighbouring states in matters related to maritime search and rescue.
- The training of the research and rescue personnel,
- Collecting data and statistics from the MRCCs and MRSCs and elaboration of the appropriate reports.
- Ensure the compliance of MRCC and MRSC with the international and national regulations related to SAR services.
- Ensure the juridical watch regarding the conventions related to search and rescue and the positions of different parties and advice the national committee accordingly.
- Any other duties required by the committee.

The committee shall meet at least once in six months by invitation from its president or his representative or upon a request of one of its members. The committee shall not function if the required quorum of (50%+1) of its member is not present. However, in such a case, the committee shall meet upon an invitation of its president after eight days counted from the date of the first meeting regardless the number of attending members. The committee shall take its decisions and recommendations by the majority of the votes of the attending members. In the case of equal votes, the president's vote will be decisive. Each meeting shall be subject to minutes signed by all the attendees.

Article 6- A National Centre for Maritime Search and Rescue shall be established within the General Direction of Maritime Transport and Trade Ports, headed by an attached senior officer from the Tunisian Coast Guard, and which will be responsible for the following duties:

Article 7- 1) The Minister of Interior and the Minister of National Defence shall, through a joint ministerial order, determine the maritime search and rescue region of the Coast Guard and the search and rescue region of the Navy within the Tunisian SAR zone of responsibility.

2) The Minister of Interior and the Minister of National Defence shall establish, through ministerial orders, the required MRCC and MRSC in the respective maritime search and rescue region of the Coast Guard and Navy and the designated search and rescue units for each centre.

3) All the information related to MRCC and MRSC and search and rescue regions shall be communicated in due time to the Ministry of Transport and Logistics.

Article 8- 1) The MRCC and MRSC shall meet the international standards related to the communications equipment and units of SAR and shall handle the appropriate documentation listed in the IMO circular SAR.7/Circ.11 and any other updated circular.

2) MRCC and MRSC shall coordinate with the port authority and the concerned regional committee for the fight against calamities, their prevention and the assistance organization to ensure a safe place of rescued persons after disembarkation in a Tunisian Port.

Article 9- The duties and responsibilities of the MRCC and MRSC and the organization of maritime search and rescue operations shall be defined in the national SAR intervention plan.

Article 10- The post SAR operation investigations are to be conducted by the Tunisian Coast Guard.

CHAPTER THREE

PARTICULAR PROVISIONS

Article 11-The expenditure relating to research and rescue is at the expense of the State within the limits of credits inscribed in its budget. This expenditure includes:

- The training of maritime search and rescue personnel,

-The execution of maritime search and rescue operations.

- Special equipment of maritime search and rescue.

Article 12- The ministry of transport shall be responsible for updating and communicating the search and rescue information to the relevant IMO committee through the appropriate means.

Article 13- The provisions of this decree did not limit the execution of SAR operation to the ships of Tunisian Coast Guard and Navy and did not overrule the obligation of rendering assistance for ships in distress at sea.

Article 14- If applicable, the Tunisian Coast Guard and the Tunisian Navy, while executing a maritime SAR operation, can requisite any other public or private vessel to give support to the ongoing maritime SAR operation.

Article 15- This decree shall be published in the official gazette of Tunisia.