

## Is there a right to be rescued at sea? A constructive view

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### 1. *Introduction*

The present paper investigates the relationship between the safety of life at sea and the right to life under international law, in order to assess the existence of an individual right to be rescued at sea. It posits that the recognition of such a right to be rescued is much needed in order to enhance compliance with the duty to render assistance and (hopefully) to prevent new boat tragedies, such as the Lampedusa one, from happening.

The right to life is protected under a number of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR),<sup>1</sup> the European Convention on Human Rights (ECHR),<sup>2</sup> the American Convention on Human Rights (ACHR)<sup>3</sup> and the African Charter on Human and Peoples' Rights (AFCH).<sup>4</sup> These instruments protect individuals who are within the jurisdiction of states parties. In the law of the sea, it is still contentious as to whether people

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<sup>1</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>2</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.

<sup>3</sup> American Convention on Human Rights (22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

<sup>4</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58.



rescued at sea or about to be rescued are under the jurisdiction of the 'rescuing state' (flag state of the rescuing unit and/or coastal state), and whether the performance of a search and rescue (SAR) operation entails the exercise of jurisdiction.

In the context of SAR operations, only one case has been thus far heard before an international judicial body concerned with human rights violations, the *Hirsi Jamaa and others v Italy* case<sup>5</sup> of the European Court of Human Rights (ECtHR). The ECtHR affirmed that Italy was exercising its jurisdiction over the rescued migrants on the basis of the fact that they were taken on board naval unit involved. The rescued persons were consequently under *de facto* and *de jure* control of the flag state. This is perfectly in line with Article 92 of the United Nations Convention on the Law of the Sea (LOSC),<sup>6</sup> which affirms the exclusive jurisdiction of the flag state on the high seas. The exercise of jurisdiction might however, result in a more difficult assessment when the rescued persons are not taken on board the rescuing unit, or when there is negligence by the alleged competent authorities.

This paper will first briefly analyse the international legal framework of SAR operations and argue that the duty to render assistance does not consist of a mere obligation to provide the means, but entails the achievement of certain results as well. Second, the legal framework of the right to life and the relevant practice will be delineated and their application at sea tested. The paper will then highlight how both flag states and coastal states are bound by a minimum obligation of due diligence with respect to the application of the duty to render assistance, and more generally the protection of the safety of life at sea. It will then conclude that the loss of life or the risk of losses at sea may lead to a violation of the right to life of the concerned persons, of their 'right to be rescued at sea'.

<sup>5</sup> *Hirsi Jamaa and others v Italy*, App no 27765/09 (ECtHR, 23 February 2012).

<sup>6</sup> United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397.



## 2. *The legal basis of the 'right to be rescued at sea'*

### a) *The duty to render assistance in the Law of the Sea*

The duty to render assistance at sea is set out by Article 98 of the LOSC, as follows:

'1. 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:

(a) to render assistance to *any person found at sea* in danger of being lost;

(b) to *proceed with all possible speed to the rescue of persons in distress*, if informed of their need of assistance, in so far as such action may reasonably be expected of him; (...)' (emphasis added).

This duty is also regulated by the 1974 Convention for the Safety of Life at Sea (SOLAS Convention),<sup>7</sup> the 1979 Search and Rescue Convention (SAR Convention),<sup>8</sup> and the 1989 International Convention on Salvage.<sup>9</sup> Because of its repetition in treaty and domestic law, and in the light of state practice, even if it is not always uniform,<sup>10</sup> the duty to render assistance is today recognised as a principle of customary law.<sup>11</sup>

<sup>7</sup> Convention for the Safety of Life at Sea (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 1861.

<sup>8</sup> Convention on Maritime Search and Rescue (adopted 27 April 1979, entered into force 22 June 1985) 1405 UNTS 97.

<sup>9</sup> International Convention on Salvage (adopted 28 April 1989, entered into force 14 July 1996) 1953 UNTS 193, art 10.

<sup>10</sup> See the debate between Mediterranean states (namely, Italy, Malta and Spain) within the IMO: IMO, 'Measures to protect the safety of persons rescued at sea, Compulsory guideline for the treatment of persons rescued at sea,' Submitted by Spain and Italy, FSI 17/15/1, 13 February 2009; IMO, 'Measures to protect the safety of persons rescued at sea, Comments on document FSI 17/15/1,' Submitted by Malta, FSI 17/15/2, 27 February 2009. All IMO documents are available at <http://docs.imo.org>. For a comment, S Trevisanut, 'Search and Rescue Operations in the Mediterranean: Factor of Cooperation or Conflict?', (2010) 25 Intl J of Marine and Coastal L 523.

<sup>11</sup> See the ILC commentary to draft art 12 of the articles concerning the law of the sea, (1956) II Intl L Comm YB 271. Many have supported the customary nature of the obligation; see C J Colombos, *International Law of the Sea* (Longman Green & Co. 1954) 304; D P O'Connell, *The International Law of the Sea* (Clarendon Press 1982) 813-14. See also, R Barnes, 'Refugee Law at Sea' (2004) 53 ICLQ 47, at 49; E Papastav-



The SAR Convention in particular aims to create an international system for coordinating rescue operations that guarantees their efficiency and safety. States parties are thus invited to conclude SAR agreements with neighbouring states to regulate and coordinate SAR operations and services in the agreed maritime zone. Such agreements technically and operationally implement the obligation set out in Article 98 (2) of the LOSC, which provides that, where needed, neighbouring states shall cooperate through regional agreements to promote and maintain adequate and effective SAR services.<sup>12</sup>

The duty to render assistance extends to the disembarkation of the rescued persons in a place of safety. The Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) adopted two resolutions that amended both the SOLAS<sup>13</sup> and SAR Conventions,<sup>14</sup> and which entered into force 1 July 2006. Consequently, Article 3 (1) (9) of the SAR Convention now provides:

*‘Parties shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships’ intended voyage (...). The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety (...). In these cases, the relevant Parties shall arrange for such disembarkation to be effective as soon as reasonably practicable’* (emphasis added).

According to the MSC Guidelines,<sup>15</sup> a ‘place of safety’ means a location where the rescue operations can be considered as completed. In accordance with Principle 6.14 of the Guidelines, the rescue unit can be the place of safety, but only provisionally. In fact, the text insists on the

ridis, *The Interception of Vessels on the High Seas, Contemporary Challenges to the Legal Order of the Oceans* (Hart Publishing 2013) 294; S Trevisanut (n 10) 527.

<sup>12</sup> ‘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’.

<sup>13</sup> IMO, MSC.153 (78), 20 May 2004.

<sup>14</sup> IMO, MSC.155 (78), 20 May 2004.

<sup>15</sup> IMO, MSC.167 (78), 20 May 2004.



role that the flag state and the coastal state should play in substituting for the master of the rescuing vessel (Principle 6.13).

Moreover, pursuant to the same guidelines, the state in whose SAR zone the operation took place has the duty to provide or, at least, to secure a place of safety for the rescued persons (Principle 2.5). This Principle simply requires that the coastal state carries out the SAR operations and brings them effectively to an end, i.e., not leaving the rescued persons (whatever their status) at sea. Considering that the MSC Guidelines are not binding, Principle 2.5 suggests that the coastal state has a 'residual obligation' to allow disembarkation on its own territory when it has not been possible to do so safely anywhere else.<sup>16</sup> This has been clarified by the IMO Facilitation Committee (FAL), which adopted the 'Principles relating to administrative procedures for disembarking persons rescued at sea'.<sup>17</sup>

Another issue concerns the identification of the beneficiary of the obligation: is the duty to render assistance a purely inter-state obligation or does it entail a right to be rescued for people in distress at sea? The law of the sea is a field of international law where individuals or more generally private actors have little involvement.<sup>18</sup> The main aim of the law of the sea consists of allocating obligations and rights in different maritime zones to states. However, the multiplication of activities at sea and the increased human presence lead to the question of the protection of the human element, in particular of the application of human rights at sea. Many scholars have already discussed the application of the relevant human rights treaties at sea,<sup>19</sup> pointing out that the law of

<sup>16</sup> For a contrary opinion, see Papastavridis (n 11), at 299.

<sup>17</sup> FAL.3/Circ.194, 22 January 2009.

<sup>18</sup> I Papanicolopulu, 'The Law of the Sea Convention: No Place for Persons?' (2012) 27 *Intl J of Marine and Coastal L* 867.

<sup>19</sup> S Cacciaguidi-Fahy, 'The Law of the Sea and Human Rights', (2007) 19 *Sri Lanka J of Intl L* 85; B H Oxman, 'Human Rights and the United Nations Convention on the Law of the Sea', in J Charney, D K Anton and M E O'Connell (eds), *Politics, Values and Functions, International Law in the 21st Century, Essays in Honor of Professor Louis Henkin* (Martinus Nijhoff 1997) 377; I Papanicolopulu, 'International Judges and the Protection of Human Rights at Sea', in N Boschiero and others (eds), *International Courts and the Development of International Law, Essays in Honour of Tullio Treves* (T.M.C Asser Press 2013) 535; T Treves, 'Human Rights and the Law of the Sea', (2010) 28 *Berkeley J of Intl L* 1; B Vukas, 'Droit de la mer et droits de l'homme', in G Cataldi (ed), *La Méditerranée et le droit de la mer à l'aube du 21e siècle* (Bruylant 2002) 85-95.



the sea, specifically the LOSC, pursues some community interests, among which the protection of human rights.<sup>20</sup> Building on this scholarship, the duty to render assistance can be considered to be the operational obligation deriving from the application of the human right to life at sea.

*b) The right to life in Human Rights Law*

The ECtHR has provided some guidance in its case law concerning the positive obligations that the implementation of the right to life entails. First, states should not only refrain from the intentional and unlawful taking of life, but should also take appropriate steps to safeguard the lives of those within their jurisdiction.<sup>21</sup> Moreover,

‘Where there is an allegation that the authorities have violated their positive obligation to protect the right to life (...), it must be established to the [Court’s] satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk’.<sup>22</sup>

In *Berü v Turkey*, which concerned the death of a child in an attack by stray dogs, which were previously known to be dangerous, the Court concluded that there was no violation of Article 2 of the ECHR because the series of incidents that had already taken place before the fatal attack were not sufficient for the Court to find that the authorities had had a ‘positive obligation’ to take preventive measures. There was no evidence that the authorities knew or should have known that there was an immediate risk to the child’s life.<sup>23</sup> But in *Kemaloglu v Turkey*, which concerned a seven-year old child who froze to death while trying to walk home from school on a day when the school had been closed early

<sup>20</sup> *Oxman* (n 19), at 382.

<sup>21</sup> *L.C.B. v the United Kingdom*, App no 14/1997/798/1001 (ECtHR, 9 June 1998), para 36.

<sup>22</sup> *Osman v the United Kingdom*, App no 87/1997/871/1083 (ECtHR, 28 October 1998), para 116.

<sup>23</sup> *Berü v Turkey*, App no 47304/07 (ECtHR, 11 January 2011), para 47.



due to a blizzard and the municipality shuttle failed to arrive on time, the ECtHR affirmed that, by neglecting to inform the municipality's shuttle service about the early closure of the school, the Turkish authorities had failed to take measures which might have avoided a risk to the child's life.<sup>24</sup>

The positive obligation of the state also extends to the performance of emergency services 'where it has been brought to the notice of the authorities that the life or health of an individual is at risk on account of injuries sustained as a result of an accident', as pointed out in *Furdík v Slovakia*.<sup>25</sup> Even if this latter case concerned the determination of the content of the obligation deriving from the right to life rather than its territorial application, it is of particular relevance for the application of the right to life in the context of SAR operations. When the endangered person or a third party who notices the distress situation launches a distress call, the jurisdictional link between the person(s) in danger and the state authorities emerges as a result of the distress call, meaning that the authorities consequently have an obligation to provide emergency services (whether directly or indirectly).

### 3. *The scope of application of the 'right to be rescued at sea'*

#### a) *The application of human rights at sea*

The ECtHR has also developed substantial case law on the application of the ECHR at sea.<sup>26</sup> In *Xhavara and others v Italy and Albania*,<sup>27</sup> the ECtHR considered that the Albanian vessel *Kater I Rades* - sunk be-

<sup>24</sup> *Kemaloglu v Turkey*, App no 19986/06 (ECtHR, 10 April 2012).

<sup>25</sup> *Furdík v Slovakia* (Admissibility decision), App no 42994/05 (ECtHR, 2 December 2008).

<sup>26</sup> On this issue, see among others E Papastavridis, 'European Convention on Human Rights and the Law of the Sea: The Strasbourg Court in Unchartered Waters?', in M Fitzmaurice and P Merkouris (eds), *The Interpretation and Application of the European Convention of Human Rights: Legal and Practical Implications* (Martinus Nijhoff 2012) 117; P Tavernier, 'La Cour Européenne des droits de l'homme et la mer', in *La mer et son droit, Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec* (Pedone 2003) 575.

<sup>27</sup> *Xhavara and Fifteen Others v Italy and Albania* (Admissibility Decision), App no 39473/98 (ECtHR 11 January 2001).



cause of a collision incident with the Italian warship *Sibilla* in the international waters of the Otranto Channel on 28 March 1997—was subject to Italian jurisdiction on the basis of the factual circumstances of the collision.<sup>28</sup> In order to attribute international responsibility to Italy, the Court recalled in particular that the collision happened in the framework of operations carried out on the basis of a bilateral cooperation agreement concluded by Italy and Albania on 25 March 1997. The ECtHR did not provide elaboration on this point. It is, however, arguable that the mere existence of an agreement conferring enforcement powers on a state is sufficient to prove the exercise of jurisdiction. It is undoubtedly strong evidence, but an assessment with regard to the actual circumstances, would need to be made on a case-by-case basis.<sup>29</sup>

In the *Medvedyev and others v France* case,<sup>30</sup> concerning the crew of a Cambodian vessel intercepted by a French warship on the high seas because of suspicions of drug trafficking, the ECtHR again examined in detail the factual background and maintained that French authorities exercised effective, continuous, and uninterrupted control over the vessel. Consequently, the persons on board were subject to French jurisdiction (para 67). This case law shows that ECHR contracting parties are subject to scrutiny under the ECtHR for activities on the high seas<sup>31</sup> when carried out in the framework of an agreement, which gives enforcement powers and/or when state authorities exercise effective control on vessels and their passengers. On the basis of the existing case-law, it is unclear, however, whether these two conditions have to be applied cumulatively or not.

In *Hirsi Jamaa and others v Italy*,<sup>32</sup> concerning a group of irregular migrants intercepted by the Italian navy in 2009, transferred onto Ital-

<sup>28</sup> E Lagrange, 'L'application de la Convention de Rome à des actes accomplis par les Etats Parties en dehors du territoire national' (2008) 12 *Revue Générale de Droit International Public* 521, 544-5.

<sup>29</sup> P De Sena, *La nozione di giurisdizione statale nei trattati sui diritti dell'uomo* (Giappichelli 2002) 228-9.

<sup>30</sup> *Medvedyev and others v France*, App no 3394/03 (ECtHR, 29 March 2010).

<sup>31</sup> The Court in particular pointed out that 'the special nature of the maritime environment cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction'; *ibid* para 81.

<sup>32</sup> See *Hirsi Jamaa* (n 5).





ian military ships and then returned to Tripoli on the basis of the 2008 bilateral agreement between Italy and Libya,<sup>33</sup> the Grand Chamber held that:

[T]he events took place entirely on board ships of the Italian armed forces, the crews of which were composed exclusively of Italian military personnel. In the Court's opinion, in the period between boarding the ships of the Italian armed forces and being handed over to the Libyan authorities, the applicants were under the continuous and exclusive de jure and de facto control of the Italian authorities. (...) Accordingly, the events giving rise to the alleged violations fall within Italy's 'jurisdiction' within the meaning of Article 1 of the Convention'.

This case is particularly important because it is the only one (so far) brought in front of an international judicial body concerning human rights violations perpetrated in the context of SAR operations.

*b) The exercise of jurisdiction in the framework of SAR operations*

Pursuant to the *Hirsi* case, when the SAR operation consists of taking the persons in distress on board the rescue vessels, those persons are within the jurisdiction of the flag state and the ECHR applies. As already mentioned, this is squarely in line with LOSC Article 92 on the exclusive jurisdiction of the flag state.<sup>34</sup>

The determination of the exercise of jurisdiction might be more difficult when the rescued persons are not taken on board of the rescuing unit, or when the SAR services are not performed. For instance, in the *Xhavara* case, which did not concern a SAR operation, the ECtHR recognised the exercise of jurisdiction by Italian authorities on two grounds: the activities were performed on the basis of a bilateral agreement; and there was a collision between the Italian navy vessel and the

<sup>33</sup> 'Trattato di Amicizia, Partenariato e Cooperazione', *Gazzetta Ufficiale della Repubblica Italiana*, no 40, 18 February 2009.

<sup>34</sup> In the *Marine I* case, the Committee Against Torture also had the opportunity to ascertain the exercise of state jurisdiction during a SAR operation and affirmed that Spain 'maintained control over the persons on board the *Marine I* from the time the vessel was rescued'; CAT, *J.H.A v Spain*, 323/2007, Decision 11 November 2008, para 8.2.

migrants' boat.<sup>35</sup> Applying this reasoning by analogy, we can conclude that, when the SAR operation is performed on the basis of an international agreement, namely a SAR agreement, and there is contact between the rescuing unit and the vessel in distress, the ECHR applies.

The non-performance of SAR services is a more difficult instance. Take, for instance, a factual situation similar to the one of the *Hirsi* case and consider the hypothesis in which the Italian authorities did not intervene. The main question to be answered here is whether human rights instruments apply in cases of SAR non-performance, i.e. whether the non-rescued persons did fall within the jurisdiction of a state while they were in distress at sea. Two hypotheses have to be distinguished. First, the people in distress are on the high seas, meaning that they are not within a SAR zone. Under the current regime, it is unclear whether the state which receives the distress call, has an obligation to ensure that the SAR operation takes place.<sup>36</sup>

Second, the distress situation occurs within a SAR area and the interested coastal state receives the call. SAR regions are non-jurisdictional areas; that is to say that in those regions states have obligations but not rights.<sup>37</sup> States are thus deemed to be responsible for the SAR region and to exercise a limited jurisdiction, which is exclusively functional to the performance of the SAR services. A question then remains: could the jurisdiction of the coastal state be presumed in its SAR region as far as the application of human rights' instruments is concerned?

In order to answer this question, it can first be argued that the distress call creates a 'relationship' between the state which receives it, and the persons who send it. The life of the persons in distress depends on

<sup>35</sup> Lagrange (n 28) 544-5.

<sup>36</sup> See the episode reported on 8 May 2011 by the British newspaper *The Guardian* concerning a boat carrying 72 persons, which left Tripoli (Libya) for the Italian island of Lampedusa at the end of March 2011, and which was washed up on the Libyan shore with only 11 survivors after 16 days at sea. Survivors explained that they had used their satellite phone to call an Eritrean priest in Rome for help. Moreover, pursuant to survivors' testimonies, a large aircraft carrier or helicopter-carrying vessel sailed near to the boat, close enough for the survivors to see the sailors on board looking at them with binoculars and taking photos. The Parliamentary Assembly of the Council of Europe launched an investigation to ascertain the fact; see 'Lives lost in the Mediterranean Sea: Who is responsible?', Res 1872, final version, adopted on 24 April 2012.

<sup>37</sup> Art 2 (1), and Annex, art 2 (1) (7) SAR Convention.



the behaviour of the recipient state. The argument could go further and support the existence of an 'exclusive long distance *de facto* control' that the state, which received the call exercises on the lives of the people in distress. Their lives are placed at the hands of that state. The application by analogy of the reasoning of the ECtHR in *Furdík v Slovakia*<sup>38</sup> could give further support to the recognition of this *de facto* control. This could also apply to situations in which the distress call was launched from a portion of high seas not encompassed in the SAR zone of the recipient state. If the recipient state cannot directly intervene, maybe because of the distance between its coasts and the endangered persons, the recipient state should do what it can to activate the available SAR services, in the relevant geographical area.

Moreover, the *de facto* control becomes also *de jure* when the distress situation is located within the SAR zone of the recipient state, which has an obligation to '*promote* the establishment, operation and maintenance of an *adequate and effective* search and rescue service' (Article 98 (2) of the LOSC, emphasis added). Even if the LOSC Article 98 (2) does not oblige coastal states to directly perform the SAR services, its wording suggests, however ambiguously, that the obligation contained therein does not consist in a mere obligation to provide the means, but an obligation to reach a certain level of service.<sup>39</sup> It can be argued that this obligation means that the coastal state assumes authority over its SAR zone.<sup>40</sup> The coastal state is then bound by an obligation of due diligence,<sup>41</sup> pursuant to which it has to make sure that *adequate and effective* SAR services are in place in its SAR zone. The loss of lives or the risk of losses in its SAR zone may entail, on the one hand, the violation of this obligation of due diligence if the coastal state fails to guarantee the existence of adequate services; on the other hand, such a situ-

<sup>38</sup> See *Furdík* (n 25).

<sup>39</sup> See A E Moen, 'For Those in Peril on the Sea: Search and Rescue under the Law of the Sea Convention' (2010) 24 *Ocean YB* 377, at 386, 389: 'Article 98(2) represents the imposition of a positive duty, with no clear understanding of its minimum threshold or its outer limit, and no clear indication of the relationship that gives rise to such an obligation. (...) Search and rescue under Article 98(2) then cannot be the mere promotion of a service, but the promotion of a certain level of service'.

<sup>40</sup> See *Al-Skeini and others v United Kingdom*, App no 55721/07 (ECtHR, 7 July 2011), paras 149-150.

<sup>41</sup> C Pitea, 'Diritto alla vita', in L Pineschi (ed.), *La tutela internazionale dei diritti umani, Norme, garanzia e prassi* (Giuffrè 2006) 314, 318.



ation may lead to a violation of the right to life of the concerned persons, in particular when the violation is perpetrated in an area where other similar instances have occurred and the competent state authorities were duly informed.

Lastly, if the persons in distress are located within the SAR zone of a coastal state but they do not launch any distress call (because they do not have any means to do so), it is difficult to argue that there is a jurisdictional link between the coastal state and the persons. The coastal state is however bound by the above-mentioned obligation of due diligence. Its negligence could eventually be contested by other states on the basis of the law of sea instruments. It is also possible to argue that individuals might contest the misconduct of the coastal state on the basis of the human right to life as interpreted by the ECtHR in the above-analysed cases *Berü v Turkey*<sup>42</sup> and *Kemaloglu v Turkey*.<sup>43</sup> In what may be seen as a provocative endeavour, it is then possible to affirm that a coastal state has in its SAR zone positive obligations, which consist of guaranteeing the adequacy and effectiveness of SAR services, and taking preventive measures when the authorities are aware or should be aware of an immediate risk for the individuals under their responsibility.

#### 4. *The need to recognise the 'right to be rescued at sea' under International Law*

Arrivals of irregular migrants on boats unworthy for navigation are not an emergency anymore but a structural crisis. Not all deaths at sea can be prevented, but many of the situations reported by the media could have been avoided or contained more effectively, as the launch of the operation *Mare Nostrum* in the aftermath of the Lampedusa boat tragedy has poignantly shown.<sup>44</sup>

The recognition of a right to be rescued at sea flows from the normative and jurisprudential developments in both the law of the sea and

<sup>42</sup> See *Berü* (n 23).

<sup>43</sup> See *Kemaloglu* (n 24).

<sup>44</sup> For comments, see J Coppens, 'The Lampedusa Disaster: How to Prevent Further Loss of Life at Sea' (2013) 7 *Intl J on Marine Navigation and Safety of Sea Transportation* 589; F De Vittor, 'Il diritto di attraversare il Mediterraneo... o quantomeno di provarci' (2014) 8 *Diritti umani e diritto internazionale* 63.



human rights law. This recognition is much needed in order to strengthen the implementation of the duty to render assistance, and to improve the adequacy and efficiency of SAR services. The recognition of this right does not solve all problems or prevent all deaths, but it allows the victims of mismanagement or negligence in the performance of SAR services to seek a remedy.

