

Refugees in distress at sea: acting and assisting

Guidance for skippers
and crews

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With the next holiday season just around the corner, owners and charterers of yachts and motorboats prepare to take their vessels out to sea. However, for the past years navigation has been confronted with an ever-growing problem: the fate of refugees in distress at high sea or in territorial waters, travelling in unseaworthy vessels. Nowadays, skippers have to be prepared to encounter refugees in distress both within and beyond traditional areas of navigation: in the Aegean, off Sicily or Malta, in large parts of the Western Mediterranean, in the Canaries, or in the waters off the West-African coast.

People who set off from the ports of Northern Africa, West Africa, Turkey or the Middle East and board unseaworthy boats are usually fleeing poverty, persecution or civil war. For these refugees, the sea is not a delightful holiday setting, but an obstacle on their way to Europe that can constitute a mortal hazard.

Most of the vessels used are unfit for the high seas. Many can barely be manoeuvred or are equipped with outboard motors that are too weak. Often they are overloaded up to the waterline, or old and rotten. Thousands have died over the past years when such boats capsized or drifted for days or weeks because of engine failure. The survivors report on the fate of their fellow travellers: starved, died of thirst, drowned. In 2014 alone, over 4,000 people died in the Mediterranean.

It is not at all impossible that such a boat will cross your way. What should you do? You are under an obligation to attend to the rescue. Please remember that as a sailor or at the helm of a motor yacht you are continuing a long and proud tradition of navigation. For many centuries this tradition has involved the affirmation of an important obligation: fellow humans in distress deserve assistance. We ask one thing of you: to keep this tradition alive – in each and every case. Do not turn away – human lives may depend on your decision.

**This brochure is designed to help you meet your obligations.
It provides you with:**

- An overview over the regulations of international law that you should be familiar with
- Concrete instructions on what to do when rendering assistance in distress
- A list of further sources of information and emergency numbers.

Where are the rules on assistance in distress at Sea laid down?

The obligation to provide assistance in distress at sea is laid down in several international treaties on the law of the sea. These treaties have been implemented by the state parties, among them the European states. This means: assistance in distress is more than charity. You are under a legal obligation to render assistance. Therefore, you should be familiar with the following provisions:

- The 1982 United Nations Convention on the Law of the Sea (UNCLOS):
'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, insofar as such action may reasonably be expected of him...' ¹
- The 1974 International Convention for the Safety of Life at Sea (SOLAS):
'The master of a ship at sea which is in a position to be able to provide assistance on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so.' ²
- The 1989 International Convention on Salvage: 'Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.' ³

- The 1979 International Convention on Maritime Search and Rescue (SAR): 'Parties shall ensure that necessary arrangements are made for the provision of adequate search and rescue services for persons in distress at sea round their coasts.'⁴
- In 2004, an important step was made to improve the implementation of rescue duties. The Maritime Safety Committee (MSC) of the International Maritime Organisation (IMO) passed Guidelines on the Treatment of Persons Rescued at Sea, which entered into force in 2006.⁵ They contain details on the obligation to provide assistance.

When do I have to render assistance?

You have to intervene not only if lives are at risk,⁶ but in any situation where a person is in distress at sea.⁷ Distress at sea is '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.'⁸ This means that you have to render assistance not only where a passenger has gone overboard. You have to assume that a vessel is in distress in any situation such as the cases mentioned above: if a boat has difficulties or is unable to manoeuvre, if it is damaged or overloaded with too many passengers, or lacks supplies in food, drinking water or necessary medication.

1 Article 98(1) UNCLOS.

2 SOLAS, Annex, Chapter V, Regulation 33 para. 1, clause 1.

3 Article 10(1) Salvage Convention.

4 SAR, Chapter 2.1.1.

5 Maritime Safety Committee, Resolution MSC.167(78).

6 Article 98(1)(a) UNCLOS; Article 10(1) Salvage Convention.

7 Article 98(1)(a) UNCLOS; SOLAS, Annex, Chapter V, Regulation 33 para. 1, clause 1.

8 SAR, Chapter 1.3.11.

Do I have to render assistance even if it puts my crew and me at risk?

No. UNCLOS and the Salvage Convention stress: You only have to render assistance if you can 'do so without serious danger to the ship, the crew or the passengers'.⁹ For example, sport boats may be too small to take on a large group of persons. However, in such cases you still can and must take action: If you are unable to render assistance yourself, not only do you have to record this in your logbook along with the reasons, but you also have to inform the responsible search and rescue service [Rescue Co-ordination Centre, RCC],¹⁰ so that it can attend to the rescue instead. You should also try contacting other large cargo ships or fishing vessels in the area via FM, as they might be able to provide assistance sooner than the search and rescue services.

Otherwise, not only do you risk the lives of those in distress, you may also be liable to criminal prosecution for failure to assist a person in danger. At sea, you are subject to the criminal jurisdiction of your flag state, your home state, and, in its territorial waters, of the coastal state.

Whom do I have to rescue?

Anyone who is in distress at sea. SAR and SOLAS emphasise: The duty to render assistance applies in relation to any person who is in distress at sea, regardless of his or her nationality or legal status, or the circumstances under which he or she is found.¹¹

It therefore does not matter which country the person is from, nor is it important whether this person was aware of the risk incurred, or why he or she took to the sea in the first place.

Above all, however, it is irrelevant whether the person in distress has a visa that permits entry to a European state. This will often not be the case – immigration by sea is a typical route of unauthorised immigration. As there are hardly any legal and safe ways for refugees and other migrants to reach Europe, it is not by choice but out of necessity that refugees and other migrants undertake these dangerous journeys and entrust their lives to smugglers. This does not change the fact that there is a legal obligation to render assistance to persons who get into distress on their journey at sea: rescue has to be provided to every human being in such an emergency situation. The European Union has recently confirmed this principle in relation to its border protection operations.¹²

9 Article 98(1) UNCLOS; similarly, article 10(1) Salvage Convention.

10 SOLAS, Annex, Chapter V, Regulation 33 para. 1, clause 3.

11 SAR, Chapter 2.1.10; SOLAS, Annex, Chapter V, Regulation 33 para. 1, clause 2.

12 Article 9 Regulation (EU) No. 656/2014.

What is the role of international refugee law in rescue at sea?

The boats that come to Europe carry both migrants who are entitled to international protection, also known as asylum, and migrants who are not.

Two groups of migrants are entitled to international protection. Firstly, refugees within the 1951 UN Refugee Convention, who have fled their home country because they risk persecution against which they are unprotected there, for reasons of race, religion, nationality, political opinion, or membership of a particular social group. Secondly, migrants are entitled to protection if they risk other severe human rights violations in their countries of origin, for example, torture, inhumane or degrading detention conditions, or severe harm in a civil war. For these two groups of people, European states are legally obliged under international and European law to provide protection.¹³

What does this mean for you if you take persons on board as part of a rescue operation? You are not required to determine whether there are persons among the survivors who are entitled to international protection. A ship is not a proper place to examine a protection claim, and a captain is not trained to do so. This is an obligation for the state authorities alone.

Still, you should have an open ear if survivors identify themselves as asylum seekers. For one, in such cases you should alert the United Nations High Commissioner for Refugees (UNHCR) and the search and rescue service. Secondly, a need for protection may affect the choice of place of disembarkation. You will find more information on this in the sections 'Rescue – what do I have to do?' and 'What is a place of safety?' of this brochure.

Rescue – what do I have to do?

Attend to the rescue. According to the SAR Guidelines, this means for you:¹⁴

- Rescue the persons in distress;
- Ensure medical first aid or other basic provisions;
- Bring them to a place of safety. Identifying a place of safety can be problematic; therefore this is dealt with below, in a separate section of this brochure.

Contact the Rescue Coordination Centre (RCC) responsible for the search and rescue area. In accordance with IMO Guidelines¹⁵, it will ask you for the following details:

- Information on the survivors, including their names, age, gender, apparent health status and possible medical needs;
- Your assessment of the safety of your ship following the rescue (this might include questions on sufficient life-saving equipment, drinking water, food, medicine and accommodation for those taken on board. It also includes the safety of your crew if survivors might become aggressive or violent.);
- Measures that you have completed or intend to take;
- The current degree of capacity utilisation of your ship taking into account the additional persons on board;

¹³ Directive 95/2011/EU.

¹⁴ Maritime Safety Committee, Resolution MSC.167(78), para. 5.1; see also SOLAS, Annex, Chapter V, Regulation 33 paras. 1., 1.1, and 6.

¹⁵ Maritime Safety Committee, Resolution MSC.167(79), para. 6.10–11.

- The closest port of safety that you have identified;
- Your preferred arrangement for disembarking the survivors;
- Any type of assistance that you may need during or after the rescue operation;
- Any special relevant factors, such as weather conditions or time-sensitive cargo.

If persons on board have identified themselves as asylum-seekers, you should follow the recommendations of UNHCR and IMO.¹⁶

This means:

- Alert the RCC to the fact that there are individuals with possible protection needs on board;
- Contact UNHCR;
- Do not give any information to the person's state of origin or the state he or she fled from, to the authorities of that country, or to persons who may pass the information on to that country;
- Do not request disembarkation in the state of origin or the state that the person fled from. The following section of this brochure contains further information.

¹⁶ IMO and UNHCR, Rescue at Sea – A Guide to Principles and Practice as Applied to Migrants and Refugees.

The practical steps to rescue will depend on the specific conditions and on the constitution of your ship. There are a number of things you should always do:

- If you receive a distress signal via radio, confirm reception and request all necessary information;
- Go to the international calling and distress frequency (2182 kHz, maritime radiotelephone communications, or 156.8 MHz (channel 16 VHF));
- Always carry the equipment required by SOLAS, including radio equipment;
- Keep rescue equipment at the ready (e.g., life vests, life savers, life lines, or any other equipment on board);
- In darkness, keep the necessary signalling equipment ready and install floodlights;
- Prepare for assistance by keeping medical equipment ready;
- If you have ladders and manropes, lower them for the survivors to climb on board;
- Keep line-throwing equipment ready to establish a connection to the boat in distress;
- If your vessel is equipped with lifeboats, keep these prepared to take on survivors.

You can find a detailed survey of the necessary rescue steps in the 'International Aeronautical and Maritime Search and Rescue Manual' (see below at 'Where can I get more information?').

What is a place of safety?

SAR and SOLAS require you to deliver survivors to a 'place of safety'.¹⁷ But what is a place of safety? According to the IMO's Maritime Safety Committee, it is a place where the rescue operation can be considered to have terminated. This is a place where the life of the survivors is no longer under threat. Furthermore, basic human needs must be met there, which include, above all, food and water, accommodation and medical assistance.¹⁸

Such a place can be the nearest port, the next port of call of the assisting ship, or a port of the flag state of the assisting ship. The solution will always depend on each individual case. However, one thing is for certain: disembarkation is a must. The rescuing ship is not a place of safety. It will usually not be equipped to secure the necessary supplies and accommodate increased passenger numbers following the rescue. In addition, the crew of the rescuing ship should not be overburdened.¹⁹

Identifying a place of safety requires particular care if survivors have identified themselves as asylum seekers. The Maritime Safety Committee makes this very clear: When assessing a place of safety, you must take into account whether the survivors would face threats to their life and person there because of persecution.²⁰

What does this mean? It is necessary to bear in mind that some of the persons rescued may have fled directly from a North African coastal state. If they are disembarked there, they are delivered straight into the hands of their persecutors. Others may have merely transited there, having fled from other countries in Africa or the Middle East. For them, too, disembarkation in an African coastal state, such as Libya, can entail severe risks: in

most of these states, there is no proper asylum system, if any, and some have not even ratified the Refugee Convention. This means that your survivors may be deported to their home country without an examination of their protection needs. The result is the same: the person will be exposed to persecution. A place where this can happen is not a place of safety. It is of no use to exchange distress at sea for torture, persecution, or civil war. The European Court of Human Rights also found that migrants must not be pushed back to countries where they are not safe from persecution, deportation, or mistreatment.²¹

Information on the human rights situation in countries of origin or transit is compiled by non-governmental organisations such as Amnesty International or Human Rights Watch, as well as by UNHCR and other UN Organizations.²²

If you are not sure, do not take any risks. Play it safe: disembark elsewhere. It will usually be safest to disembark survivors in European ports. This is also confirmed by EU law.²³

17 SAR 2004, para. 3.1.9, and SOLAS Chapter V Regulation 33, para. 1.1.

18 Maritime Safety Committee, Resolution MSC.167(78), para. 6.12.

19 Maritime Safety Committee, Resolution MSC.167(78), para. 6.13.

20 Maritime Safety Committee, Resolution MSC.167(78), para. 6.17.

21 *Hirsi Jamaa and others v. Italy*, Application no. 27765/09, judgment of 23 February 2012 (Grand Chamber).

22 For example, country reports can be found at www.refworld.org or at www.ecoi.net.

23 Article 10(1) Regulation (EU) No. 656/2014.

Do states have to let me disembark?

You can only complete your rescue operation if a state allows you to disembark the survivors in one of its ports. In the past, coastal states have sometimes refused this. For responsible captains, this is a severe burden on their legitimate interest to continue their journey.

Important improvements were achieved in 2004 by amending SAR²⁴ and SOLAS.²⁵ These amendments have strictly limited the discretion of the coastal state to let a ship enter port.²⁶

Thus, the state parties of SAR and SOLAS have to co-ordinate and co-operate to 'ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligation with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from these obligations does not further endanger the safety of life at sea.' The treaties emphasise: the state responsible for the search and rescue area bears the primary responsibility for this co-ordination.²⁷

In particular, the states have to observe IMO Guidelines.²⁸ And those Guidelines are unequivocal: A ship may not suffer undue delay, financial loss or similar difficulties after having rescued persons from distress at sea.²⁹ This means, if the first Rescue Coordination Centre (RCC) contacted is not responsible, it must alert the responsible one. The responsible RCC must immediately take the necessary measures, including arrangements for a place of safety³⁰ (see also the section 'What is a place of safety?' in this brochure). This also means minimising the time survivors spend on board and to expedite their disembarkation.³¹ Therefore, the RCC will usually arrange disembarkation in consultation with the local authorities.

Should you nonetheless encounter difficulties with disembarkation, contact your flag state. It might be able to reach an agreement by diplomatic means. This also goes for UNHCR. Finally, you should contact IMO and inform them as to whether their guidelines were respected in practice.

24 Maritime Safety Committee, Resolution MSC.155(78), MSC 78/26/Add.1, Annex 5.

25 Maritime Safety Committee, Resolution MSC.153(78), MSC 78/26/Add.1, Annex 3.

26 Malta is the only EU state that has not ratified these amendments; the Maltese SAR zone is very large, includes the Italian island of Lampedusa, and extends well into Libyan waters.

27 SAR, Chapter 3.1.9.; SOLAS, Annex, Chapter V, Regulation 33 para. 1.1 (both added in 2004).

28 SAR, Chapter 3.1.9.; SOLAS, Annex, Chapter V, Regulation 33 para. 1.1.

29 Maritime Safety Committee, Resolution MSC.167(78), para. 6.4.

30 Maritime Safety Committee, Resolution MSC.167(78), para. 6.7.

31 Maritime Safety Committee, Resolution MSC.167(78), para. 6.8–9.

Do I risk criminal prosecution?

The answer to this question may come as a surprise, as the contrary is the case: if you *do not* render assistance, you risk an indictment for failure to assist a person in danger. Therefore, disembarkation is usually unproblematic.

However, there is reason for concern over the 2006 trial of the captain of the Cap Anamur and the former head of the Cap Anamur committee. Having rescued persons from distress at sea, they brought them to Italy. The result was an indictment for aiding illegal immigration. The same court in Sicily also tried seven Tunisian fishermen who had also saved lives at sea.

Human rights organisations criticise that this is designed to deter crews from doing what should be a matter of course: rendering assistance. The impounding of boats and fishing equipment can threaten the livelihood of fishermen.

However, such measures are still the exception. It stands to reason that the German and Italian governments were making a political example of the Cap Anamur case. Also, broad media attention made it into a political case. Only after three years of court proceedings were the two defendants finally acquitted. Shortly after, the Tunisian fishermen were also acquitted, although their two captains were convicted for obstructing a police officer.

A clear ruling at the European and international level is urgently needed: No-one should be led to violate the duty to render assistance for fear of prosecution.

Where can I find further information?

- Concrete guidance on rescue duties is contained in the 'International Aeronautical and Maritime Search and Rescue Manual' (IAMSAR) Vol. III, edited by the International Maritime Organisation (IMO).
- The United Nations High Commissioner for Refugees (UNHCR) and the IMO jointly edited the brochure 'Rescue at Sea – A Guide to Principles and Practice as Applied to Migrants and Refugees'. Download at: <http://www.unhcr.org/450037d34.html>.
- The International Maritime Organisation (IMO) is a special organisation of the United Nations that deals with international navigation and the related safety issues. Website: www.imo.org.
- A list of the SAR zones and the responsible search and worldwide rescue services is contained in 'Nautical Publications', vol. V (also cited as NP 285), pp. 315–414, edited by the United Kingdom Hydrographic Office, and in the IAMSAR mentioned above.

Important Emergency Numbers SAR Contacts

GREECE

JRCC Piraeus (Cospas-Sarsat SPOC)

Tel: 0030 210 4112500, 0030 210 4220772

Email: jrccpgr@yen.gr

Fax: 0030 210 4132398

Greek Rescue Team - Hellenic Rescue Team

Tel: (0030) 2310310649 (24 hours)

RSC Mytilini (Central Aegean Sea)

Tel: 0030 22510 40827

Fax: 0030 22510 47888

RSC Patrai (Ionian Sea)

Tel: 0030 2610 341002

Fax: 0030 2610 327136

RSC Chania (SW Aegean Sea)

Tel: 0030 28210 98888

Fax: 0030 28210 28387

RSC Rodos (Rhodes) (SE Aegean Sea)

Latitude, Longitude: (36.43333054, 28.21666908)

Tel: 0030 22410 22220

Fax: 0030 22410 27365

RSC Thessaloniki (N Aegean Sea)

Latitude, Longitude: (40.63000107, 22.79999924)

Tel: 0030 2310 531504

Fax: 0030 2310 531506

Symi – Port Authorities

Tel: 0030 2246 071205

TURKEY

MRCC Ankara (Turkish Coast Guard Command)

Tel: 0090 312 417 5050, 0090 312 425 3337

Fax: 0090 312 417 2845

E-mail: sgkhrkmrk@sgk.tsk.mil.tr

E-mail: trsgk@skyfile.com

MSRCC ANKARA (Main Search and Rescue Coordination Centre)

General Directorate of Maritime Transport

Undersecretariat for Maritime Affairs

Tel: 0090 312231 9105, 0090 312232 4783

Fax: 0090 312232 0823

E-mail: trmrcc@denizcilik.gov.tr

MRCC Izmir (Aegean Sea Region) (Turkish Coast Guard)

Tel: 0090 232 365 6825

Fax: 0090 232 365 9575

MRSC Canakkale (Turkish CG)

Tel: 0090 286212 7500

Fax: 0090 286212 7202

RSC Marmaris (Aegean Sea Region)

(Turkish Coast Guard)

Tel: 0090 252 412 7722

Fax: 0090 252 412 7777

CYPRUS

National Responsible Authority for Maritime SAR

Ministry of Communications and Work

Department of Merchant Shipping

P.O. Box 56193

CY-3305 Lemesos - Cyprus

Tel: 00357 2584 8100

Fax: 00357 2584 8200

E-mail: maritimeadmin@dms.mcw.gov.cy

JRCC Larnaca

SRR: CYPRUS SRR

Tel: 00357 2464 3005

Fax: 00357 2464 3254

Email: jrcc_cyp@cytanet.com.cy

RCC Akrotiri

Tel: 00357 252 76854

Fax: 00357 252 76795

MALTA

RCC Malta (Malta Radio) (Cospas-Sarsat SPOC)

Tel: 00356 2125 7267, 00356 2249 4202

Fax: 00356 2180 9860

Email: rccmalta@gov.mt

Armed Forces Of Malta

Telephone: 00356 21 809 279

Tel: 00356 2249 4020

Email: hq.afm@gov.mt

Fax: 00356 21 809 860

Fax: 00356 21 241001

ITALY

MRCC Rome

Tel: 0039 06592 3569, 0039 06592 4145, 0039 06590 84527

Email: cgcp3rep4@infrastrutturetrasporti.it, centraleoperativa1@libero.it

Fax: 0039 06592 2737, 0039 06590 84793

E-mail: imrcc-ssas@mit.gov.it

MRSC Palermo

Tel: 0039 091 604 3111, 0039 091604 3110, 0039 091 604 3165

Fax: 0039 091 325 519

Email: gcpalermo@mit.gov.it

palermo@guardiacostiera.it

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MRSC Catania

Tel: 0039 095 747 4111

Tel: 0039 095 7474321 / 0039 095 747 4319

0039 095 747 4211 / 0039 095 538 888

Fax: 0039 095 747 4307

Fax: 0039 095 533 962

Email: catania@guardiacostiera.it

MRSC Bari

Tel: 0039 0805216860, 0039 080528 1511, 0039 080528 1544

Fax: 0039-080-521-1726

Email: bari@guardiacostiera.it

SPAIN

MRCC Tarifa

Tel: 0034 956 684 740

Fax: 0034 956 680 606

MRCC Almería

Tel: 0034 950 271 726, 0034 950270715

Fax: 0034 950 270 402

MRSC Algeciras

Tel: 0034 956 580 930

Fax: 0034 956 585 402

ARCC Canarias

Telephone: 0034 92857 7080

Fax: 0034 92857 7081

Email: rcc.canarias@ea.mde.es

MRCC Tenerife

Vía Auxiliar Paso Alto, 4 planta 9ª

Edificio Torre de Salvamento Marítimo

38001 Santa Cruz de Tenerife-Canarias

Tel.: 0034 92259 7551, 0034 92259 7552

Fax: 0034 92259 7331

MRCC Las Palmas

Explanada Tomas Quevedo, s/n

Edificio Autoridad Portuaria, 4ª planta

35071 Las Palmas de Gran Canaria

Canarias

Tel.: 0034 928 467757, 0034 928 467955

Fax: 0034 928 467760

Sociedad de Salvamento y Seguridad Marítima

c/. Fruela, 3 - 28011 MADRID (SPAIN)

Tel.: 0034 91 755 9100

Fax: 0034 91 755 9109

E-mail: cncs@sasemar.es

ARCC Madrid

Tel: 0034 91677 1718, 0034 91678 5271

Fax: 0034 91677 2021

MRCC Madrid

Tel: 0034 91755 9132, 0034 91755 9133

Fax: 0034 91 526 1440

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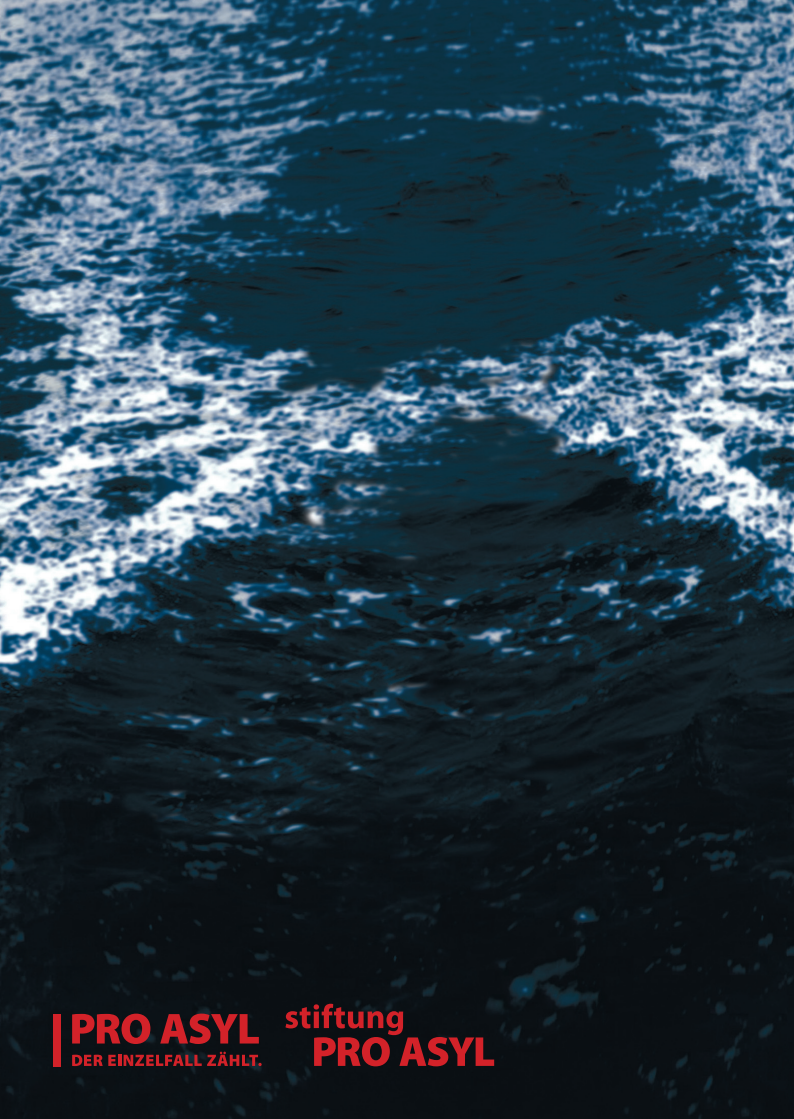


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