



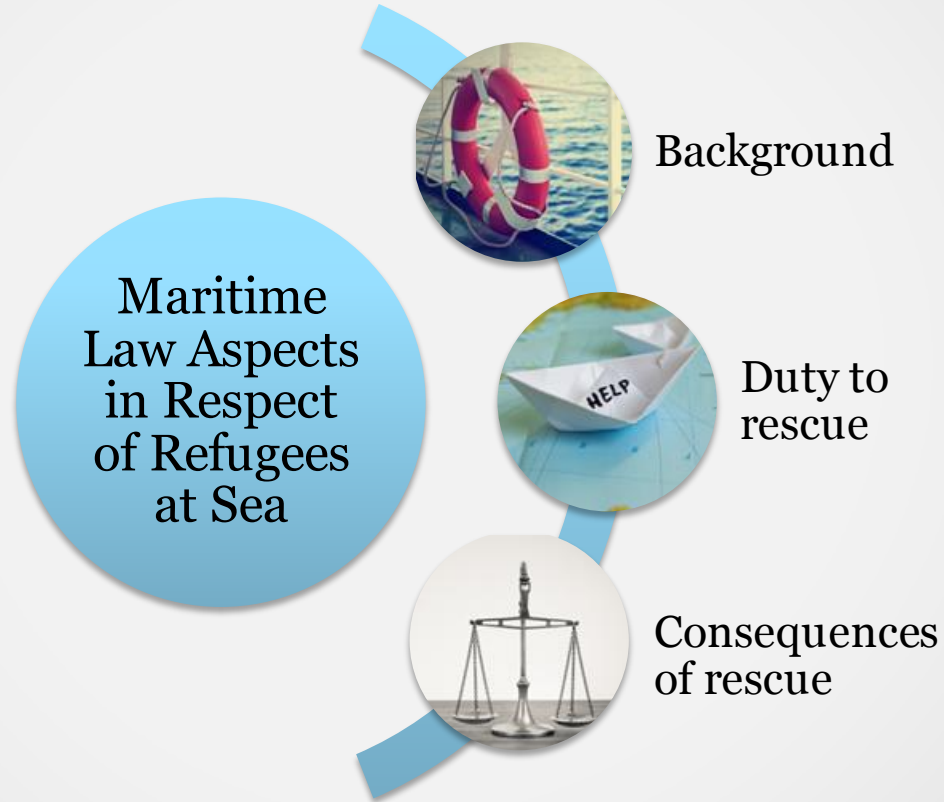
Maritime Law Aspects in Respect of Refugees at Sea

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16.6.2016
Helsinki, Finland



Structure



BACKGROUND

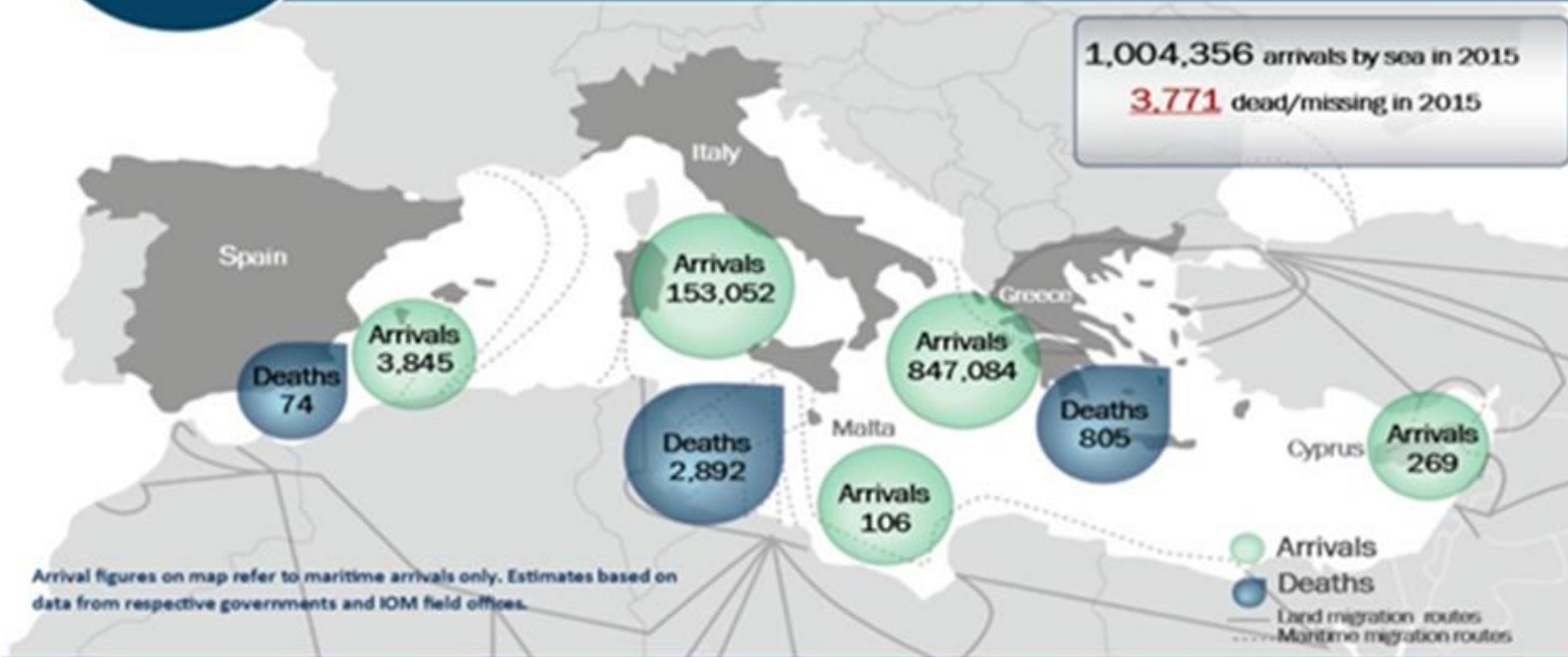


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Mediterranean Update

Migration Flows Europe: Arrivals and Fatalities



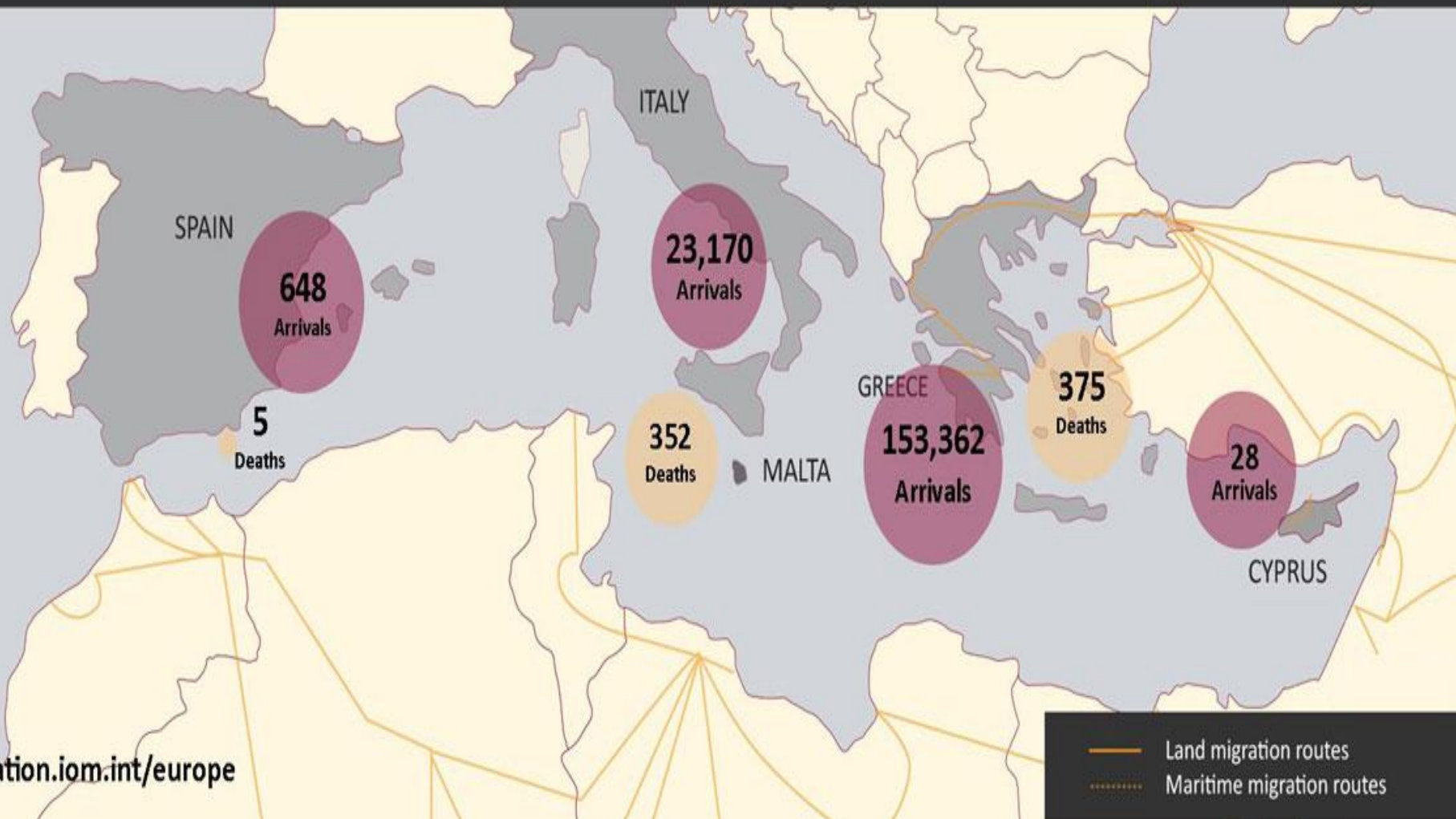
Missing Migrants Project is a joint initiative of IOM's Global Migration Data Analysis Centre (GMDAC) and Media and Communications Division (MCD).

#MissingMigrants Missingmigrants.iom.int #MigrationEurope Migration.iom.int

1, 011,712
ARRIVALS IN 2015

177,207 ARRIVALS BY SEA IN 2016
732 DEAD/MISSING

PUBLISHED 10:00 CET 15 APRIL
ARRIVALS DATA REFERS TO SEA ARRIVALS 13 APRIL 2016
DATA FOR SPAIN TO 29 FEB 2016



DUTY TO RESCUE

HELP



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Main conventions



- **UNCLOS**
United Nations
Convention on the Laws
of the Sea
- **SOLAS**
International
Convention for the
Safety of Life at Sea
(SOLAS)
- **SAR**
International
Convention on Maritime
Search & Rescue
- **ICS**
International
Convention on Salvage

Master's duty to rescue (1/2)



- UNCLOS (art 98(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"
 - "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....in so far as such action may reasonably be expected of him."

- SOLAS (V/33)

- "The master of a ship at sea...on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance..."
- This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found.
- Unless "the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance..."

Master's duty to rescue (2/2)



- Master's duty
- General duty to rescue, unless "serious danger"/ "special circumstances"
 - Hundreds of refugees on a merchant vessel designed for and operated by a small crew?
 - Fear of terrorism/diseases?
 - Lack of bunkers for rescue operation?
- Breach of duty
 - Usually criminal liability
 - FMC: fine – 6 months prison

The duties of coastal states



- Duty to
 - promote establishment, operation and maintenance of adequate and effective SAR-service (UNCLOS art 98 & SOLAS v/7)
 - ensure that assistance is provided to any person in distress at sea (SAR Convention)

- But also, importantly (SOLAS V/33 & SAR 3.1.9)

”... 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, provided that releasing the master of the ship from the obligations under the current regulation does not further endanger the safety of life at sea.”

CONSEQUENCES OF RESCUE





Consequences

Time/work/money spent on rescue?

- Time lost
- Bunkers
- Port charges
- Extra stores
- etc

Liability exposure due to rescue?

- Delay?
- Cargo damage?
- Sick/injured passengers?



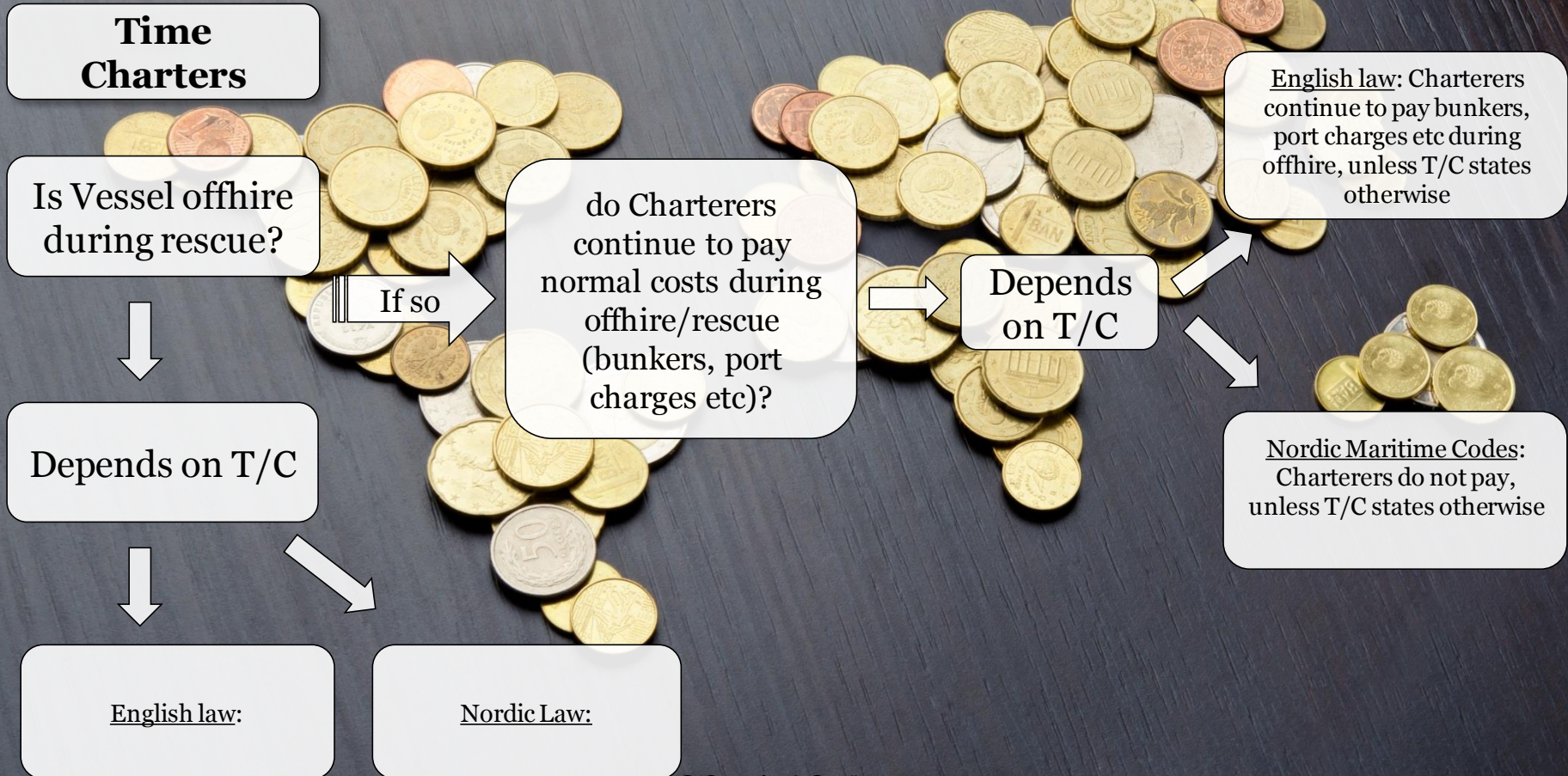


Time/work/money spent on rescue

- Voyage charters
 - Time and cost of performing voyage is born by Owners
 - Deviation to save life at sea + disembarkation on Owners
- Bills of Lading
- Carriage of passengers



Time/work/money spent on rescue



Time/work/money spent on rescue

Time charter examples

TIME CHARTER®

New York Produce Exchange Form
Issued by the Association of Ship Brokers and Agents (U.S.A.), Inc

November 8th, 1913 - Amended October 20th, 1921; August 8th, 1931; October 3rd, 1946;
Revised June 12th, 1981; September 14th 1993.

17. Off Hire 219

hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in lines 257 to 258 hereunder, the hire is to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, 226
227
228
229
230
231

22. Liberties 256

The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property. 257
258

"Should the Vessel deviate for any reason other than where permitted in lines 257 to 258 hereunder, the hire is to be suspended"

"257-258: The Vessel shall have the liberty to deviate for the purpose of saving life"

- NYPE 93
 - On-hire during rescue



Time/work/money spent on rescue

Time charter examples

Code word for this Charter Party "SHELLTIME 4"

Issued December 1984 amended December 2003

| | | |
|----------|--|---|
| Salvage | 25. Subject to the provisions of <u>Clause 21</u> hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this <u>Clause 25</u> . All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share. | 516 516 517 518 519 520 521 |
| Off-hire | 21. (a) On each and every occasion that there is loss of time (whether by way of interruption in the vessel's service or, from reduction in the vessel's performance, or in any other manner); (i) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under <u>Clause 17</u> hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or; | 339 340 351 352 353 354 |

"Subject to the provisions of Clause 21, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life shall be borne equally by Owners and Charteres"

"Off-hire 21.(a): On each and every occasion that there is loss of time.
(ii) For the purpose of obtaining medical advice or treatment for or landing any sick or injured person"

Shelltime 4

- Loss of time and expenses incurred in saving lives born 50/50
- BUT, subject to off-hire clause
 - Vessel off-hire when landing sick/injured
 - Also applies to costs

Time/work/money spent on rescue

Time charter examples

**BIMCO UNIFORM TIME-CHARTER
(AS REVISED 2001)
CODE NAME: "BALTIME 1939"**



PART I

Balttime

- Silent on deviation for saving life
- Background law decisive

Liability exposure?

Deviation and delay



- Allowed to deviate in order to save lives

The Hague-Visby Rules - The Hague Rules as Amended by the Brussels Protocol 1968

Article IV 4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

TIME CHARTER[®]

New York Produce Exchange Form
issued by the Association of Ship Brokers and Agents (U.S.A.), Inc.

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946;
Revised June 12th, 1981; September 14th 1993.

22. Liberties

The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress and to deviate for the purpose of saving life and property.

RECOMMENDED
THE BALTIC AND INTERNATIONAL MARITIME COUNCIL
UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994)
(To be used for trades for which no specially approved form is in force)
CODE NAME: "GENCON"



3. Deviation Clause

The Vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.

Liability exposure? Deviation and delay



- However, risk of cancelling of voyage or time c/p in case rescue leads to late arrival in loading/delivery port

RECOMMENDED
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UNIFORM GENERAL CHARTER (AS REVISED 1922, 1976 and 1994)
(To be used for trades for which no specially approved form is in force)
CODE NAME: "GENCON"



9. Cancelling Clause 137
(a) Should the Vessel not be ready to load (whether in berth or not) on the 138
cancelling date indicated in Box 21, the Charterers shall have the option of 139
cancelling this Charter Party. 140
(b) Should the Owners anticipate that, despite the exercise of due diligence, 141
the Vessel will not be ready to load by the cancelling date, they shall notify the 142
Charterers thereof without delay stating the expected date of the Vessel's 143
readiness to load and asking whether the Charterers will exercise their option 144
of cancelling the Charter Party, or agree to a new cancelling date. 145

Liability exposure? Cargo damage



4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.



- Hague-Visby Rules
 - Starting point: No liability due to deviation to save life

Liability exposure? Cargo damage



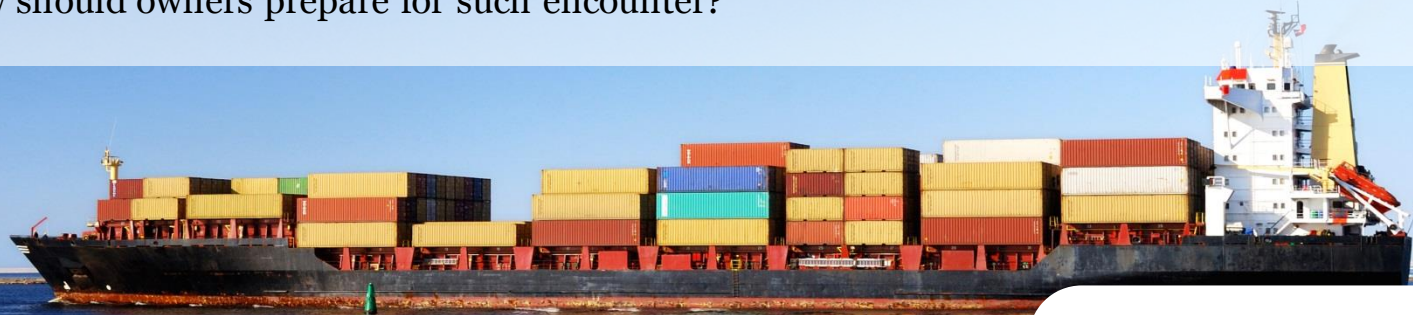
- When has loss/damage resulted from deviation in saving lives?
- Saving lives or error in management of cargo?
- Saving lives or initial unseaworthiness?

Liability exposure? Cargo damage



- Initial unseaworthiness?

- Is it foreseeable that a vessel in the Mediterranean will/is likely to encounter refugees at sea?
- If so, how should owners prepare for such encounter?



- Put procedures in place before entering the area?
- Provide adequate training for the crew?
- Equip the crew with necessary protective clothing?
- Ensure that the vessel is equipped with reasonable extra stores and clothing,
- etc, etc?

If preparatory measures not taken, may the vessel be deemed initially unseaworthy?

May this cause loss/damage to cargo?

Liability for sick/ill passengers?



- Athens Convention (Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974)
- If no procedures in place, not trained crew and e.g. no protective clothing
→ Possible liability?





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THANK YOU!