

# THE CRANSTON INQUIRY

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## LEGAL FRAMEWORK

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### I. RELEVANT INTERNATIONAL OBLIGATIONS IN RESPECT OF SEARCH AND RESCUE

1. Safety at sea, and in particular search and rescue, is addressed in a number of international treaties. These include:
  - a. the 1982 United Nations Convention on the Law of the Sea [**'UNCLOS'**]
  - b. the 1974 International Convention on the Safety of Life at Sea [**'SOLAS'**]
  - c. the Search and Rescue Convention 1979 [**'1979 SAR'**]
2. The UK and France are both party to all three of these Conventions and are bound by the obligations contained in them under international law.
3. The UK and France are also Member States of the International Maritime Organization [**'IMO'**], which is a specialized agency of the United Nations with responsibility for the safety and security of shipping and the prevention of pollution by ships. SOLAS and the 1979 SAR were adopted under the auspices of the IMO.<sup>i</sup>
4. The IMO and International Civil Aviation Organization jointly publish and periodically review and update the International Aeronautical and Maritime Search and Rescue [**'IAMSAR'**] Manual. This is a guide to member states, set out in three volumes, for providing and organising a SAR service and executing their responsibilities under the applicable aviation and maritime conventions.
5. The duty to render assistance to those in peril at sea is a long-established norm of the law of the sea. It finds expression in two specific obligations:
  - a. obligations on vessels to render assistance to persons in danger or in distress; and
  - b. obligations on coastal States to establish, operate and maintain adequate and effective search and rescue services.

## II. REQUIREMENTS FOR VESSELS TO RENDER ASSISTANCE

6. Each of UNCLOS, SOLAS and 1979 SAR contain provisions which address requirements for vessels to render assistance to persons in danger or distress. They do so in slightly different terms.
7. Article 98(1) of UNCLOS imposes an obligation on States to require that certain action be taken by masters of its flagged vessels, in the following terms:<sup>ii</sup>

*(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; ...*

8. SOLAS<sup>iii</sup> imposes obligations directly on masters of a ship to provide assistance in response to distress messages in the following terms. Paragraph 1 of Regulation 33(1) of Chapter V of Annex is key, and provides as follows:

### *Distress messages: Obligations and procedures*

*1 The master of a ship at sea which is in a position to be able to provide assistance on receiving a signal 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. If 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, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress, taking into account the recommendation of the Organization, to inform the appropriate search and rescue service accordingly.*

*1-1 Contracting Governments shall coordinate and cooperate 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, providing that releasing the master of the ship from the obligations under the current regulations does not further endanger the safety of life at sea. The Contracting Government responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such coordination and cooperation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular*

*circumstances of the case and guidelines developed by the Organization. In these cases, the relevant Contracting Governments shall arrange for such disembarkation to be affected as soon as reasonably practicable.*

9. Under both UNCLOS and SOLAS, the duty to provide assistance applies regardless of the legal status of the person in distress. The 1979 SAR expressly confirms that assistance is to be provided regardless of the nationality or status of the person in distress.

*Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such person or the circumstance in which that person is found.<sup>iv</sup>*

10. The requirement for vessels to render assistance in case of distress is incorporated in UK domestic law through the Merchant Shipping Act (Safety of Navigation) Regulations 2020 [**MSA (Navigation) Regulations**].<sup>v</sup> The Regulations apply to any UK ships, and any non-UK ships while they are within UK waters.<sup>vi</sup> A contravention of paragraph 1 of Regulation 33(1), SOLAS Annex, Chapter V is an offence by the master of a ship,<sup>vii</sup> punishable on summary conviction in England and Wales by a fine, or on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both.<sup>viii</sup>

### **III. OBLIGATIONS ON COASTAL STATES IN RESPECT OF THE OPERATION AND MAINTENANCE OF EFFECTIVE SEARCH AND RESCUE SERVICES**

11. UNCLOS, SOLAS, and the 1979 SAR require States to establish, operate and maintain search and rescue services at sea.

#### UNCLOS

12. Article 98(2) of UNCLOS provides:

*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.*

#### SOLAS

13. Regulation 7 of Chapter V of Annex to SOLAS provides:

- 1 *Each Contracting Government undertakes to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at*

*sea around its coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and the navigational dangers and shall, so far as possible, provide adequate means of locating and rescuing such persons.*

#### 1979 SAR<sup>ix</sup>

**14.** The most detailed provisions concerning SAR services are found in the 1979 SAR. It establishes a comprehensive international system for SAR operations, and provides for States to have responsibility for designated SAR regions, within which SAR services are provided.<sup>x</sup> The 1979 SAR also provides for the rescue of persons in distress to be coordinated by a SAR organisation, and where necessary, cooperating with neighbouring SAR organisations.

##### **i. SAR regions**

**15.** Under the 1979 SAR, States are to establish SAR regions by agreement, to be notified to the Secretary-General of the IMO.<sup>xi</sup> In the English Channel, the UK's SAR region and France's SAR region (for purposes of maritime SAR) are divided along the territorial sea boundary.

**16.** Where a State has accepted responsibility to provide SAR services, it "*shall use search and rescue units and other available facilities for providing assistance to a person who is, or appears to be, in distress at sea.*"<sup>xii</sup> A State must also arrange for its rescue co-ordination centre (and any rescue sub-centres) to receive distress alerts originating from within its SAR region.<sup>xiii</sup>

##### **ii. The elements of SAR services**

**17.** A common definition of SAR services appears in SOLAS and 1979 SAR,<sup>xiv</sup> which provides:

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.<sup>xv</sup>

**18.** The 1979 SAR sets out the basic elements of SAR services in para 2.1.2 of Chapter 2 to the Annex. It provides:

*Parties shall, either individually or, if appropriate, in co-operation with other States, establish the following basic elements of a search and rescue service:*

*1 legal framework;*

*2 assignment of a responsible authority;*

*3 organisation of available resources;*

*4 communication facilities;*

*5 co-ordination and operational functions; and*

*6 processes to improve the service including planning, domestic and international co-operative relationships and training.*

*Parties shall, as far as practicable, follow relevant minimum standards and guidelines developed by the Organization.*

**19.** It further provides that States shall:

- a. *“establish appropriate national procedures for overall development, co-ordination, and improvement” of SAR services;*<sup>xvi</sup>
- b. ensure the co-ordinated use of available facilities and establish close co-operation between services and organizations that may contribute to improving SAR services;<sup>xvii</sup>
- c. individually or in co-operation with other States, establish rescue co-ordination centres (and sub-centres, as they consider appropriate) for their SAR service. These centres are to arrange for the receipt of distress alerts originating from within its SAR region, and for communications with persons in distress, SAR facilities and with other rescue co-ordination centres or sub-centres. They are to be operational on a 24-hour basis and to be constantly staffed by trained personnel with a working knowledge of English;<sup>xviii</sup>
- d. identify all facilities able to participate in SAR operations;<sup>xix</sup> and
- e. provide each SAR unit with equipment appropriate to its task.<sup>xx</sup>

**iii. Co-operation between States**

**20.** The 1979 SAR provides for co-operation between neighbouring States in respect of SAR operations, including through agreements with other States, where appropriate.<sup>xxi</sup> It

requires States to co-ordinate SAR organizations and operations.<sup>xxii</sup> It also indicates that States should:

- a. *enter into agreements with neighbouring States setting forth the conditions for entry of each other's SAR units into or over their respective territorial seas or territory, and these agreements should provide for expediting entry with the least possible formalities;*<sup>xxiii</sup>
- b. *authorize its SAR co-ordination centres to request assistance from other rescue co-ordination centres; to grant necessary permission for the entry of vessels, aircraft, personnel or equipment into or over its territorial sea or territory; to make arrangements with appropriate authorities with a view to expediting such entry; and to make necessary arrangements to identify the most appropriate place(s) for disembarking persons found in distress at sea;*<sup>xxiv</sup>
- c. *ensure its rescue co-ordination centres provide assistance to other centres, when requested;*<sup>xxv</sup> and
- d. *authorise their responsible authority to make operational plans and arrangements for SAR co-operation and co-ordination with responsible authorities of other States.*<sup>xxvi</sup>

21. In the context of the English Channel, the UK and France have agreed the Anglo-French Joint Maritime Contingency Plan for the English Channel (Mancheplan), Chapter 2 of which is a regional SAR agreement within the meaning of the 1979 SAR.<sup>xxvii</sup>

**iv. Reporting requirements on SAR services**

22. States are obliged to provide information to the Secretary-General of the IMO on their SAR service.<sup>xxviii</sup>

**v. Operating procedures for rescue co-ordination centres**

23. Chapter 4 of the Annex to 1979 SAR sets out detailed provisions to guide the operations of rescue co-ordination centres and sub-centres.

24. Each of these centres is to:

- a. have available up to date information concerning SAR facilities and available communications relevant to SAR operations in its area;

- b. have ready access to information regarding the position, course, and speed of vessels within its area which may be able to provide assistance, and regarding how to contact them;
- c. have detailed plans of operation for the conduct of SAR operations;
- d. be kept informed of the state of preparedness of SAR units.<sup>xxxix</sup>

**vi. Receiving and acting upon distress alerts**

- 25. States are to ensure that they are capable of promptly and reliably receiving distress alerts from within their SAR regions, on a 24-hour basis.<sup>xxx</sup> They are to ensure that effective arrangements are in place for the registration of communication equipment and for responding to emergencies where appropriate.<sup>xxxi</sup>
- 26. When a centre receives information concerning a person, vessel or other craft in a state of emergency, it is to evaluate such information and determine the phase of emergency and the extent of operations required.<sup>xxxii</sup> If a SAR unit receives information of a distress incident, it is to take immediate action if in a position to assist and shall, in any case and without delay, notify the rescue co-ordination centre or sub-centre in whose area the incident has occurred.<sup>xxxiii</sup>
- 27. Chapter 4 identifies three emergency phases, and sets out procedures to be followed in the during these phases:
  - a. The “uncertainty phase” is when a person has been reported as missing or a vessel or other craft is overdue, or where a person, vessel or other craft has failed to make an expected position or safety report.<sup>xxxiv</sup> The rescue co-ordination centre or sub-centre is to initiate inquiries to determine the safety of the person, vessel or other craft, or declare the “alert phase”.<sup>xxxv</sup>
  - b. The “alert phase” is when, following the uncertainty phase, attempts to establish contact with the person, vessel or craft have failed and inquiries to other appropriate sources have been unsuccessful; or information is received indicating that the operating efficiency of a vessel or other craft is impaired, but not to the extent that a distress situation is likely.<sup>xxxvi</sup> The rescue co-ordination centre or sub-centre is to extend the inquiries for the missing person, vessel, or other craft; alert appropriate SAR services; and initiate such

action as is necessary in the light of the circumstances of the particular case.<sup>xxxvii</sup>

- c.** The “distress phase” is when:
- (a) positive information is received that a person, vessel or other craft is in danger and in need of immediate assistance; or
  - (b) following the alert phase, further unsuccessful attempts to establish contact and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or
  - (c) information is received which indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a distress situation is likely.<sup>xxxviii</sup>

The rescue co-ordination centre or sub-centre is to proceed as prescribed in its plans of operation for the conduct of SAR operations.<sup>xxxix</sup>

- 28.** Where the position of the search object is unknown:
- a.** the rescue co-ordination centre or sub-centre shall assume responsibility for initiating suitable action, unless it is aware that other centres are taking action, and confer with other centres with the objective of designating one centre to assume responsibility;
  - b.** unless otherwise agreed, the centre responsible for the area in which the search object was according to its last reported position is to be designated; and
  - c.** after the declaration of the distress phase, the centre co-ordinating the SAR operations shall, as appropriate, inform other centres of all the circumstances of the emergency and of all subsequent developments.<sup>xl</sup>
- 29.** Whenever possible, the rescue co-ordination centre or sub-centre shall forward information on the SAR operations it has initiated to the person, vessel or other craft for which an emergency phase has been declared.<sup>xli</sup>
- 30.** Where SAR operations involve more than one State, each shall take appropriate action in accordance with the plans of operation when requested by the rescue co-ordination centre.<sup>xlii</sup>
- 31.** The activities of SAR units and facilities are to be co-ordinated on-scene to ensure the most effective results, and where there are multiple facilities about to engage, the most capable person should be designated as on-scene co-ordinator.<sup>xliii</sup>



- 32.** SAR operations are to continue, when practicable, until all reasonable hope of rescuing survivors has passed.<sup>xliiv</sup> The decision to discontinue will normally be taken by the rescue co-ordination centre or sub-centre, or if no centre is involved, by the on-scene co-ordinator.<sup>xliv</sup> SAR operations shall be terminated where the centre considers, on the basis of reliable information, that the operation has been successful, or that an emergency no longer exists, and it will inform any authority, facility, or service which has been activated or notified.<sup>xlvi</sup> If a SAR on-scene becomes impracticable and the centre concludes that survivors might still be alive, on-scene activities may be temporary suspended, and resumed when justified on the basis of information subsequently received.<sup>xlvii</sup>
- 33.** The rescue co-ordination centre or sub-centre shall initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea, and shall inform the ship, ships and other relevant parties concerned thereof.<sup>xlviii</sup>

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<sup>i</sup> The IMO has an ongoing role in amending and updating those Conventions. The IMO has a Member State Audit Scheme, which became a treaty obligation in 2016. At that time, SOLAS was amended to provide that contracting States would be subject to periodic audits by the IMO to verify compliance with and to implement SOLAS.<sup>i</sup> The IMO has adopted guidelines for the audits<sup>i</sup> and the Secretary-General of the IMO is responsible for administering the audit scheme. Periodically, the IMO Secretariat prepares and publishes an anonymous consolidated audit summary report [‘CASR’]: six of these have been published since the commencement of mandatory audits in 2016.

<sup>ii</sup> Article 98 appears in Part VII of UNCLOS, which deals with the high seas. It is generally accepted that it applies to all areas of the sea, because of the general wording included in Article 98(1)(a), referring to “to any person found at sea”.<sup>ii</sup> The application of the duty to provide assistance to the territorial sea is also consistent with Article 18(2) of UNCLOS (in Part II on the territorial sea and contiguous zone), which provides that foreign vessels may temporarily stop or anchor in another State’s territorial sea for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

<sup>iii</sup> SOLAS, Regulation 33(1) of Chapter V of Annex.

<sup>iv</sup> Article 2.1.10 of Chapter 2 of the Annex to the 1979 SAR.

<sup>v</sup> In force 31<sup>st</sup> July 2020.

<sup>vi</sup> MSA (Navigation) Regulations, section 3(1). There are several exclusions, notably ships owned and operated by a State and engaged only on government non-commercial service.

<sup>vii</sup> MSA (Navigation) Regulations, section 9(2).

<sup>viii</sup> MSA (Navigation) Regulations, section 9(5).

<sup>ix</sup> Para 2.1.1 of Chapter 2 to the Annex of 1979 SAR provides:

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*Parties shall, as they are able to do so individually or in co-operation with other States and, as appropriate, with the Organization, participate in the development of search and rescue services to ensure that assistance is rendered to any person in distress at sea. On receiving information that any person is, or appears to be, in distress at sea, the responsible authorities of a Party shall take urgent steps to ensure that the necessary assistance is provided.*

*The notion of a person in distress at sea also includes persons in need of assistance who have found refuge on a coast in a remote location within an ocean area inaccessible to any rescue facility other than as provided for in the annex.*

<sup>x</sup> These regions are to be established by agreement and notified to the Secretary General: 1979 SAR, Annex, chapter 2, para 2.1.4.

<sup>xi</sup> 1979 SAR, Annex, chapter 2, para 2.1.4.

<sup>xii</sup> 1979 SAR, Annex, chapter 2, para 2.1.9.

<sup>xiii</sup> 1979 SAR, Annex, chapter 2, para 2.3.2.

<sup>xiv</sup> UNCLOS does not define SAR services.

<sup>xv</sup> 1979 SAR, Annex, chapter 1, para 1.3.3; SOLAS, Annex, Chapter V, Regulation 2(5).

<sup>xvi</sup> 1979 SAR, Annex 2, chapter 2, para 2.2.1.

<sup>xvii</sup> 1979 SAR, Annex 2, chapter 2, para 2.2.2.

<sup>xviii</sup> 1979 SAR, Annex 2, chapter 2, para 2.3.

<sup>xix</sup> 1979 SAR, Annex 2, chapter 2, para 2.5.

<sup>xx</sup> 1979 SAR, Annex 2, chapter 2, para 2.6.1.

<sup>xxi</sup> 1979 SAR, Annex 2, chapter 3, esp para 3.1.8.

<sup>xxii</sup> 1979 SAR, Annex 2, chapter 3, para 3.1.1.

<sup>xxiii</sup> 1979 SAR, Annex 2, chapter 3, para 3.1.5.

<sup>xxiv</sup> 1979 SAR, Annex 2, chapter 3, para 3.1.6.

<sup>xxv</sup> 1979 SAR, Annex 2, chapter 3, para 3.1.7.

<sup>xxvi</sup> 1979 SAR, Annex 2, chapter 3, para 3.1.9.

<sup>xxvii</sup> Annex 2, Chapter 3, para 3.1.8. The 2018 Anglo-French Joint Maritime Contingency Plan (Mancheplan) for the English Channel provided the basis for the coordination and cooperation of SAR between the UK and French authorities as at November 2021.

<sup>xxviii</sup> To include the following: (1) *national authority responsible for the maritime search and rescue services*; (2)

*location of the established rescue co-ordination centres or other centres providing search and rescue co-ordination, for the search and rescue region or regions and communications therein*; (3) *limits of their search and rescue region or regions and the coverage provided by their shore based distress and safety communication facilities*; and (4) *principal types of available search and rescue units* (1979 SAR, Annex 2, chapter 4, para 4.1 (4.1.1-4.1.4))

States are also required to update this information “with respect to any alterations of importance”; the Secretary-General is to transmit all the information received to all State Parties: 1979 SAR, Annex 2, chapter 2, para 2.1.11

<sup>xxix</sup> 1979 SAR, Annex 2, chapter 4, para 4.1 (4.1.1-4.1.4).

<sup>xxx</sup> 1979 SAR, Annex 2, chapter 4, para 4.2.1.

<sup>xxxi</sup> 1979 SAR, Annex 2, chapter 4, para 4.2.2.

<sup>xxxii</sup> 1979 SAR, Annex 2, chapter 4, para 4.2.4.

<sup>xxxiii</sup> 1979 SAR, Annex 2, chapter 4, para 4.3.

<sup>xxxiv</sup> 1979 SAR, Annex 2, chapter 4, para 4.4.1.

<sup>xxxv</sup> 1979 SAR, Annex 2, chapter 4, para 4.5.1.

<sup>xxxvi</sup> 1979 SAR, Annex 2, chapter 4, para 4.4.2.

<sup>xxxvii</sup> 1979 SAR, Annex 2, chapter 4, para 4.5.2.

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xxxviii	1979 SAR, Annex 2, chapter 4, para 4.4.3.
xxxix	1979 SAR, Annex 2, chapter 4, para 4.5.3.
xl	1979 SAR, Annex 2, chapter 4, para 4.5.4.
xli	1979 SAR, Annex 2, chapter 4, para 4.5.5.
xlii	1979 SAR, Annex 2, chapter 4, para 4.6.
xliii	1979 SAR, Annex 2, chapter 4, para 4.7.
xliv	1979 SAR, Annex 2, chapter 4, para 4.8.1.
xlv	1979 SAR, Annex 2, chapter 4, para 4.8.2.
xlvi	1979 SAR, Annex 2, chapter 4, para 4.8.3.
xlvii	1979 SAR, Annex 2, chapter 4, para 4.8.4.
xlviii	1979 SAR, Annex 2, chapter 4, para 4.8.5.