



Refugee Migration at Sea and Maritime Law **Questionnaire**

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THE CURRENT REFUGEE and MIGRANT CRISIS

- A. What measures were taken by your jurisdiction in relation to massive refugee/migrant flows?**
- (i) In relation to the rescue from boats?**
 - (ii) In relation to the landing of rescued persons from boats?**
 - (iii) In relation to granting humanitarian protection/refugee status to those rescued?**

The United Nations Convention on the Law of the Sea was adopted in Spain through the relevant Instrument of Ratification published in the Spanish Gazette on 14 February 1997, being in force since that date. This convention states in its article 98 that every State shall require the master of a ship flying its flag, in the terms therein established, to render assistance to any person found at sea in danger of being lost and to proceed to the rescue of persons in distress.

Also, Spain has ratified the International Convention for the Safety of Life at Sea (SOLAS), 1974, which is in force in Spain since 16 June 1980, when it was published in the Spanish Gazette. This Convention states that the captain of a vessel who is aware of people being in danger at sea shall promptly provide assistance to such people provided assistance can be given, and to report, where possible, to such people or to the service search and rescue authorities (SOLAS Convention, Chapter V, rule 33.1).

As further described in section C(iii) below, Spain is a party to the International Convention on Maritime Search and Rescue 1979, and therefore, the 2004 amendments to such Convention are in force in Spain. Some of such amendments were aimed to enhance the relevant articles for the provision of assistance to any person in distress at sea, regardless of the nationality, status or circumstances of such person, and the co-operation between States to identify the most appropriate place for disembarking such persons.

Spain has issued different laws and adhered to different Conventions in order to guarantee humanitarian protection and refugee status. Some examples are as follows:

- On 22 July 1978, Spain adhered to the Refugee Convention made in Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, made in New York on 31 January 1967.

- On 2 June 1982, Spain ratified the European Agreement on the exemption of visas for refugees, made in Strasbourg on 20 April 1959.
- On 31 October 2009, Spanish Law 12/2009, of 30 October, regulating the right to asylum and subsidiary protection was issued.
- On 10 February 1995, Royal Decree 203/1995 which approves the Regulations regarding the Right to Asylum and Refugee status was issued as well (such a Royal Decree has been amended several times. Last one on December 30th, 2004).
- Finally, on October 24th, 2003, Royal Decree 1325/2003 which approves the Regulation on the temporary protection regime in the event of a massive flood of displaced persons was also adopted.

B. Which authority (Department of State or Organisation) in your jurisdiction is responsible for implementing SAR activities?

(i) Which authority is responsible for deciding on the measures?

In Spain, the key responsible entity in respect of SAR activities at sea is E.P.E. SOCIEDAD DE SALVAMENTO Y SEGURIDAD MARITIMA (hereinafter, “**SASEMAR**”). SASEMAR is a public entity created in 1992, ascribed to the Ministry of Transport (who is the main competent authority in matters relating to safety at sea). Amongst others, SASEMAR’s purpose includes as primary activity the provision of the public service of safety of human life at sea.

The Spanish Government, based on the relevant proposal made by the Ministry of Transport, has the duty of approving a national plan relating to, amongst others, the service of safety of life at sea. The latest national plan approved covers the period 2021-2024, and sets out the main goals and areas of focus for such period (e.g. renewal of certain elements of the fleet and other assets; training of personnel on SAR activities). For easing the participation of the different Autonomous Communities (i.e. the main levels of political and administrative division in Spain) in relation with safety activities, a national commission was created under the name of Comisión Nacional de Salvamento Marítimo.

SASEMAR is also responsible of managing the safety coordinating centers (Centros Coordinadores de Salvamento Marítimo), which are responsible for coordination the execution of SAR operations within a particular designated zone.

(ii) Which authority is responsible for providing support in implementing the measures?

Again, mainly the Ministry of Transport, through SASEMAR. Other Spanish public bodies, such as Harbour Masters and Port Authorities, also include safety in general within their purposes and sphere of functions. Likewise, the specifications, terms and conditions for the provision of port services may also include undertakings relating to safety to be assumed by port operators.

Also, SASEMAR and Cruz Roja Española (a humanitarian organization of public interest) are regularly engaged in contractual arrangements for the collaboration and support of both parties in

SAR and other activities. These contractual arrangements are renewed periodically, and the latest agreement is dated 31 October 2019.

SASEMAR also counts with the support of the Spanish national security forces in respect of SAR activities.

The above without prejudice to the general SAR and salvage duties imposed by various international conventions such as the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Salvage, the International Convention on Maritime Search and Rescue (SAR).

(iii) Did your authority implement measures to transfer those rescued to the state of origin (i.e. the State from which they started their journey)?

Spanish law foresees a mechanism for returning non-Spanish nationals trying to enter illegally in Spain. Generally, the legal treatment for irregular migrant flows intercepted at sea or close to the Spanish border is channeled through the return mechanism. Briefly, the return implies an administrative process in which the affected person can participate and be provided with free legal assistance, translators and, generally, benefit from effective legal protection (a fundamental right set out in article 24 of the Spanish Constitution for any person).

The return mechanism cannot be used (i) if international protection has been requested by the relevant person, in which case the return shall only be applicable if the international protection request is denied; or (ii) in case of pregnant women, when the return may present a risk for the mother or the pregnancy, or sick persons, when this measure may entail a health risk.

There is a special regime applicable to the Spanish cities of Ceuta and Melilla. Non-Spanish nationals intercepted while trespassing the border fences to irregularly cross the Spanish border may be rejected and returned to Morocco without the need of initiating the return mechanism and related administrative proceedings, provided that the rejection is made in observance of international regulations in respect of human rights and international protection applicable in Spain.

(iv) Did your authority implement measures to transfer those rescued to the state whose they are nationals?

See section B(iii) above.

(v) Which authority or authorities is or are responsible for enforcing the various measures?

The competent authority in respect of the return mechanism is the Spanish Government, through the delegate or sub-delegate of Government in the relevant Autonomous Community. The decision can be appealed against the same authority in first instance, and before the administrative courts in second instance.

The rejection mechanism under the special regime applicable for the cities of Ceuta and Melilla is carried out by the Spanish administration through the national security forces directly.

The request for international protection shall be filed before authorized police offices, foreign offices, asylum and refugee offices or border control facilities. The competent authority for resolving the international protection request in Spain is the office of asylum and refugee (Oficina de Asilo y Refugio), ascribed to the Ministry of Home Affairs. This office is also the competent authority in respect of the temporary protection mechanism set out in the context of the invasion of Ukraine.

(vi) Were maritime administrations within your jurisdiction consulted in relation to decisions taken within your jurisdiction?

In Spain, there is no “ministry of the sea” as such, and maritime competences are distributed across several ministries, including, amongst others and for the relevant purpose of this questionnaire, the Ministry of Transport (to which SASEMAR is ascribed), the Ministry of Home Affairs (which has the competence in relation with immigration and to which the maritime service of the Civil Guard is ascribed). On this basis, “maritime administrations” do somehow participate in these matters and may be consulted in practice.

C. Are those who take decisions in your jurisdiction aware of the requirements of:

(i) Geneva Convention on the status of refugees (1951)?

Spain became a party to the Convention on 22 July 22, 1978, through the Instrument of Adhesion of Spain to the Convention on the Status of Refugees, made in Geneva on 28 July 28 1951 and the Protocol on the Status of Refugees, done at New York on 31 January 1967. Such adhesion was published in the Spanish Gazette on 21 October 1978, being in force since then.

(ii) The ILO Conventions (nos. 97 and 143)?

Regarding to ILO Conventions, Spain has ratified number 97, but no number 143.

The Government of Spain stated that the ratification of Convention no. 143 would require the establishment of costly infrastructures to effectively combat illegal immigration and that preferred to allocate these resources to the integration of immigrants in a regular situation.

(iii) The SAR Convention?

Spain became a party to the SAR Convention on 29 January 1993, through the corresponding Instrument of Adhesion published in the Spanish Gazette on 30 April 1993, being in force since then.

D. In relation to free pratique:

(i) Are you aware if your jurisdiction has denied port access/free pratique to any vessel due to the fact that they carried rescued persons?

Different decisions have been taken by the Spanish Government regarding the access/free pratique to vessels carrying rescued persons. For instance:

- In 2018, the M/V AQUARIUS and M/V OPEN ARMS (humanitarian ships) were accepted by Spanish authorities and migrants/rescued persons arrived at Spanish ports and were assisted by humanitarian NGO and Spanish authorities.
- However, in August 2019, M/V OPEN ARMS, carrying 121 rescued persons (who 30 of them were minors), was not allowed to arrive to Spanish ports and in January 2019. Barcelona Harbour Master denied the departure of the M/V OPEAN ARMS to set sail for the Mediterranean Sea on a humanitarian mission.

(ii) Are you aware if the current COVID-19 pandemic impacted the behavior of your jurisdiction regarding port access/free pratique to any vessel since they carried rescued persons?

Since the announcement of the “state of alarm” by the Spanish Government on 14 March 2020 (initially foreseen for a period of 15 days but which was later extended for months), several restrictions were imposed to a number of vessels regardless of their port of origin (cruise ships and passenger ships had restricted access to Spanish ports arriving from foreign ports during such state of alarm period). To our knowledge, there was no specific restriction regarding port access/free pratique to any vessel carrying rescued people although a COVID protocol was created in order to deal with possible cases of COVID 19 within the context of irregular immigration.

As per European Commission statistics¹, arrivals in Spain, and in particular the Canary Islands, significantly increased (+46%, 35,800) in 2020 as compared to 2019. The impact of COVID-19 restrictions on irregular arrivals was temporary: during the first six months of lockdown, Spain received 4,677 fewer people than in the same period of the previous year. Between January 1st and June 30th of 2020, 8,546 people arrived irregularly to the Spanish coasts (less than in 2019, when 13,223 people arrived). And since August 2020, the number of arrivals to Spain has been consistently greater than in 2019.

(iii) Are you aware if the *most recent* Ebola outbreak (ongoing in the Democratic Republic of the Congo since August 2018) pandemic impacted the behavior of your jurisdiction regarding port access/free pratique to any vessel because they carried rescued persons?

To our knowledge, the Ebola outbreak pandemic of 2018 did not impact the behavior of Spanish jurisdiction in that sense.

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_232

ADDENDUM

to

Refugee Migration at Sea and Maritime Law Questionnaire

THE CURRENT REFUGEE and MIGRANT CRISIS

A. Did the refugee flows related to the Ukrainian-Russian crisis affected your shipping activities? If so, how?

While the effects of Ukrainian - Russian crisis have impacted Spain at many different levels, the related refugee flows have not affected the Spanish shipping activities significantly. There are, however, certain measures that have been approved to tackle the underlying humanitarian crisis (see section B(ii) below) and the economic consequences of the conflict.

B. Which measures were taken by your national authorities in that regard?

(i) Which authority is responsible for deciding on the measures?

See (ii) below.

(ii) Which authority or authorities is or are responsible for enforcing the various measures?

In the context of the Ukrainian - Russian crisis and the subsequent mass influx of displaced persons from Ukraine, the Council of the European Union adopted the Decision 2022/382 of 4 March 2022. This Decision activates (for the first time since its inception), in the benefit of such displaced persons, the temporary and urgent protection mechanism set out in the Directive 2001/55/CE of 20 July 2001.

European Union member states can expand the level of protection under the referred temporary mechanism. On that basis, pursuant to the decision passed by the Spanish Ministries Council on 8 March 2022, Spain has increased the category of eligible persons that may benefit from this mechanism to the following persons:

- (i) Ukrainian nationals which were in Spain before 24 February 2022 that cannot return to Ukraine as a consequence of the conflict;
- (ii) nationals from third countries or stateless persons that where legal residents in Ukraine that cannot return to their countries or regions;
- (iii) certain family members of the persons listed in (i) and (ii) above; and
- (iv) Ukrainian nationals which were irregularly in Spain before 24 February 2022 that cannot return to Ukraine as a consequence of the conflict (in this case, no extension is granted to family members).

The request for this temporary protection shall be filed before authorized police offices, foreign offices, asylum and refugee offices or border control facilities. The competent authority for processing the protection request in Spain is the office of asylum and refugee (*Oficina de Asilo y Refugio*), and the resolution is to be passed within 24 hours by the Ministry of Home Affairs². If the

² Between March and June, aaround 120,000 persons have been granted with the protection recognized under the temporary mechanism in Spain.

temporary protection is granted, the beneficiaries will have, amongst others, residency and working rights in Spain, and access to the public health system.

Unlike the general international protection mechanism, the temporary urgent protection is subject to time limitations: (i) one year of initial term of protection, (ii) which is automatically extended for six-month periods with the limit of one year; and (iii) provided that there are sufficient grounds that justify an extension, the Council of the European Union can agree to extend the protection for an additional year. Hence, the aggregate maximum period of protection under the temporary mechanism is three years.

Although the temporary protection mechanism (as increased pursuant to the decision of the Spanish Ministries Council on 8 March 2022 referred to above) constitutes the primary measure to tackle the migratory crisis, other pieces of legislation have been recently approved in Spain to provide additional or complementary levels of protection. For instance, pursuant to the Royal Decree-law 6/2022 of 29 March, amongst other measures (i) certain formalities generally applicable to the solicitation of Spanish nationality by Ukrainian refugees have been suspended up until the end of the conflict; and (ii) the Spanish 2022 state budget has been increased in the amount of EUR 1,200,000 to assist in financing the costs related to the attention of Ukrainian refugees.

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