

*Visiting Researcher Sinem Ogis, LL.D*

University of Dubai (UAE), University of Gakushuin (JPN)

## **STAND-ALONE INSURANCE PRODUCT FOR RESCUE OPERATION?**

### **1. INTRODUCTION: APPLICATION OF DELAY INSURANCE FOR RESCUE OPERATIONS**

Critiques have echoed over the years within the political spectrum about the governance of immigration. For instance, in 2019, the Dutch-flagged Sea-Watch 3 has been stuck in the Mediterranean.<sup>1</sup> After over two weeks at sea, the captain of the ship, Carola Rackete, decided she had no choice but to enter Italian waters illegally to bring the remaining 42 migrants to safety.<sup>2</sup> In such cases, when the shipmaster deviates from the route for search and rescue (SAR) operations, the shipowner needs to bear some costs which insurers do not provide coverage for.

In legal theory, the shipowner could be freed from the coverage by having an insurance. However, currently there is currently no such insurance that is applicable for such cases.

At first stage of this work, the author was analysing the application of political risk insurance for rescue operations. Political risk insurance (PRI) covers: “(i) political risk activities similar to that of the public insurers, such as coverage for investments in developing countries against expropriation, political violence, and other such risks; and (ii) developing country non-payment insurance covering contract frustration and default by governments.”<sup>3</sup>

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Dr. Sinem Ogis, LL.M University of Southampton (UK), Ph.D. University of Augsburg (DE), Visiting Researcher at University of Dubai (UAE), University of Gakushuin (JPN), [sinemogis@gmail.com](mailto:sinemogis@gmail.com), ORCID 0000-0002-9602-3359.

<sup>1</sup> <https://www.thelocal.it/20190628/italy-allows-two-migrants-off-the-sea-watch-3/> (last accessed on 29.03.2021).

<sup>2</sup> <https://www.theguardian.com/world/2019/jul/05/captain-who-rescued-42-migrants-id-do-it-again-despite-jail-threat> (last accessed on 29.03.2021).

<sup>3</sup> Miga Wipr Report, *Chapter Three: The Political Risk Insurance Industry*, (2010), 55.

However, as it can be seen PRI is given to the investors and financial institutions which possibly face loss of money because of political events, therefore, the insured person, who is the shipowner in this case, cannot be fall under this category. Thus, the author came into conclusion that such losses can fall better under delay insurance coverage.

To illustrate this in an example, where the ship X deviates from the route for a SAR operation, unless such cost is covered by the government, in which the nearest and safest port is located, such cost then could be protected by delay insurance. By doing so, the shipowner who had experienced a large financial loss, due to delay and cost of SAR, could protect himself against many of these risks. Providing this insurance allows also shipmaster’s ability to operate smoothly for the rescue operations.

In fact, currently some P&I companies provide delay insurance cover to protect revenue stream from the costs of vessel delay beyond control. Generally, many different risk triggers onshore and onboard and shipowners, operators, anyone with an interest in a vessel who are looking to protect their business from the financial consequences of delay buys such insurance scheme.

Even though, at first it might seem as such insurance coverage already exists and can be applicable for SAR, there is no such P&I coverage to cover all the losses that might incur. Especially when the vessel deviates from its route for rescue operation, any damage might happen to the vessel is not covered by P&I or generally the P&I clubs do not provide cover for lost hire or freight that could arise for such deviation.

As well as, if one analyses the application of hull and machinery (H&M) policies, it provides physical loss or damage insurance for the hull and its propulsion of the ship. However, again the coverage of such insurance for rescue operations would be limited.

Therefore, the cover should be a specialised, stand-alone product not linked to P&I, H&M, or any other policy and responds to a comprehensive list of insured perils that might result during the rescue operations. In fact, no comprehensive framework for handling immigration at sea has been developed so far.

The cover can be for the net expenses incurred as a direct consequence of the deviation to rescue and disembark the immigrants. The incurred costs can be related to the period of time up to when the ship returns to the position no less favourable than if the deviation had not occurred. For example, for the case of stowaways, some P&I clubs has a coverage for the net loss to the members in respect of fuel, insurance, wages, stores and provisions incurred for such purpose. Similar approach could be adopted for the stand-alone insurance product for rescue operations.

## 2. ISN'T SAVING LIFE AT SEA COMPULSORY?

Shipmaster has an obligation to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found. This is in fact also a longstanding tradition and is essential to preserve the integrity of maritime.<sup>4</sup> This duty to render assistance at sea under many different international treaty laws had been pointed out.

### 2.1. The International Code of Safety for High-Speed Craft (HSC Code)

The provisions of the HSC were considered to be generally declaratory of established principles of international law and covered rules relating to the duty to render assistance on the high seas.

### 2.2. The United Nations Convention on the Law of the Sea (UNCLOS)

Article 98 of the UNCLOS refers to do duty to render assistance at sea and establishes the requirement of the States for proceeding with the rescue operations for the persons that are in distress.<sup>5</sup>

### 2.3. The International Convention for the Safety of Life at Sea (SOLAS)

Likewise, under SOLAS, Chapter V, Regulation 33 it states that the master is bound to proceed with all speed to the assistance of persons or ships in distress.<sup>6</sup>

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<sup>4</sup> See Jasmine Coppens, Eduard Somers, “Towards New Rules on Disembarkation of Persons Rescued at Sea?”, *The International Journal of Marine and Coastal Law*, Vol. 25, 2010, 378.

<sup>5</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; (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call. 2. 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 neighboring States for this purpose.”

<sup>6</sup> In such situations, deviation is permitted and insurers cover will not necessarily be prejudiced and may even allow the member to recover the expenses associated with such deviation. Recoverable expenses cover for deviation will only usually include the net expenses incurred during or directly resulting from such deviation. These usually include: bunkers; stores and provisions; wages; additional insurance; agency fees; local pilot and transportation costs; and port charges. However, the cover provided does not extend to lost hire or freight.

## **2.4. The International Convention on Maritime Search and Rescue (SAR)**

SAR Convention, obliges State parties to ensure that assistance be provided to any person in distress at sea and also provide for their initial medical or other needs, and deliver them to a place of safety.

## **2.5. The International Convention on Salvage (ICS)**

ICS similarly obliges masters to render assistance (life salvage) to any person in danger of being lost at sea, unless doing so would seriously endanger the ship or persons thereon.<sup>7</sup>

## **3. WHY SUCH INSURANCE IS NEEDED?**

If one assumes that a ship is proceeding from port A to C, but has to deviate to unscheduled port B to rescue and save life at sea, shipowner will incur unexpected port costs and other expenses compared to the original intended voyage.<sup>8</sup> Some costs indeed might be covered by the P&I. The P&I would cover the net additional running costs for the time spent travelling from point A to B, as well as from point B to C. While the P&I will cover these additional running costs, it will not pay for any loss of profit or loss of income incurred if, for example, the ship is placed off hire.

In conclusion, providing a detailed coverage under the delay insurance but as a stand-alone product that is needed. Even though, the analysis above is covering mainly the merchant vessel, such scheme can be also applicable for the NGO vessels as the incapacity of developing an answer to migration matters is putting at risk the immigrants most fundamental human rights, mainly the right to live.

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<sup>7</sup> The terms of the ICS are incorporated into English law through the Merchant Shipping Act 1995, which makes a master’s failure to render such assistance a criminal offence.

<sup>8</sup> See the case of Tampa in *Bailliet*, Cecilia Bailliet, “The Tampa Case and Its Impact on Burden Sharing at Sea”, *Human Rights Quarterly*, Vol. 25, 2003, 742.

## LIST OF REFERENCES

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