The protection of rescue craft in periods of armed conflict

by Philippe Eberlin

1. Introduction

The National Lifeboat Societies and State-maintained rescue services, members of the International Lifeboat Conference (ILC), unanimously adopted the report by their special working group on the protection of rescue craft in periods of armed conflicts. The report was drawn up after the meeting in Geneva from 16 to 18 April 1984 of that working group, comprising representatives of the ILC, of the International Maritime Organization (IMO), of the International Telecommunication Union (ITU) and of the International Committee of the Red Cross (ICRC). It contains recommendations for improving the protection of rescue craft and their crews and of fixed coastal installations and staff of lifeboat institutions in periods of armed conflict.

Those recommendations were the outcome of a detailed examination of the provisions concerning rescue craft in the Second Geneva Convention of 12 August 1949, and their aim is to solve technical problems in applying these provisions. The ILC has put forward practical suggestions: firstly by drawing up a simplified manual for all coxswains or those in command on, *inter alia*, the use of radio and radar transponders; and secondly by proposing a clearer and more exact interpretation of those texts of the Convention dealing with protected personnel and rescue craft.

The ILC considers that the crews of rescue craft and personnel in fixed coastal installations should enjoy the same protection as that accorded by Articles 36 and 37 of the Convention to crews of hospital ships and to religious and medical personnel.

Moreover, the ILC and the IMO have pointed out the need to clarify the technical terms and expressions used to denote rescue craft and their operations; in the French, English and Spanish versions of Articles 27, 30, 31 and 43 of the Second Convention the following expressions are used:

— embarcations de sauvetage côtières; embarcations; canots de sauvetage côtiers;
— coastal rescue craft; lifeboat; small craft; vessels; ships; coastal lifeboats; craft;
— embarcaciones costeras de salvamento; embarcaciones; canoas de salvamento costeras.

This diversity of terms leads to confusion when applied to present-day rescue craft. For this reason the ILC recommends the exclusive use of the terms:

— bateaux de sauvetage;
— rescue craft;
— barcos de salvamento.

It specifically states that, "in the future, vessels used by the State or by officially recognized lifeboat institutions for search-and-rescue operations and in conformity with Article 27 of the Second Geneva Convention should be termed "rescue craft" irrespective of their dimensions or range of action. These rescue craft should not be restricted to coastal rescue operations in order to be "respected and protected, so far as operational requirements permit" as laid down in Article 27 of the Second Geneva Convention".

This ILC recommendation is justified by the way in which seafaring and sea and air navigation have developed and by technical advances which have increased rescue craft range and efficiency.

Without in any way altering the protection afforded by the Convention, the terms recommended by the ILC are more suited to the various types of rescue craft operating today than the ones employed thirty-six years ago when the Convention was adopted in 1949.

Modern rescue craft have kept pace with technological developments and are more efficient than former ones in going to the assistance of the shipwrecked, the wounded and the sick, a fact which is unquestionably consistent with the intentions of the legislators of 1949. These modern craft can be very different from those in less technically developed regions where lifeboats, if they exist at

all, have either not developed or have done so only very little since 1949. The terms recommended by the ILC have a wider meaning and include all types of rescue craft, ancient and modern; nevertheless, the IMO has pointed out the need to define clearly the terms "lifeboat", "rescue craft" and "rescue operations" as they are used in the Second Geneva Convention.

No request has been made for an explanation of the corresponding terms in French and Spanish; these are not examined here, their catch-all meaning avoiding any difficulty in the interpretation of their use in that Convention. We shall discuss only the English term for which definitions have been asked. We point out, moreover, that the last paragraph of article 43 of the Second Convention relating to hospital ships applies also to rescue craft and that the most modern identification methods to which it refers are themselves a subject of separate study in connection with the protection of rescue craft during armed conflict.

Before expressing its own opinion on the modern means of identification (blue flashing light, radio and radar transponders) proposed by the ILC, the IMO would like to know what the ICRC thinks of the foregoing ILC recommendations on terminology. Being keen to alleviate the plight of the wounded, the sick and the shipwrecked, the ICRC cannot but approve the ILC recommendations making for the achievement of that aim by conferring on rescue craft the right to the protection afforded by modern technology. Should there be a conference of naval technical experts (which could be held in Geneva at the end of 1985) the ICRC would willingly submit these recommendations to it and to the Twenty-fifth International Red Cross Conference which will take place in Geneva in October 1986 in order that a resolution might be adopted on this matter.

It is important to define certain English terms as they are used in the Second Geneva Convention since the same terms may be employed for rescue craft and operations which do not enjoy the protection of the Conventions. The definitions of the English terms "lifeboat", "rescue craft" and "rescue operation", together with some explanations, have been sent to the IMO and the ILC and are set out below.

2. **The term "lifeboat"**

In the English version of the Second Convention, this term appears in Article 27 in the expression "lifeboat institutions" and in

Article 43 in the expression "coastal lifeboats". The International Maritime Dictionary by R. de Kerchove gives the following definition for "lifeboat": "A boat built of wood or metal and specially designed and equipped for life-saving purposes". Today one must say: "... constructed in wood, or metal, or plastic or any other material that is solid or inflatable..." This definition applies to all types of "lifeboats"; those which are land-based and those from hospital ships, passenger ships and merchant ships; war ships can also be equipped with "lifeboats". Nevertheless, the only "lifeboats" protected at all times by the Second Convention are those belonging to hospital ships and those which are land-based and used by the State or by officially recognized lifeboat institutions [1].

The flotillas of these rescue organizations show the variety of types of modern rescue craft which have all been specially designed and equipped for life-saving purposes and which comply with the definition of "coastal lifeboat" even though their dimensions vary from a few metres in length up to 40 metres and their horsepower can be as much as 7,000 HP or more. The various types of land-based "lifeboats" are entitled to protection under the Second Convention during periods of armed conflict if they meet the requirements set out in Articles 27, 30, 31 and 43 of that Convention.

It is clear that these articles do not apply to only one type of rescue craft. There can be great differences in types of rescue craft from one country to another because of different general and technical criteria for rescue services. The general criteria are in line with national arrangements for rescue at sea, on rivers and on lakes; rescue services may be organized by the State or by private rescue and relief organizations such as the Royal National Lifeboat Institution, in the United Kingdom of Great Britain and Northern Ireland, or the Cruz Roja del Mar of the Spanish Red Cross, or the Société nationale de Sauvetage en Mer, in France. All this can play a role in choosing the type of rescue craft, as do also bilateral international rescue agreements or conventions between States with adjacent coasts, territorial waters, contiguous zones and exclusive economic zones.

The type of rescue craft chosen, particularly when it belongs to the State, must be compatible with the standard alarm and monitoring services, link-up and communications, and national regulations and obligations stemming from international conventions on

[1] "Lifeboats" from ships other than hospital ships are protected by the Convention only when they are transporting the shipwrecked, the wounded or the sick.

safety in the air and at sea, such as the International Convention for the Safety of Life at Sea, 1974, Regulation 15, Chapter V. This Regulation provides for the establishment of a maritime search and rescue organization by coastal States party to the Convention.

The International Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage, signed in Brussels in 1910, mentions "tug" and "salvors of human life" without specifying the rescue craft used for life-saving purposes.

The IMO is currently reviewing this Convention and may shortly adopt a revised version.

It is the rescue institutions, whether State-owned or private, which choose the type of rescue craft best suited for a particular area; the international organizations interested in rescue matters have not laid down any regulations for the specifications of rescue craft. The IMO makes a distinction between two categories of vessels for search-and-rescue operations, but does not go into the specifications of these boats: [2]

— Rescue boat: short-range coastal and/or river craft (RB);
— Rescue vessel: long-range seagoing craft (RV).

The International Civil Aviation Organization, in the annexes to the Convention on International Civil Aviation signed in Chicago on 7 December 1944, published instructions on Search and Rescue (Annex 12), Rules of Procedures (Document 7030) and a Search and Rescue Manual (Document 7333); there is no mention of specifications for various types of rescue craft.

The Convention on the Law of the Sea [3], signed on 10 December 1982, includes in Article 98(2) the same provision regarding rescue work as Article 12(2) of the Convention on the High Seas of 1958. The Convention on the Law of the Sea requests all coastal States to facilitate the setting up and operation of a permanent search-and-rescue service at sea but it does not specify any requirements or restrictions on the type of rescue craft.

There is no exact definition for a universal type of rescue craft; each national lifeboat institution chooses its vessels in accordance with its means and the requirements of the lifeboat service in its own region. In each region the type of rescue craft used is

[2] See *IMO—Search and Rescue Manual*, p. 41; and *Merchant Ships SAR Manual (Mersar) Editions in English, French and Spanish.* IMO publications, London.

[3] The Convention on the Law of the Sea had been ratified, by the end of January 1985, by seven States; to become effective it must be ratified by 60 States.

influenced by several kinds of factors—geographic, economic and technical—for example:

— the nature of the coast and position of the rescue station on land; harbour, roadstead, beach;
— the hydrography, the bathymetry (study of sea depths) and the meteorology of the region along the coast and in the adjoining high seas;
— the people living along the coasts, fishermen, tourists;
— coastal and offshore (oil rigs) industrial activities;
— sea traffic in the area;
— technical co-ordination with official services, e.g. tug and pilot boat services, civil defence, police, the armed forces, navy and airforce, helicopters;
— the instruction and training of crews of rescue craft, voluntary and professional sailors;
— the presence in, or near to, the planned operation area of shipyards capable of building rescue craft;
— the possibilities of financing and importing a lifeboat;
— the lifeboat's required power, its seaworthiness, its range;
— the lifeboat's suitability for the transport and care of the wounded and the shipwrecked, for towing vessels in distress, passing through frozen waters and surf, over bars, coping with tidal and other currents, sailing between reefs, near desert coast lines or coasts difficult to approach, and navigating in poor visibility and storms.

These technical and general requirements explain why there are so many kinds of rescue services and vessels throughout the world. Such diversification ranges from the most advanced State institutions, such as the United States Coast Guards, to the lack of any rescue institutions in certain regions and along very many uninhabited coastlines and the least-frequented sea routes.

In the most favoured regions, rescue operations can be successfully carried out under the most difficult of conditions, near the coast or on the high seas, thanks to improvements in several types of lifeboat. Elsewhere, where there are only rowing-boat types of lifeboat, operations are limited by human muscle power despite the courage of crews who sometimes lose their lives in trying to assist the shipwrecked.

The Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 is applicable on all seas and other waters. At any place, in time of war, rescue craft going to the

assistance of the shipwrecked are entitled to protection and respect, in accordance with the conditions set out in Articles 23, 27, 30, 31, 34 and 43.

Within the meaning of the Convention, the term "lifeboat" therefore applies to any vessel especially designed and permanently equipped for life-saving purposes, shore-based and employed for inshore or offshore rescue work by the State or by the officially recognized lifeboat institutions.

3. The term "rescue craft"

This term is used in the title to Article 27: "Coastal rescue craft". It is used in the same way as "lifeboat" in J. Pictet's *Commentary*. As implied in the Second Geneva Convention "rescue craft" has a more general meaning than the term "lifeboat" which, in maritime terminology, as mentioned above, is applied to various makes of boats, specially designed and equipped for life-saving purposes, whereas "rescue craft" indicates any boat in general permanently used for rescue work in the meaning of Articles 22, 27, 30, 31, 34 and 43 of the Second Convention.

As mentioned in the *IMO Search and Rescue Manual:* "Most vessels are suitable for both search and rescue operations at sea". Hence, where no lifeboat designed and equipped for life-saving purposes exists one may use any boat by properly fitting it out as a rescue craft so that it can enjoy the protection of the Geneva Convention; it must be notified to the parties to the conflict and used exclusively for rescue operations throughout the entire conflict. Indeed, merchant vessels converted for use as hospital ships may not be put to any other use during hostilities, according to article 33 which applies by analogy to rescue craft since they are entitled to the same protection as hospital ships. Vessels converted for use as rescue craft and attached to shore-based life-saving stations are therefore subject to article 33. When, for an occasional rescue operation, [4] a vessel which is not a rescue craft must be used, the provisions of article 23 of Protocol I shall apply.

The general and technical criteria laid down for choosing the type of inshore or offshore lifeboat equally apply when choosing a "rescue craft" or, as referred to in the IMO Search and Rescue Manual, a "rescue vessel". For these two categories of rescue craft, the IMO SAR Manual gives examples of types of vessels including

[4] The term "rescue operation" is examined below.

"inshore lifeboats" and "offshore lifeboats"; the latter figure amongst "rescue vessels... which can participate in rescue operations at considerable distances from their base... and are of particular value because of their special equipment and trained personnel". [5]

Therefore the definition of the term "rescue craft" as understood in the Geneva Convention is: Any vessel, shore-based and employed temporarily or permanently for inshore or offshore rescue work, for life-saving purposes, by the State or by the officially recognized lifeboat institutions.

The only difference in the foregoing definitions is that the "lifeboat" is especially designed, equipped and permanently used for lifesaving while the "rescue craft" may be so employed temporarily.

4. **Rescue craft and lifeboats: the same protection**

Under the same conditions as those provided for hospital ships, Article 27 of the Second Geneva Convention protects rescue craft and lifeboats used for coastal or deep-sea rescue operations by the State or by officially recognized lifeboat institutions in so far as the requirements of military operations permit.

Neither the type of boat used—whether it be a large ultra modern inshore or offshore lifeboat, a rescue craft or a simple open rowing boat—nor the lifeboat's or rescue craft's range of action or zone of operation can cause it to forfeit the protection accorded to it by Article 27.

This protection shall not cease unless the rescue craft or lifeboat is used to commit, outside its humanitarian duties, acts harmful to the enemy, in accordance with Article 34 of the Second Convention which lays down the conditions for discontinuation of protection.

However, lifeboats engaged in rescue operations during periods of armed conflict shall in no way hamper the movements of the combatants. During and after an engagement they act at their own risk. These conditions, laid down in Article 30 of the Second Convention, take into account the "military necessity" for which international humanitarian law constantly makes allowance.

Article 27 grants protection "so far as operational (naval) requirements permit", this does not mean that it is permissible to

[5] *IMO SAR Manual:* 3.3.3. Utilization of vessels for SAR purposes, p. 41.

attack a lifeboat, since the belligerent can order it off (article 31). These provisions demonstrate that rescue craft and belligerents need to be able to communicate with naval vessels and aircraft. Their means of communication should be mentioned in the notification of rescue craft.

5. Notification of rescue craft

Notification of rescue craft to parties to a conflict is important for their protection. Useful information on notification may be found in an article by Gilbert Gidel, published in *International Review of the Red Cross,* September 1955, in which he refers to the Seventh International Lifeboat Conference at Estoril in 1955. At the end of his article, Gidel alludes to Resolutions 6 and 7 annexed to the 1949 Geneva Conventions, in connection with communication between rescue vessels and naval vessels and aircraft. He mentions also the proposal that the ICRC keep a register of rescue craft notified by States.

Incidentally, the ITU receives from the national telecommunication Administrations notification of radio stations aboard various types of rescue craft. The List of Ship Stations (Nomenclature des stations de radio de navire—Nomenclator de las estaciones de barco) published annually by the ITU uses the letters "SV" for the general classification and "SAU" to indicate rescue vessels. Of the 150,000 ship stations notified to the ITU by 35 member Administrations, 374 are classed as rescue craft "SV/SAU" [6]. It is probable that not all Administrations have notified rescue craft flying their national flags and that some of the vessels classed "SV/SAU" are not rescue craft as meant by the Second Geneva Convention.

It would therefore be advisable for State and private lifeboat institutions to agree with national telecommunication Administrations for notifications of rescue craft radio stations to the ITU to differentiate between those protected by the Second Geneva Convention and those which are not.

[6] The List of Ship Stations contains, for example, the following classification abbreviations:

Bta = factory ship
Cgt = coast-guard
Div = ship used by divers
Dou = customs launch
Fps = fast patrol ship
Hop = hospital ship
Ins = inspection ship
Phs = fishing guard
Ram = salvage ship
Sau = rescue vessel
Sec = stand-by safety vessel
Tug = Tug-boat
etc., etc.

6. The term "Rescue operations"

The term "rescue operations" appears in Article 27 in the expression "coastal rescue operations". A lifeboat's zone of operation may be far from its land base; in Article 43, paragraph 6, provision is made for "coastal lifeboats" to continue to fly their own national colours along with Red Cross flags when operating far from their base in occupied territory. J. Pictet's *Commentary* explains Article 27 as follows: "the expression "coastal rescue operations" does not mean that the small craft concerned may operate only near the coast. If humanitarian considerations obliged a small craft to go to a point some considerable distance from the coast, it would nonetheless remain protected. This is obvious from Articles 30 and 31..." [7].

In accordance with Article 27 of the Second Convention, the term "rescue operation" means therefore: any inshore or offshore rescue work needed for life-saving purposes made by rescue craft or lifeboat, according to Article 27 of the Second Geneva Convention.

In accordance with Articles 12 and 13 of the Second Convention the shipwrecked, wounded and sick who are at sea shall be respected and protected in all circumstances, it being understood that the term "shipwrecked" means wrecked from any cause and includes forced landings at sea by or from aircraft. The explanations which J. Pictet gives in his *Commentary* on Articles 12 and 13 for the terms "shipwrecked" and "shipwreck" state what rescue operations are in time of war. As understood in the Second Convention they consist in bringing assistance to any person in danger and, according to Pictet, to "persons in distress who renounce active combat (and who) can only expect the adversary to respect and rescue them if they make their situation clear and, of course, provided the adversary sees their signals" [8].

In point of fact it may happen that combatants in a dangerous situation might, nevertheless, decide not to stop fighting and that operations to "recover" them might be aimed at purposes other than saving people in distress, irrespective of whether the shipwreck occurred near the coast or on the high seas.

[7] J. Pictet, *Commentary, II Geneva Convention,* ICRC, 1960; Art. 27, p. 173.
[8] J. Pictet, *Commentary, II Geneva Convention,* ICRC, 1960; Art. 12, p. 90.

7. Recovery and assistance operations – (Combat Search and Rescue)

During the Second World War merchant convoys had a heavy escort and were defended by warships and were followed at a short distance by armed vessels especially equipped to search for and rescue the crews from ships which had sunk or were in distress after the convoys had been attacked. These rescue ships, included in the convoy, were fulfilling a task which neither a hospital ship nor a rescue craft would be called on to carry out since besides rescuing the shipwrecked, wounded and sick, and sometimes towing disabled ships, they were armed to counter-attack the enemy. Of course, these rescue ships did not display the distinctive protection emblems and did not claim the immunity due to ships protected by the Convention.

Similarly, armed rapid coastal launches used to rescue and, sometimes, capture aircraft pilots who had fallen in the sea could not enjoy the protection due to rescue craft since they were engaged in operations which were not solely humanitarian. Some armed helicopters and seaplanes also could undertake such support operations—"combat-search-and-rescue" operations—without the protection of the Geneva Conventions.

Recovery operations cannot be considered rescue operations as understood in the Second Convention since their aim is to assist military personnel in carrying out their mission, either by bringing them to a safe place after they have accomplished their objectives, on land or at sea, or by rescuing them from a difficult situation after their stricken aircraft has come down in the sea or their ship or vessel has been disabled or sunk; these military personnel do not given any signs of distress and do not surrender: their situation is similar to that of a wounded soldier wanting to escape from captivity.

This difficult situation may not be considered one of distress if the survivors are sufficiently fit for service and have survival equipment to enable them to indicate their position and await the arrival of the means planned for picking them up—means with which specialized combatants are frequently familiar.

It often happens that these search and assistance operations enable combatants to go on active duty again, sometimes immediately afterwards, and the opposing party would certainly not be idly looking on, especially when the combatants concerned are specialized people such as aircraft pilots, navigators, divers of

underwater demolition teams, etc. For this reason, and because they may be armed, the means used to seek and assist them may not be considered to be medical transports entitled to the protection of the Geneva Conventions, unless an agreement to the contrary has been concluded (see below). Aeroplanes, helicopters, deep sea salvage tugs or ships may be involved, sometimes escorted by combat planes or helicopters or war ships.

8. The expression "search and rescue" (SAR) — Conclusion of special agreements

Many countries have peace-time civilian search-and-rescue (SAR) services which conform to national regulations or to the international regulations contained in Rule 15, "Search and Rescue", Chapter V, of the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) and in Article 25 of the Convention on International Civil Aviation, already referred to, which provides for the search and rescue of missing aircraft by each contracting State and for international co-operation by SAR services. The expression "SAR" therefore refers to a national and international search-and-rescue institution for aircraft and ships.

The international provisions for search-and-rescue services for civilian aircraft and ships in times of peace require a technical infrastructure that does not necessarily exist everywhere. Nevertheless, studies are being conducted by the IMO, ITU, ICAO and others with a view to establishing a Future Global Maritime Distress and Safety System (FGMDSS). Recommendation 713, adopted by the World Administrative Radio Conference for the Mobile Services (MOB-83, ITU Geneva, 1983), provides for the use of radar transponders in search-and-rescue operations at sea.

Emergency Position-Indicating Radiobeacons for ships and aircraft in distress have proved to be extremely useful in combination with the COSPAS/SARSAT and INMARSAT radiodetermination-satellite service; an increase in the use of all modern search-and-rescue means may be expected in the near future and it is likely that military search-and-rescue services will follow suit.

Under the Second Convention, parties to a conflict may conclude amongst themselves arrangements and agreements for search-and-rescue operations which, if so agreed, may be carried out by medical aircraft, hospital ships, lifeboats, or any other ships protected by the Second Convention, through the application of Articles 6, 18, 21, 27 and 30. The experience of civilian search-and-

rescue services should facilitate the conclusion of these special agreements.

By analogy, the provisions of Protocol I additional to the Geneva Convention of 12 August 1949, dealing with medical transports—including Articles 25 to 31 concerning the use of medical aircraft—may serve as a model for the conclusion of search-and-rescue arrangements at sea in the various areas where naval and airforce operations are being carried out.

Every party to a conflict and any neutral States may endeavour to recover their personnel who have fallen into the sea, are shipwrecked or in a difficult and distressing situation. However, international humanitarian law is intended to protect the victim, the shipwrecked, irrespective of military considerations and, with this aim in mind, agreements should be reached between the belligerents for the rescue of their own personnel whenever they are themselves unable to undertake it or whenever assistance or search-and-rescue is liable to become a tactical naval operation between rival forces.

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