

## **Maritime rescue regulations in the light of the provisions of the Algerian maritime law**

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### **Abstract:**

When ships are at sea, they may be exposed to various risks, as the seas are often fraught with such dangers. Therefore, it seems necessary to provide assistance and rescue to these ships so that they can overcome their crisis.

The legislator has included the rescue at sea in the category of maritime incidents that prevent the continuation of a voyage, and these incidents can have serious consequences. However, not every mariner can be considered a rescuer, as the law requires certain conditions to be met in order to carry out a rescue at sea.

**Keywords:** Rescue, Assistance, Aid, Ship, Danger.

### **Introduction:**

Rescue is defined by law as any assistance given to a vessel in distress or to property on board<sup>1</sup>. Maritime rescue<sup>2</sup> is the act of

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<sup>1</sup> - Examine Article 32 of Order No. 76-80 dated October 23, 1976, which includes Maritime Law, Official Gazette, April 10, 1976, Issue 29, Page 496.

<sup>2</sup> - Maritime rescue differs from civilian assistance; on land, rescue is essentially a voluntary act left to individual discretion and is not questioned if declined. In maritime law, rescue is considered a mandatory act under certain conditions, and the captain can be questioned if refusing. Additionally, on land, rescue work is typically voluntary, whereas at sea, it is a paid service. For further details, refer to H.

extending a helping hand or assistance to persons or property in distress at sea and helping them to overcome their ordeal. In addition, providing assistance to a vessel in danger of being lost is considered a rescue<sup>3</sup>. It is therefore agreed that rescue is defined as assistance given to a vessel in danger in order to save persons or property on board.

It is worth noting that in the past a distinction was made between assistance, where the ship is still in danger, and rescue, where the maritime danger has already taken its toll and caused damage to the ship. There is still a jurisprudential aspect to this idea<sup>4</sup>.

In contemporary law, however, there is no longer any significant distinction between the two terms. The use of the two terms has become interchangeable, as can be seen in French and English law<sup>5</sup>. Algerian legislation, for example, sometimes uses the term 'rescue' and sometimes 'assistance', and occasionally 'emergency assistance'<sup>6</sup>, similar to the approach taken by Egyptian and Lebanese legislators<sup>7</sup>. This position has been supported by a faction of jurists who believe that the terms "assistance" and "rescue" have the same meaning. On the other hand, some argue that the term "rescue" means the outcome of a process that always begins with assistance and ends with rescue. Assistance is seen as the means, while rescue is seen as the result<sup>8</sup>. It is

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Faroun, Maritime Law, Karam Printing Press, Damascus, 1975-1976, Pages 263 and 264.

<sup>3</sup> - J. Warot, Assistance maritime, Encyc. D, Droit pénal, T.1, 1972, P.2.

<sup>4</sup> - Refer to H. Faroun's previous reference, Page 263.

<sup>5</sup> - Hamdallah Muhammad Hamdallah, Maritime Law, Dar Al-Nahda Al-Arabia, Cairo 2008, Paragraph 511, Page 505.

<sup>6</sup> - Refer to Article 332 of Maritime Law and subsequent clauses. Also, examine the second paragraph of Article 775 and Article 803 (y) of Maritime Law.

<sup>7</sup> - See Article 245 of Egyptian Maritime Trade Law (EMTL), which states: "Any rescue or salvage operation carried out by a ship in the service of another ship in danger, including the things on board that ship and its passengers, even if its crew leaves it." Article 248 of EMTL is formulated in the same manner.

<sup>8</sup> - Referring to V. R. Rodiere, *Traité générale de droit maritime*, T.2, *Affrètements et transports: contrat de transport des marchandises*, Dalloz, 1967, n°.651, P.388.

better to define things by their results than by the means that lead to those results<sup>9</sup>.

Some others maintain that the Brussels Convention on Assistance and Salvage of 23 September 1910 and its provisions, adopted by the International Convention on Salvage in 1989<sup>10</sup>, expressly abolished this distinction. Article 1 of the Convention clearly states that its provisions apply to both assistance and salvage<sup>11</sup>.

Maritime rescue is any action or activity taken to assist a ship or other property in danger in navigable waters or other waters<sup>12</sup>, regardless of its nature. Rescue may involve the rescue of persons or the rescue of property. The term "rescue of persons" does not give rise to any ambiguity, since it refers to the provision of assistance to any person or human being who is in danger of death and in need of urgent help to survive. The term "rescue of property" needs to be specifically defined. Property includes all movable property intentionally placed on the coast, including threatened cargo<sup>13</sup>. This definition was laid down in the International Convention on Salvage of 1989<sup>14</sup>.

The term "vessel" refers to any craft, vehicle or structure capable of navigation<sup>15</sup>. Maritime law defines it as any sea-going structure or

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<sup>9</sup>- See Hamdallah Muhammad Hamdallah, *Maritime Law*, the previous reference, Paragraph 511, Pages 505 and 506.

<sup>10</sup>- Algeria ratified the International Convention \_ Salvage concluded in 1989 by virtue of Presidential Decree No. 11-385 dated 27 Dhu al-Hijjah 1432 corresponding to November 23, 2011, proclaiming the accession of the People's Democratic Republic of Algeria to the International Convention for Salvage for the year 1989, which was issued in London on April 28, 1989. The Official Gazette dated November 27, 2011, Issue 64, Page 4.

<sup>11</sup>- Refer to A. Mohammed Hussein, *Maritime Accidents, Collision, and Rescue*, Manshurat Al-Maaref, 1997, Paragraph 128, Page 100.

<sup>12</sup>- Article 1 (a) of the International Convention for Rescue concluded in 1989.

<sup>13</sup>- Refer to F. Zawawi, *Introduction to Legal Sciences: Theory of Law*, National Institute for Printing Arts, 1997, Page 123.

<sup>14</sup>- Article 1 (b) of the International Convention for Rescue concluded in 1989.

<sup>15</sup>- Article 1 (b) of the International Convention for Rescue concluded in 1989.

floating mechanism engaged in maritime navigation, either by its own means or by being towed by another vessel specially designed for such navigation<sup>16</sup>.

It should be noted that, according to Article 332 of the Maritime Code, maritime salvage is directed towards maritime vessels or the property on board them. From this it can be concluded that it falls within the category of salvage of property, as provided for by the Law on the Salvage of Maritime Vessels and their Property.

From the above, it can be concluded that the definition of maritime rescue provided by the International Convention on Salvage concluded in 1989 is broader than the definition proclaimed by the legislator in maritime law.

Maritime rescue is of great importance because of the considerable damage to life and property caused by maritime accidents. For example, according to Lloyd's Register statistics, 225 ships sank in 1952, ten of which disappeared without a trace. In June 1931, the San Ferrier sank with the loss of 400 lives in a matter of minutes. In addition, the sinking of the "Lamoricière" in 1941 resulted in the loss of 142 lives<sup>17</sup>.

### **The research problem:**

The research problem is related to the topic of maritime rescue rules and the need to define its conditions, which include: 1) the obligation to render assistance or aid, 2) the rendering of assistance or aid between maritime vessels or between them and inland waterway vessels, 3) the

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By way of comparison, the Brussels Treaty for Bills of Lading concluded on August 25, 1924, defines a maritime ship in its Article 1 (d) as "every vessel used in the sea transport of goods."

<sup>16</sup>- Refer to Article 13 of Maritime Law.

<sup>17</sup>- See Mahmoud Samir Al-Sharqawi and Mohamed Al-Qalyoubi, *Maritime Law*, Dar Al-Nahda Al-Arabia, 2008, Paragraph 618, Page 618. Also, refer to Paris, *L'assistance aux navires et le sauvetage des épaves*, and see also JULIEN LE CLERE, 1954, p. 95.

rendering of assistance to a vessel in distress, and 4) the condition related to the place where the rescue takes place.

The answer to this research problem can be addressed using descriptive and analytical approaches.

### **Research plan:**

First branch: The duty to render assistance or help.

1. Maritime rescue is the provision of assistance or aid.
2. Maritime rescue includes a legal obligation to rescue persons and a contractual obligation to rescue property.

Second branch: The provision of assistance between seagoing vessels or between seagoing vessels and inland waterway vessels.

1. Assistance to vessels or inland waterway vessels and their property and persons.
2. Assistance to sister ships.

Third branch: Assistance to a vessel in distress.

First: the danger must be serious and imminent or likely to occur.

Second: Danger is the criterion that distinguishes maritime rescue from other activities.

Fourth branch: The place where the rescue takes place.

### **First sub-branch: The obligation to render assistance or help.**

Maritime rescue is carried out by providing aid or assistance to vessels in danger at sea. Rescue is considered to be a service rendered by one ship to another in response to the specific circumstances faced by the latter, in fulfilment of a legal obligation to rescue persons and a contractual obligation to rescue property.

### **Firstly: Maritime rescue is assistance or aid.**

maritime rescue is defined as any assistance or aid provided to a vessel in imminent danger<sup>18</sup>. The law does not specify specific types of assistance, so any service provided to a vessel in exceptional circumstances is considered a rescue. In the absence of such circumstances, such services would be considered ordinary activities rather than rescue operations.

It is well established that maritime rescue is the provision of assistance to a ship in distress<sup>19</sup>. The question is, what is meant by assistance or aid?

In fact, there is no consensus on the interpretation of the term "assistance" as it is used by some people. Some distinguish between material assistance (assistance matérielle) and intellectual or moral assistance (assistance intellectuelle ou morale)<sup>20</sup>.

Material assistance refers to actions taken by the rescuing vessel to physically assist the distressed vessel in overcoming its crisis. For example, individuals may board the vessel in distress to facilitate towing, or the rescued vessel may be provided with a number of officers and sailors to assist with navigation and continuation of the voyage if the crisis it is facing requires additional manpower to continue<sup>21</sup>.

Intellectual or moral assistance does not involve physical action. It is focused on providing advice and guidance, without going to the level of providing tangible assistance. Examples of intellectual assistance include standing guard over a ship in difficulty, staying by its side to

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<sup>18</sup> - See Article 1 (A) of the International Convention on Salvage dated 1989 and Article 332 BC.

<sup>19</sup> - Refer to H. Faroun, cited above, pages 263 and 264, and H. Dweidar, A Concise Guide to Maritime Law, Dar Al-Jamia Al-Jadida, 2004, page 332.

<sup>20</sup> - Also, refer to V. M. DE JUGLART by M. DE JUGLART and J. VILLENEAU, Systematic and Practical Directory of Sea Assistance, Vol. 1, L.G.D.J., ed. 1962, pp. 107 et seq.

<sup>21</sup> - Ibid.

offer support, or boarding a sinking ship to give advice to the captain and thus help it avoid destruction<sup>22</sup>.

Some argue that the mere provision of advice and guidance constitutes assistance which justifies a claim for a reward for the rescue, as long as the vessel which received the information was able to use it to overcome the danger. For example, providing information to a stranded vessel that has lost radio contact and is in danger of being destroyed in the open sea<sup>23</sup>. This view is supported by others who believe that rescue can be achieved through physical action or the provision of information, and they conclude that intellectual assistance is considered a form of rescue<sup>24</sup>.

However, there is a faction within Islamic jurisprudence that rejects this position and maintains that mere advice and guidance cannot be considered rescue or assistance unless it is accompanied by physical effort or action. Simply informing a lost vessel of its location by wireless telegraphy or throwing ropes to it from the shore is not considered assistance. Examples of physical action include extinguishing a fire on the vessel being assisted or carrying the distressed vessel's cargo to lighten its load and enable it to float<sup>25</sup>.

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<sup>22</sup>- Ibid.

<sup>23</sup>- See H. Faroun, the previous reference, Page 265, and also refer to A. Al-Baroudi, Principles of Maritime Law: The Ship, Its Ownership, and Its Special Legal System, Sea Travelers, Maritime Transportation, and Maritime Sales, Outstanding Creditors and Mortgages, Maritime Accidents, Collision, Rescue, General Average Losses, Manshurat Al-Maaref, Alexandria, 1983, Paragraph 240, Page 287. ... It is sufficient for the action performed by the (rescuing) ship to have actually saved the (rescued) ship from a state of danger, and therefore, it is considered a rescue. Providing information qualifies as rescue if the stranded ship has lost the ability to communicate wirelessly, putting it in serious danger at sea.)

<sup>24</sup>- See A. Muhammad Hussein, Maritime Accidents: Rescue and Collision, the previous reference, Paragraph 146, Page 116.

<sup>25</sup>- See M. Kamal Taha, Maritime Law: Introduction, Ship, Maritime Navigation Personnel, Maritime Transportation, Maritime Accidents, Maritime Insurance, Dar Al-Jamea, 1993, Paragraph 494, Page 387, and M. Kamal Taha, Maritime Law: Introduction, Ship, Maritime Navigation Personnel, Maritime Transportation,

The French judiciary has adopted the first legal perspective, recognising that intellectual assistance can indeed constitute a form of rescue similar to material assistance<sup>26</sup>.

It is worth noting that the International Convention on Maritime Search and Rescue, concluded in 1989, explicitly states that maritime rescue is carried out by "activity" or "action" taken to assist a vessel or property in danger<sup>27</sup>. Furthermore, the Convention establishes certain criteria for determining the reward for rescue. From a deductive analysis of the above provisions, it can be concluded that rescue<sup>28</sup>, according to this Convention, is carried out by providing tangible action or physical assistance.

It is true that the Algerian legislature has not explicitly stated its position on this matter, nor has Algerian jurisprudence or the Algerian judiciary spoken out on the subject.

If we refer to article 332 of the Maritime Code, it states that maritime rescue or maritime assistance, as it is referred to in the legal text, is "... any assistance..." and adds that it is also considered as rescue "... services of the same nature...". With this phrase, the legislator intended to include services of the same nature as rescue. Thus, in defining rescue, the legislator focused on the concept of assistance, which implies the performance of concrete actions.

Furthermore, any successful rescue operation entails the payment of a reward, which is determined either by agreement between the parties or, in the absence of agreement, by the court<sup>29</sup>.

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Maritime Accidents, Maritime Insurance, Dar Al-Jamea, Third Edition, Paragraph 427, Page 331-332.

<sup>26</sup> - Paris, March 7, 1955, D. M. F., 1955, p. 466, and Rennes, June 24, 1964, D.M.F., 1965, p. 731.

<sup>27</sup> - Article 1 (a) of the International Convention for Rescue concluded in 1989.

<sup>28</sup> - Article 13 (1) of the International Convention for Rescue concluded in 1989.

<sup>29</sup> - See the first paragraph of Article 343 AD.



The law requires the court to take certain principles into account when determining the reward for rescue<sup>30</sup>. These principles indicate that if a person assists a vessel in distress, makes efforts to rescue it, exposes himself and his own vessel to danger, confronts the imminent danger to the assisted vessel and uses machinery and equipment to remove the danger, including the use of his own vessel's equipment, and may suffer damage as a result of the rescue operation he has undertaken, it is highly probable that the rescue involves physical action.

**Second, maritime rescue is assistance that involves a legal obligation to rescue persons and a contractual obligation to rescue property.**

Maritime rescue is a service provided by the rescuing vessel to the vessel in distress because of the danger it faces. In reality, the rescue is carried out to fulfil a legal obligation in the case of the rescue of persons<sup>31</sup>, while the rescue of property and assets in danger remains a contractual obligation governed by the agreement between the parties<sup>32</sup>.

The general principle is that the ship's crew do not deserve to be rewarded for their participation in the rescue of their own ship from danger at sea. This is because their actions in such cases constitute the fulfilment of an obligation imposed on them under the maritime employment contract<sup>33</sup>.

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<sup>30</sup> - Refer to Article 345 AD, which affirmed that the judiciary considers the following foundations in determining the salvage reward: the efforts and merit of those who provided assistance, the danger faced by the assisted ship along with its crew, the danger faced by the rescuers, the risks incurred by the assisted ship, the time used, expenses, and damages resulting from the rescue, and the value of equipment used by the rescuers.

<sup>31</sup> - Refer to Article 10(1) of the International Convention on Salvage concluded in 1989 and the first paragraph of Article 334 AD.

<sup>32</sup> - For further details, consult Article 6 of the International Convention on Salvage concluded in 1989 and Article 7, which specifies cases of contract nullification and its amendment.

<sup>33</sup> - Consider Article 338 AD, which states: "The crew and passengers of the salvaged vessel are not entitled to any reward". See also Dweidar, the previous reference,

Furthermore, the contribution of a guide in rescuing a vessel from danger does not qualify as rescue worthy of reward. This is because the guide's actions fall within the scope of the duties for which he was employed by the master<sup>34</sup>.

In addition, towing a vessel is not considered<sup>35</sup> a maritime rescue. The towing vessel does not deserve a reward for towing in exchange for saving the towed vessel or its cargo. This is because the towage contract itself imposes an obligation on the towing vessel to rescue the towed vessel if it is in danger at sea, and its actions during that time are considered to be in fulfilment of the towage contract<sup>36</sup>. Only in exceptional cases, where the towing vessel provides exceptional services that are not considered part of the fulfilment of the towage contract, would it be entitled to a reward for the assistance provided to the towed vessel and its cargo<sup>37</sup>.

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page 333: "The presumption in maritime salvage is that rendering assistance is not in itself the performance of a contractual obligation. The seamen's contribution to the salvage of the vessel on which they work is merely the performance of the obligation imposed on them by the maritime employment contract".

It is worth noting in this context that Algeria has recently ratified the Maritime Labour Convention adopted by the International Labour Organization at its ninety-fourth session, held in Geneva on 23 February 2006, by Presidential Decree No. 15-260 of 7 October 2015, Official Gazette of 31 January 2016, issue 5, page 3.

<sup>34</sup>- See Article 171 AD and beyond. See also Dweidar, the above-mentioned reference, page 333: "If the pilot contributes to saving the ship from a danger to which it is exposed, this falls within his duties, for which he was also called upon by the master of the ship".

<sup>35</sup>- The legislator deals with the provisions of towage in Article 860 AD and beyond. A maritime towage contract is an agreement whereby a ship, the tug, undertakes to tow another ship belonging to a third party in exchange for a predetermined fee. Within this contract there are two vessels: the first, a tugboat engaged in maritime activities, must have the material and legal qualifications of a ship. The second is a floating towed object, which retains the status of a ship as long as it was originally classified as such. For more details, see M. Kamal Hamdi, *Maritime Law: Ship, Maritime Personnel, Ship Utilisation (Ship Charter, Cargo and Passenger Transport, Towage)*, 2nd edition, 2000, paragraph 990, page 764.

<sup>36</sup>- See Article 339 AD and also Ali Al-Muqaddadi, *International Maritime Law*, Dar Al-Ilm Al-Malayin, 2002, page 211.

<sup>37</sup>- See Article 339 AD mentioned above. 38

**The second aspect concerns the provision of assistance between seagoing vessels or between seagoing vessels and inland waterway vessels.**

The International Convention on Salvage, concluded in 1989, defines salvage as "any act or activity undertaken to assist a ship or other property in danger"<sup>38</sup>. The Convention defines a ship as any seagoing vessel, ship or navigational facility<sup>39</sup>. However, the Convention does not specify the nature of the party responsible for providing salvage.

In fact, the legislator's position seems to be clearer and more precise on this matter. Article 332 of the Maritime Code states that maritime assistance includes "all rescue operations for maritime vessels ... or services of a similar nature provided between maritime vessels and inland waterway vessels"<sup>40</sup>.

On the basis of this legal text, it is clear that maritime rescue is the assistance provided between maritime vessels or between maritime vessels and inland waterway vessels. The legislator stipulates that one of the two floating facilities must have the characteristics of a vessel, regardless of whether it is giving or receiving the assistance.

It should be noted that maritime salvage is not limited to assistance to sea or inland waterway vessels<sup>41</sup>, but also includes the salvage of property on board such vessels and any other property in navigable waters that is in danger<sup>42</sup>, including cargo<sup>43</sup> and persons in danger. In addition, the legislator confirms the application of the salvage

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<sup>38</sup> - Article 1(a) of the 1989 International Convention on Salvage.

<sup>39</sup> - Article 1(b) of the 1989 International Convention on Salvage.

<sup>40</sup> - See Article 13 AD, which states: "For the purposes of this Act, a vessel shall be considered to be any maritime or floating structure engaged in navigation, either by its own means or by being towed by another vessel, or intended for such navigation". In the case of vessels, these are vessels intended for inland navigation.

<sup>41</sup> - See Article 332 AD.

<sup>42</sup> - Article 1(a) of the 1989 International Convention on Salvage.

<sup>43</sup> - Article 1(c) of the 1989 International Convention on Salvage.

provisions even when the services are provided between vessels belonging to the same person<sup>44</sup>.

**Firstly, the provision of assistance applies to both maritime and inland waterway vessels and the property and persons on board.**

The application of the maritime salvage provisions requires that the assistance be provided to maritime vessels. It may also be provided between maritime and inland waterway vessels<sup>45</sup>. The law requires that a vessel be one of the parties involved in maritime salvage.

Therefore, the assistance provided by an inland navigation vessel to another vessel, even if it takes place in maritime waters, is not considered as maritime salvage. This is because the legislation specifies that the salvage service must be provided between "maritime vessels and inland navigation vessels". It can be concluded that a maritime vessel can provide assistance to an inland waterway vessel or vice versa. However, assistance provided between inland vessels themselves is not considered to be maritime salvage.

It is worth noting that the law defines floating installations as either seagoing vessels or inland waterway vessels<sup>46</sup>. Therefore, there is no doubt about the assistance provided to offshore oil platforms<sup>47</sup>, as it is not considered salvage and is not subject to its provisions<sup>48</sup>. The legislator has extended the application of the salvage provisions to national maritime vessels, coastguard vessels and public service vessels<sup>49</sup>. The assistance provided to these vessels is considered maritime salvage and is subject to its legal provisions.

When the law provides for assistance between seagoing vessels or between seagoing vessels and inland waterway vessels, it does not

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<sup>44</sup> - See Article 341 AD.

<sup>45</sup> - See the aforementioned Article 332 AD.

<sup>46</sup> - See Article 333 AD.

<sup>47</sup> - The offshore oil drilling platforms.

<sup>48</sup> - See J. WAROT, cited work, p. 2.

<sup>49</sup> - Refer to Article 335 AD.

mean that maritime rescue is limited to the vessel itself. It also extends to other property on board the vessel that is also in danger<sup>50</sup>. The International Convention on Salvage, concluded in 1989, has extended the scope of its provisions to include property in inland waters which is also at risk<sup>51</sup>.

Maritime salvage also includes the wages of the vessel and the wages of its passengers. When assistance is given to a vessel in distress to help it overcome the crisis it is facing, the wages of the vessel and the wages of the passengers are saved along with the vessel<sup>52</sup>. This is explicitly stated in the International Convention on Salvage concluded in 1989<sup>53</sup>. In the same context, legislation has confirmed that the right to salvage compensation is based on the salvage of the cargo and the value of the cargo together<sup>54</sup>.

Ships that have been abandoned by their crew and are no longer under their control are not subject to maritime salvage, but to the salvage of shipwrecks, as provided for in article 358 of the Maritime Code and subsequent articles.

It is worth noting that article 332 of the Maritime Code does not mention the rescue of persons, although their assistance is considered obligatory<sup>55</sup>. This is because the rescue of persons does not give rise to

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<sup>50</sup> - See Article 332 AD.

<sup>51</sup> - See Article 1(a) of the 1989 International Convention on Salvage.

<sup>52</sup> - See M. Kamal Taha, Introduction, Ship, Maritime Personnel, Maritime Transport, Maritime Accidents, Maritime Insurance, Dar Al-Jami'a, 1993, paragraph 493, pages 386 and 387, and M. Kamal Taha, Maritime Law, Introduction, Ship, Maritime Personnel, Maritime Transport, Maritime Accidents, Maritime Insurance, Dar Al-Jami'a, Third Edition, paragraph 428, page 332.

<sup>53</sup> - See Article 1(c) of the 1989 International Convention on Salvage.

<sup>54</sup> - See Article 336 AD which states: "...deserves a reward for the salvage of the cargo and the cost of the voyage". The cost of the voyage refers to the charter of the vessel and the carriage of passengers.

<sup>55</sup> - See the first paragraph of Article 334 AD, which states: "Every master of a ship shall render assistance to any person found at sea in danger of perishing, without exposing his ship, crew or passengers to serious danger".

any legal obligation or entitlement to any reward for their rescue<sup>56</sup>. This is also confirmed by the 1989 International Convention on Salvage<sup>57</sup>.

Finally, the legislation expressly excludes the application of maritime salvage rules to the rescue of postal consignments, whatever their nature. It states that no reward is payable for their rescue. This is because the rescue of mail and postal parcels is governed by specific international agreements and is therefore not subject to the provisions of maritime law<sup>58</sup>.

### **Second: Assistance between sister ships.**

Sister ships are ships owned by the same person. When assistance is provided between ships owned by the same person, this assistance is subject to the rules of maritime salvage because each ship is an independent financial liability.

Article 341 of the Maritime Code states: "No reward shall be due even if assistance is rendered between vessels belonging to the same owner". The wording of this legal provision may appear ambiguous and unclear, and at first glance it may be understood that no salvage reward is due when assistance is rendered between vessels belonging to the same person. However, this is not the intention of the legislator, as the inclusion of the word "no" at the beginning of the article was merely an

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<sup>56</sup>- See the first paragraph of Article 342 AD, which states: "No reward shall be due for the rescue of persons." However, the second paragraph of this article makes an exception to this rule, stating: "Those who participated in the rescue of human lives and who intervened in the face of the same dangers shall be entitled to a fair share of the reward granted to those who rescued the vessel, her cargo and her appurtenances".

<sup>57</sup>- Article 16(1) of the 1989 International Convention on Salvage. However, the second paragraph of this article makes an exception to this rule, stating that a rescuer of human lives who was engaged in religious worship at the time of the incident requiring salvage is entitled to a fair share of the reward granted to the rescuer for saving the vessel or other property, or for preventing or minimising damage to the environment.

<sup>58</sup>- See Article 340 AD, which states: "There shall be no salvage reward for mail of any kind".

error in the translation of the legal text into Arabic. The correct interpretation is that a salvage reward is due even in the case of assistance between ships belonging to the same owner, which can be deduced from the wording of Article 341 in its original French version<sup>59</sup>.

It is worth noting that the legislator's position is in line with the provisions of Article 5 of the Brussels Convention on Assistance and Salvage, concluded on 23 September 1910. The Convention confirms the right to a salvage reward even in the case of assistance between vessels belonging to the same owner<sup>60</sup>.

This position is justified by the fact that, even if the assistance is provided between ships owned by the same person, each ship is an independent maritime asset with its own rights and obligations. The rights and obligations attaching to one ship are different from those which may attach to another ship, even if both are owned by the same person.

In addition, the salvage reward to which the rescued vessel is entitled is divided between the shipowner and the seafarers who participated in the rescue operation. If the owner of both vessels is the same, the seafarers on the two vessels would be different individuals. It is therefore reasonable to consider each ship as a separate entity with its own salvage entitlement<sup>61</sup>.

### **Third branch: Assistance to a vessel in distress**

Assistance must be given to a vessel in danger<sup>62</sup>. The element of danger is essential in maritime rescue. The rescue provisions cannot be applied

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<sup>59</sup> - Article 341 of the Maritime Code states: "Remuneration is due even when assistance is given between vessels belonging to the same owner".

<sup>60</sup> - Refer to Article 5 of the Convention which states: "Remuneration is due even if the assistance or rescue takes place between ships belonging to the same owner".

<sup>61</sup> - See H. Faroun, the aforementioned reference, page 267.

<sup>62</sup> - See Article 332 AD.

when assistance is given to a vessel that is not in danger<sup>63</sup>. The intended danger here refers to the risk of destruction<sup>64</sup>, such as the vessel being about to sink, having a fire on board, being adrift or the master losing control of the vessel due to adverse weather conditions.

The element of danger is a requirement imposed by our legislator<sup>65</sup>, as well as by many legislators<sup>66</sup>. This requirement is derived from the Brussels Convention relating to the Unification of Certain Rules of Assistance and Salvage, concluded on 23 September 1910<sup>67</sup>. It is also a condition adopted by the International Convention on Salvage, concluded in 1989<sup>68</sup>.

Intended danger, in the context of maritime salvage, refers to a significant risk that may be present or imminent. It should be noted that danger is what distinguishes maritime salvage from mere towing or assistance.

Intended danger, in the context of the discussion of maritime salvage, refers to a significant risk that may be present or imminent. It is worth noting that danger is what distinguishes maritime salvage from mere towage.

### **Firstly: the danger must be serious, either present or imminent.**

<sup>63</sup> - See H. Dweidar, the aforementioned reference, page 355.

<sup>64</sup> - See M. Kamal Taha, Maritime Law, Introduction, Ship, Maritime Personnel, Maritime Transport, Maritime Accidents, Maritime Insurance, Dar Al-Jami'a, 1993, paragraph 495, page 387, and M. Kamal Taha, Maritime Law, Introduction, Ship, Maritime Personnel, Maritime Transport, Maritime Accidents, Maritime Insurance, Dar Al-Jami'a, Third Edition, paragraph 429, page 333.

<sup>65</sup> - See Article 332 AD, as mentioned above.

<sup>66</sup> - See Article 248 of the Maritime Code (Tunisia) and Article 245 of the Maritime Code (Morocco), both of which state: "Any salvage or rescue operation carried out by a ship serving another ship in danger, including the things on board that ship, its cargo and the fare of its passengers, even if its crew abandons it, is subject to..."

<sup>67</sup> - See the first article of this treaty, which states: "Rescue and assistance to ships in danger..."

<sup>68</sup> - Article 1(a) of the 1989 International Convention on Salvage.



In maritime salvage, the vessel must be exposed to a serious danger which, without the salvor's intervention, would result in its destruction. If the salvor's action merely facilitates the ship's escape or shortens the time it would have taken to escape from a situation it could potentially have survived on its own, the action is not considered to be salvage<sup>69</sup>. However, if a ship is in serious danger and other ships come to its assistance, without which the situation would have worsened and the ship would have faced destruction, the service rendered in such a case is considered salvage. It is not necessary for the vessel to have lost all hope of extricating itself from the situation.

The ship's situation is such that it is unable to overcome the danger on its own and its destruction is inevitable unless assistance is provided. It is sufficient for the master of the ship to send a distress signal in the belief that he is in exceptional danger<sup>70</sup> and that the situation will deteriorate unless he receives the necessary assistance. The ship must be in serious danger.

The danger does not have to be imminent or imminent, but can be anticipated as likely to occur. Examples of imminent danger include a major fire breaking out on the ship, threatening the destruction of the ship and its occupants, or the ship colliding with the wreckage of other ships, resulting in significant hull breaches that threaten the ship with sinking.

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<sup>69</sup>- See A. Al-Baroudi, *Maritime Law*, Dar Al-Jami'a, 1988, paragraph 240, pages 287 and 288.

<sup>70</sup>- According to M. de Juglart and P. de la Pradelle, as discussed by J. Demettré Markianos, R. De Smet, J. Van Dosselare, P. Avrameas, S. Royer, C. Millier, G. Fraikin, G-H Lafage, R. Russo and B. Palmjensen in "Le transport maritime sous connaissance à l'heure du marché commun", L.G.D.J., ed. 1966, nos. 336 and 337, p. 133 et seq.: "It is not necessary, therefore, to speak of an assistance service for the ship to have lost all hope of getting out of the difficulty by its own means, and its loss must be absolutely certain if another ship does not come to its assistance. It is sufficient for the captain, faced with the situation, to call for assistance because he considers himself to be in abnormal danger".

One of the potential hazards is the failure of a ship's engines at sea. The reason for this concern is that if the vessel remains motionless at sea, it will be exposed to adverse weather conditions and rough seas which could lead to the destruction of the vessel<sup>71</sup>. This view is supported by another aspect of the jurisprudence, which emphasises that the failure of a vessel's engines at sea may not pose an immediate danger, but the presence of the vessel without engines is considered a serious risk justifying assistance in the form of salvage by towing it to port for repairs. On the other hand, if the ship's engines fail near a port and the port authorities could have been contacted for towing, the intervention of another ship for towing would not be considered salvage. In any case, the judge or authority dealing with the matter retains the power to assess the seriousness of the danger<sup>72</sup>.

In addition, it is required that the danger is not presumed<sup>73</sup>. The French judiciary has been content to stipulate the existence of a danger in salvage operations, without specifying whether the danger is imminent or imminent<sup>74</sup>. On the other hand, the British and American jurisdictions have emphasised the need to assist vessels in "imminent danger" and have stipulated that the vessel must be threatened by a maritime peril that can only be overcome with the assistance of another vessel.

**Secondly, the criterion that distinguishes salvage from towage is the element of danger.**

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<sup>71</sup>- See A. Ali Al-Muqaddadi, the aforementioned reference, page 209.

<sup>72</sup>- See A. Al-Baroudi, the aforementioned reference, paragraph 240, page 288.

<sup>73</sup>- Refer to A. Mohammad Hussein, Maritime Accidents, Collisions and Rescue, paragraph 160, page 127.

<sup>74</sup>- Cases of Douai, 22 November 1956, D.M.F., 1957, p. 20, and Douai, 19 May 1960, D.M.F., 1960, p. 495.

It is this requirement that the vessel be in danger that makes the service provided to it salvage. If the vessel is not in danger, the operation is considered to be towing<sup>75</sup>.

The importance of the distinction between salvage and towage is illustrated by the fact that a towage contract is a contractual agreement that entitles the tug to a fixed fee calculated on an hourly or daily basis. On the other hand, a salvage contract, even if it takes the form of towage, is a different type of contract that entitles the assisting vessel to a higher reward based on different criteria<sup>76</sup>.

An application of this would be to provide towing assistance to a vessel that is stranded near a wreck in a severe storm. On the other hand, towage assistance is provided to a sailing vessel when its auxiliary engine fails and it is able to return to port under sail without danger. This is because it is a rental of services calculated on a daily or hourly basis<sup>77</sup>.

Towing retains the character of assistance even if it is carried out without difficulty for the towing vessel. This is because the potential danger to the assisted vessel should always be taken into account. However, the risk to the assisting vessel should only be taken into account when calculating the salvage reward<sup>78</sup>.

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<sup>75</sup>- See V. J. Warot, work cited, p. 2.

<sup>76</sup>- Refer to Article 343 AD, where the legislator states that the salvage reward is determined by agreement between the parties and, in the absence of agreement, the court determines it on the basis of the principles mentioned in Article 345 AD.

<sup>77</sup>- See M. Kamal Taha, *Maritime Law, Introduction, Ship, Maritime Personnel, Maritime Transport, Maritime Accidents, Maritime Insurance*, Dar Al-Jami'a, 1993, paragraph 495, page 388, and M. Kamal Taha, *Maritime Law, Introduction, Ship, Maritime Personnel, Maritime Transport, Maritime Accidents, Maritime Insurance*, Dar Al-Jami'a, third edition, paragraph 429, page 333.

<sup>78</sup>- According to M. de Juglart and P. de la Pradelle, as quoted in the aforementioned work, no. 338, p. 143: "Towing takes on the character of assistance, even if it is carried out without any difficulty or danger for the towing vessel... The only situation to be taken into account is that of the vessel assisted; the danger to which the

**The fourth aspect: The place of salvage does not have any significant meaning according to the legislator.**

It states that "maritime salvage is any assistance provided to seagoing vessels". Similarly, services of the same nature provided between seagoing vessels and inland waterway vessels are considered to be salvage, regardless of the waters in which the assistance is provided"<sup>79</sup>. This is the same position taken by the International Convention on Salvage, concluded in 1989, which affirms that salvage may be carried out in navigable waters or in any other waters, regardless of their nature<sup>80</sup>.

It is therefore considered the same whether the salvage operation takes place at sea or in inland waters. In both cases, the assistance provided is considered to be maritime salvage and it is only required that one of the two floating structures has the characteristics of a maritime vessel, whether it is the one providing the assistance or the one being assisted.

Therefore, the assistance provided by an inland waterway vessel to another vessel is not considered salvage, even if it takes place at sea, because the decisive factor is that the maritime vessel is one of the parties involved in the maritime salvage. It does not matter whether the assistance is provided at sea or in inland waters. It should be noted that the legislator has taken into account only the provisions of the Brussels Convention for the Unification of Certain Rules Relating to Assistance and Salvage, concluded on 23 September 1910<sup>81</sup>.

Indeed, it is worth noting that some legislation, although heavily influenced by the Convention, does not specify the waters in which

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rescuer was exposed is to be taken into account only in the calculation of the remuneration".

<sup>79</sup> - See Article 332 AD.

<sup>80</sup> - Article 1(a) of the 1989 International Convention on Salvage.

<sup>81</sup> - See the first article of the Convention which states: "The following provisions shall apply to the assistance and salvage of seagoing ships ... and to services of the same kind between seagoing ships and inland navigation vessels ... irrespective of the waters in which they are carried out".

salvage should take place. This includes the Lebanese and Egyptian legislation<sup>82</sup>, where there is a fundamental difference between them and the Convention in this respect.

If the Convention states that the provisions of salvage apply to services provided to a vessel, including inland waterway vessels<sup>83</sup>, the Lebanese legislator has confirmed that salvage takes place between maritime vessels<sup>84</sup>. Furthermore, the legislator defines a vessel as any maritime construction capable of maritime navigation<sup>85</sup>. Therefore, the salvage provisions do not apply to assistance and salvage services provided to inland waterway vessels. This may be due to the lack of navigable rivers for inland navigation in Lebanon<sup>86</sup>. The Egyptian legislator follows the same position by stating that the provisions on salvage only apply to services provided between vessels<sup>87</sup>. Thus, inland navigation vessels are excluded from the application of these provisions. However, the legislator has made an exception for inland navigation vessels designated by the State or public bodies for public service and non-commercial purposes<sup>88</sup>.

The Algerian judiciary has remained silent on its position regarding these conditions and their application to Article 332 of the Maritime Code. However, the Egyptian judiciary has previously stated its position in a notable case brought before it, the case of the Greek ship

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<sup>82</sup>- See both Article 245 of the Maritime Code (Morocco) and Article 245 of the Maritime Code (Tunisia).

<sup>83</sup>- Refer to the first article of the Brussels Convention on the Unification of Certain Provisions Relating to Assistance and Salvage, concluded on 23 September 1910, as mentioned above.

<sup>84</sup>- See Article 245 of the Maritime Code (Morocco), which states: "Any act of assistance or salvage rendered by one vessel to another..."

<sup>85</sup>- See Article 1 of the Maritime Code (Morocco).

<sup>86</sup>- See M. de Juglart and P. de la Pradelle, cited work, no. 340, p. 135.

<sup>87</sup>- See article 245 of the Maritime Code (Tunisia), which states: "Any act of assistance or rescue carried out by a vessel in the service of another..." In addition, Article 1 first (a) of the Maritime Code (Tunisia) defines a ship as "... any floating installation normally used or equipped for maritime navigation, even if it is not intended for profit".

<sup>88</sup>- See Articles 293 and 303 of the Maritime Code (Morocco).

Lydia. The Alexandria Court ruled on this case on 11 February 1967 and dealt with the scope of the Brussels Convention on Assistance and Salvage, concluded on 23 September 1910<sup>89</sup>.

## Conclusion:

In conclusion, it can be said that if the conditions mentioned above are met in the assistance operation initiated by the master, maritime salvage is carried out and the master fulfils the legal obligation whenever he offers assistance to persons in danger at sea without exposing his ship, crew and himself to serious risk. The shipowner is not liable if the master fails to fulfil this obligation. However, the rescue of property

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<sup>89</sup> - The unpublished judgment referred to by A. El Baroudi, number 241, page 288, is summarised as follows While the ship Lydia was sailing from the port of Piraeus to the port of Alexandria, one of its officers noticed four large hoses (each 12.5 metres long) drifting in the sea without guidance or supervision. The weather conditions were bad, with high waves. The captain of the Lydia realised that these hoses were in serious danger, especially as they were colliding with each other. He decided to rescue them by tying them to his ship and taking them to the port of Alexandria. On arrival in Alexandria, it was discovered that these hoses had been lost by the ship François Kitty, which was towing them to the port of Alexandria on behalf of the Egypt Transport and Navigation Company and the Egyptian Public Institution for Internal Transport. However, they were lost in rough seas. The court concluded that the maritime salvage provisions applied to this case. In the grounds of its judgment, it stated:

1. Maritime assistance is assistance between two vessels or between a vessel and an inland waterway vessel, irrespective of the waters in which it takes place. It is sufficient for one of the floating structures to be described as a ship. Therefore, the maritime assistance provided by the vessel Lydia to the floating structures, which are tubes designed for inland navigation, falls within the text of Article 1 of the Brussels Convention on Assistance and Rescue of 23 September 1910.

2. The hoses were in serious danger due to their immobile engines and lack of guidance, combined with the rough sea. There was therefore a possibility that the waves would throw them far from any navigable route. The court emphasised that, despite their condition, the hoses were not to be considered as debris, but as floating structures abandoned by their crew. It is not necessary that these floating structures are actually navigable; it is sufficient that they are intended for inland navigation and are fit for use, as was the case with the hoses. The fact that their engines are not functioning is irrelevant, since the decisive factor is their fitness for navigation. Consequently, the court applied the provisions of the Brussels Convention on assistance and rescue to this case.

remains optional, but the master must always take into account the need not to expose his vessel to danger when carrying out the rescue operation.

The study of maritime salvage conditions has led us to the following conclusions:

- Salvage is the assistance given to a vessel in danger in order to save persons or property on board.
- The salvage regulations apply to both assistance and rescue, as both terms have the same meaning. This is confirmed by the Algerian legislator through the provisions of the maritime law, which use the terms interchangeably, sometimes referring to salvage, sometimes to assistance and sometimes to rescue. This was further confirmed by Algeria's ratification of the 1989 International Convention on Salvage, which expressly abolished this distinction by stating in its first article that its provisions apply to both assistance and rescue.
- Maritime salvage involves physical action and therefore the provision of advice and guidance is not considered as maritime salvage.
- The performance of maritime salvage is in fact the fulfilment of a legal obligation when it comes to rescuing persons. However, the salvage of property and assets in danger remains a contractual obligation, governed by the agreement between the parties involved.

It is not considered rescue at sea:

- 1-The participation of the ship's crew in rescuing their own ship from danger at sea, as it falls within the duties imposed on them by the contract of employment at sea.
- 2-The participation of the skipper in rescuing the vessel from imminent danger, as the actions of the skipper are part of the duties for which he was employed by the master.

3-The act of towing a vessel, as the towage contract itself imposes an obligation on the towing vessel to rescue the towed vessel if it is in danger at sea.

-Maritime rescue is the assistance provided between seagoing vessels or between seagoing vessels and inland waterway vessels where one of the two floating structures has the status of a ship.

-Maritime rescue is not limited to the physical vessel itself, but also includes the money on board that is in danger of perishing. It also covers the vessel's freight and passenger transport charges.

-Abandoned and unregulated vessels are not covered by the Maritime Rescue Regulations, but by the provisions of maritime law relating to the salvage of wrecks.

-Salvage compensation is payable even if the assistance takes place between vessels belonging to the same owner.

-Maritime salvage requires that the vessel is in serious or potential danger which could lead to its destruction.

-Assistance at sea or in inland waters is considered maritime rescue.

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### **Abbreviations :**

1. M.L. - Maritime Law

2. E.M.T.L. - Egyptian Maritime Trade Law

3. L.M.T.L. - Lebanese Maritime Trade Law

### **ABREVIATIONS in french language :**

al. Alinéa

Art. Article

c.m. code maritime

D.M.F. Droit maritime français

éd. Edition

Ency. D. Encyclopédie

Ibid.Idem, Ibidem

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op. cit.option citée

s. suite, suivant ( e, es, s)

T. Tome

V., v. Voir