A considerable number of people are leaving their home countries for economic and/or political reasons. Many of these refugees end up in distress at sea aboard unseaworthy and sometimes even un-crewed vessels, on their desperate journey in search of a better life.

There is a longstanding tradition that vessels assist when another vessel is in distress, however, putting tradition aside, there is also, based on several International Conventions, a legal obligation for the shipowner to provide assistance in distress situations at sea. The United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR), among other conventions, create a framework concerning the obligations of a vessel to provide assistance and disembark those rescued to a place of safety.

**Consequences for shipowners**
The obligation to assist could have major consequences for the shipowners concerned. Refugees saved at sea may be considerable in number and could lead to significant problems and costs. Vessels trafficking the Mediterranean have, in the past, been expected to take part in Search and Rescue (SAR) operations involving boats carrying as many as 300 refugees. Quite a few of the Club’s members have already encountered these situations where they are called up by a Marine Rescue Coordination Centre (MRCC), or the relevant Coast Guard in any of the European Coastal states and are requested to participate in an SAR operation. When the boat carrying the refugees is found it is often a relatively small boat in distress, clearly not seaworthy and overloaded with refugees.

A member might well find themselves with hundreds of refugees aboard a vessel manned only by a crew of 20. Clearly, this creates an extraordinary, and potentially very dangerous, situation. The shipowner faces quite a challenge; these people have to be taken care of in the best possible way, at the same time as the security of the crew also has to be ensured.
What costs are covered by the P&I insurance?
While the obligation to assist is clear, as are the possible criminal and civil legal consequences of failing to do so, the question concerning where the costs for the operation should fall as between a shipowner or a charterer, and/or their respective insurers, is not always as clear-cut. The constant stream of refugees coupled with the obligation to render assistance when lives are endangered, have led to many questions about what expenses should be covered by P&I insurance.

First of all, it should be stressed that only expenditure which cannot be compensated by another party will be reimbursed by the P&I insurance. Consequently, before seeking reimbursement from the Club, the member should explore the possibility of being reimbursed by the authority instructing the shipowner to take part in the SAR operations, alternatively the flag state.

Costs for diversion – a considerable item
The most considerable item for the shipowner will, in many cases, be the costs for the diversion of the vessel in order to rescue and disembark the refugees. SAR operations in the area around the busy Mediterranean routes typically last from a few hours up to a few days, depending on the circumstances of the individual case as well as the relevant vessel’s involvement.

The member will also often have a very limited say about where the refugees should be disembarked. Often the local authorities decide a specific port to which the vessel is ordered. This port is not always the closest one as the local authorities are aware that in some ports that neighbour the sea-lanes where refugees are frequently found, landing arrangements may be strained to the limit already.

Costs for a diversion are covered by P&I insurance if the diversion is justified and reasonably undertaken, which is typically the case when a shipowner is requested to assist by a national authority. It is however important that the member always informs the Club about the event before the vessel diverts, in order to obtain approval and advice from the Club. The diversion starts when the ship changes course to rescue refugees and ends when the vessel is reasonably back on course to its original destination.

Additional expenses
The diversion costs that can be reimbursed include expenses for fuel, insurance, stores and provisions, as well as additional port charges attributable to the diversion and incurred as a direct consequence thereof.

Port charges include pilots and tugs as well as port dues and fees. Cover is only provided for costs in excess of those that would have been incurred had it not been for the diversion. Credit should be made for costs saved, if any.

The member may be asked to supply details of actual and calculated costs in order for the Club to establish the compensation due. A bunker calculation should be supplied together with a bunker invoice and details of the additional distance sailed. All actions should be recorded in the deck log and a log extract is required from the member to obtain compensation from the Club for expenses incurred.

Another item that is usually not as substantial as the diversion costs, but may still be considerable, are the costs that the shipowner incurs in order to manage the refugees’ care and maintenance while aboard. These additional expenses will also be covered by the P&I insurance.

Need for complementary insurance cover?
The diversion could lead to time being lost for the shipowner/charterer, however it is important to note that no compensation will be paid out under the P&I insurance for hire lost during the diversion. The Club is currently developing a cover, complementary to traditional P&I insurance, for such shortfall in revenue while the vessel isn’t able to trade. Please contact the Club for further information.

How to minimise negative consequences?
When a request has been given to the shipowner to divert the ship, the member should, in addition to immediately notifying the Club, also alert the ship agents in the port where the refugees are to be landed or appoint an agent there to take care of the formalities.

It should be noted that often when the vessel has entered port in order to disembark refugees and during the actual disembarkation, neither the Club’s correspondents nor the local agents are allowed to board the vessel until the refugees have been disembarked. Instead the vessel is basically seized by local authorities i.e. Harbour Master, Coastguard etc.

Consequently, correspondents and agents can’t offer the Master much assistance at this stage. However, they render valuable assistance in taking the precautions necessary, before the vessel arrives, to allow a smooth disembarkation of the refugees.

Such precautions taken before the ship’s arrival will ensure that the member meets his obligations and it will also speed up the procedure and minimise the delay to the vessel. They can also be on standby during the disembarkation and attend the vessel on completion of the formalities to offer any support that is needed.

Paying party could be the shipowner or the charterer – or both
It should be noted that the starting point in this article has been that the shipowner is liable for costs. However it should be stressed that if the vessel is under a charter, the wording of the C/P will decide where the costs for the diversion, as well as other costs, will fall.

The paying party could be the shipowner or the charterer or there could be an apportionment between the two, depending on the wording of the relevant C/P. In view of the high amounts that might be involved it is important to keep this question in mind when drafting charterparties, to minimise the exposure and avoid uncertainty through clear wording.

GUIDELINES
Useful guidelines concerning the subject can be found on the IMO’s, UNHCR’s and ICS’s websites. Additionally, if you have any questions in relation to the above, please do not hesitate to contact the Club.