Conference on Irregular Migration
Legal and Policy Perspectives

Panel II: Legal aspects pertaining
to irregular migration

Irregular Migration by Sea

Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs
United Nations
Presentation

- Current challenges
- Rescue at sea – legal framework
  - International Convention for the Safety of Life at Sea (SOLAS)
  - International Convention on Maritime Search and Rescue (SAR)
  - Consideration by the General Assembly and International Maritime Organization (IMO)
- Prevention of irregular migration by sea – legal framework
  - UNCLOS
  - Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
Current challenges

- Ill treatment of people by smugglers
- Situations of people in distress at sea
- Loss of life at sea
- Reported cases of delayed rescue
- Problems with disembarkation of those rescued at sea
- Protection needs of asylum-seekers and refugees
- Challenges faced by States or origin, transit and destination
Rescue at sea: UNCLOS

Under article 98:

- Flag States must require masters to ... proceed with all possible speed to the rescue of persons in distress ... in so far as such action may reasonably be expected of him

- Coastal States must 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 neighbouring States for this purpose
Rescue at sea: SOLAS and SAR

- Parties to SOLAS/SAR must coordinate and cooperate to ensure that masters of ships are released from their obligations with minimum further deviation from the ship’s intended voyage.

- A Party to SOLAS/SAR responsible for the SAR region in which the survivors were recovered has primary responsibility for ensuring such coordination and cooperation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety.

General Assembly

In its resolution 64/71 on oceans and the law of the sea, the General Assembly:

- Calls upon States to implement the legal framework relating to rescue of persons in distress at sea
- Recognizes the need for assistance to developing States to increase SAR capabilities and to address the issue of unseaworthy ships and small craft within their national jurisdiction
- Welcomes the ongoing work of IMO relating to disembarkation of persons rescued at sea
International Maritime Organization

Ongoing work of IMO relating to disembarkation of persons rescued at sea:

- IMO Facilitation Committee issued Circular FAL.3/Circ.194 (Principles relating to administrative procedures for disembarking persons rescued at sea)

- IMO Maritime Safety Committee: Proposals to further amend SOLAS and SAR and to possibly adopt mandatory Guidelines
Prevention of irregular migration by sea: UNCLOS

- Flag States must exercise effective control over ships flying their flag
- A coastal/archipelagic State may take action in accordance with UNCLOS to prevent and punish infringements of its immigration laws and regulations in its:
  - Internal waters, archipelagic waters
  - territorial sea, contiguous zone
  - or in the exercise of its right of hot pursuit
- All States may exercise the right of visit (high seas and exclusive economic zones)
Protocol against the Smuggling of Migrants by Land, Sea and Air

- States are required to cooperate to prevent and suppress the smuggling of migrants, including by sea.

- A State party, other than the flag State, can board, search or take other appropriate action against a vessel suspected of being engaged in smuggling:
  - Action must be authorized by the flag State, unless necessary to take action to relieve imminent danger.

- Safeguards apply.
Thank you!

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