



Law of the Sea



Why Law of the Sea?

- Big numbers of migrants travel by sea
- Increasingly used by smugglers and irregular migrants
- One of the most dangerous ways of irregular migration
- Some gaps and problematic areas exist in relation to management of migration



Law of the Sea

- History
- UNCLOS
- Maritime Law Instruments
- Fundamental Principles of Law of the Sea
- Rescue at sea
- Stowaways
- Smuggling of migrants by sea



History

Concepts:

Mare Liberum

- 'Free Seas'– Grotius 1609

Mare Clausum

- 'Closed Seas'– Seldon 1635



History & Sources

- Customary International Law
- 1958 UNCLOS - 4 Conventions
(cont. shelf, fishing/living resources, HS, TS/CZ)
- 1982 UNCLOS - New Law of the Sea Convention



United Nations Convention on the Law of the Sea, 1982 (UNCLOS)

- Defines major terms of the Law of the Sea, such as internal waters, territorial sea, contiguous zone, etc.
- Sets legal regimes of different zones and rights and obligations of ships and States therein.

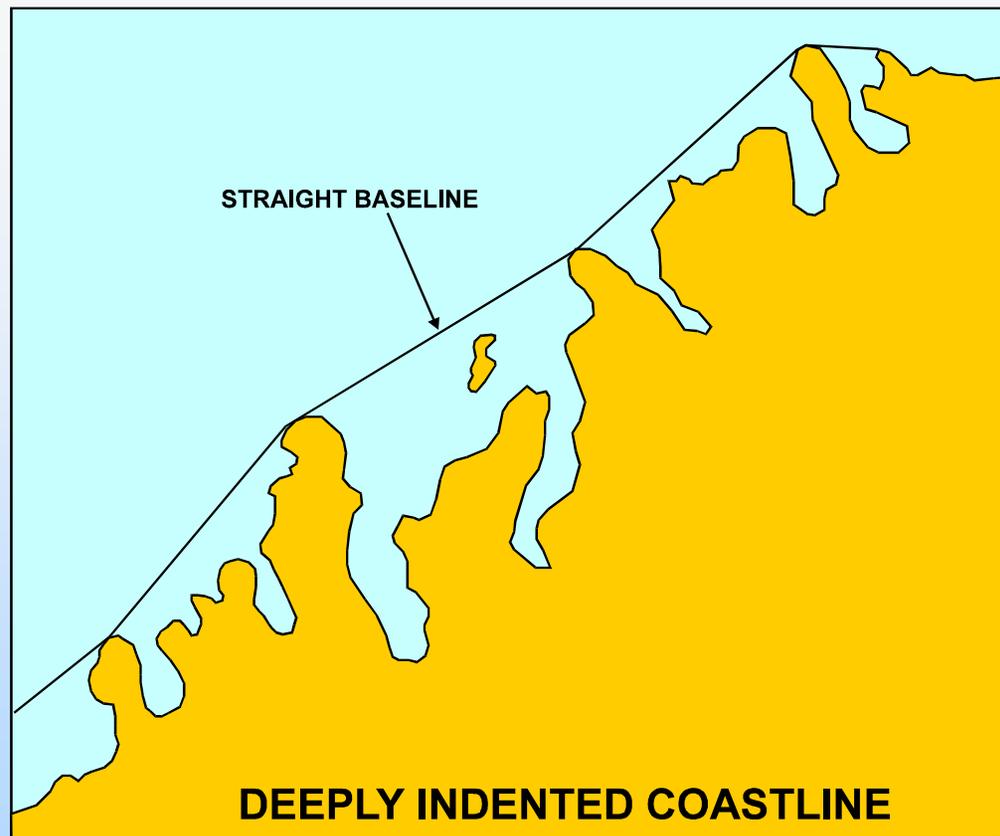


Base Lines

- An important starting point for determining the extent of Maritime Zones.
- General rule is that baselines follow the low water mark around the coast.
- Exceptions:
 - straight baselines if coast is deeply indented or fringing islands
 - bays enclosed if they fit formula under UNCLOS or are considered 'historic'
 - archipelagic baselines



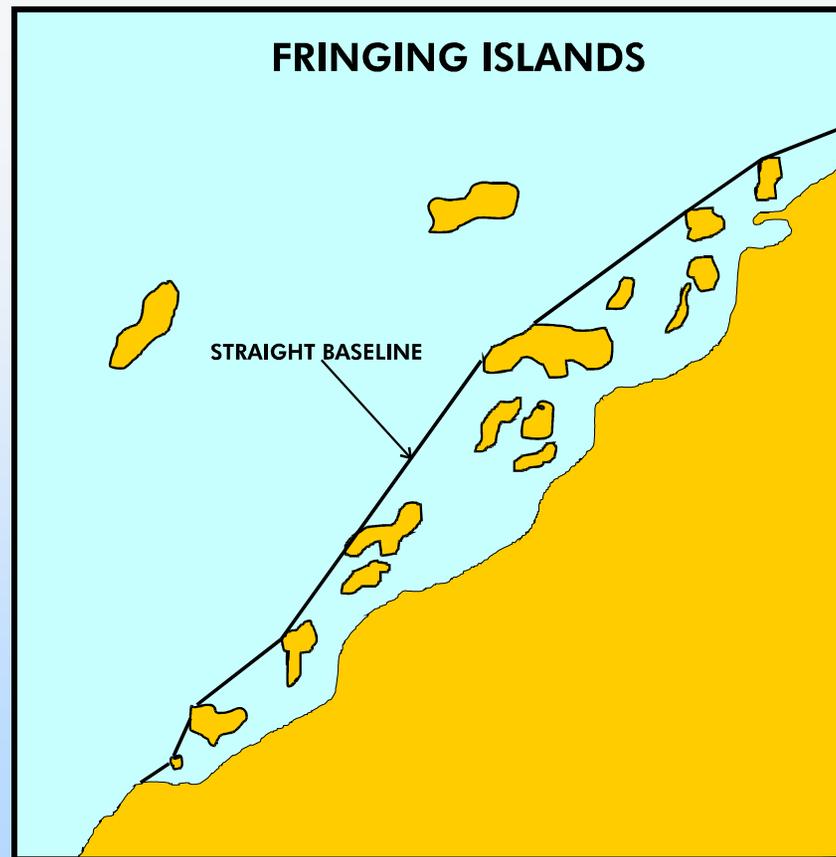
Base Lines



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Base Lines





Internal Waters

A nation's internal waters cover all waterways on the landward side of the baseline from which a nation's territorial sea (waters) is defined. It includes waterways such as rivers and canals and sometimes the waters within small bays.



Territorial Sea

- Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention
- The sovereignty of a coastal State extends beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea
- This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil

(Articles 2, 3 UNCLOS)



Territorial Sea

- Coastal state exercises full sovereign authority over territorial seas with the exception of:
 - Right of innocent passage of surface vessels
 - Right of safe haven / safe harbour for vessels/aircraft in distress
 - Right of assistance entry for humanitarian rescue
- Coastal state may close temporarily TS for security reasons



Right of Innocent Passage

- “Subject to UNCLOS, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.”
- “Passage means navigation through the territorial sea for the purpose of:
 - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
 - (b) proceeding to or from internal waters or a call at such roadstead or port facility.”

(Articles 17, 18 UNCLOS)



Right of Innocent Passage

“Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.”

“Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

[...]

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;”

(Article 19 UNCLOS)



Contiguous Zone

- The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.
- “In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
 - (a) prevent infringement of its customs, fiscal, **immigration** or sanitary laws and regulations within its territory or territorial sea;
 - (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.”

(Article 33 UNCLOS)



High Seas

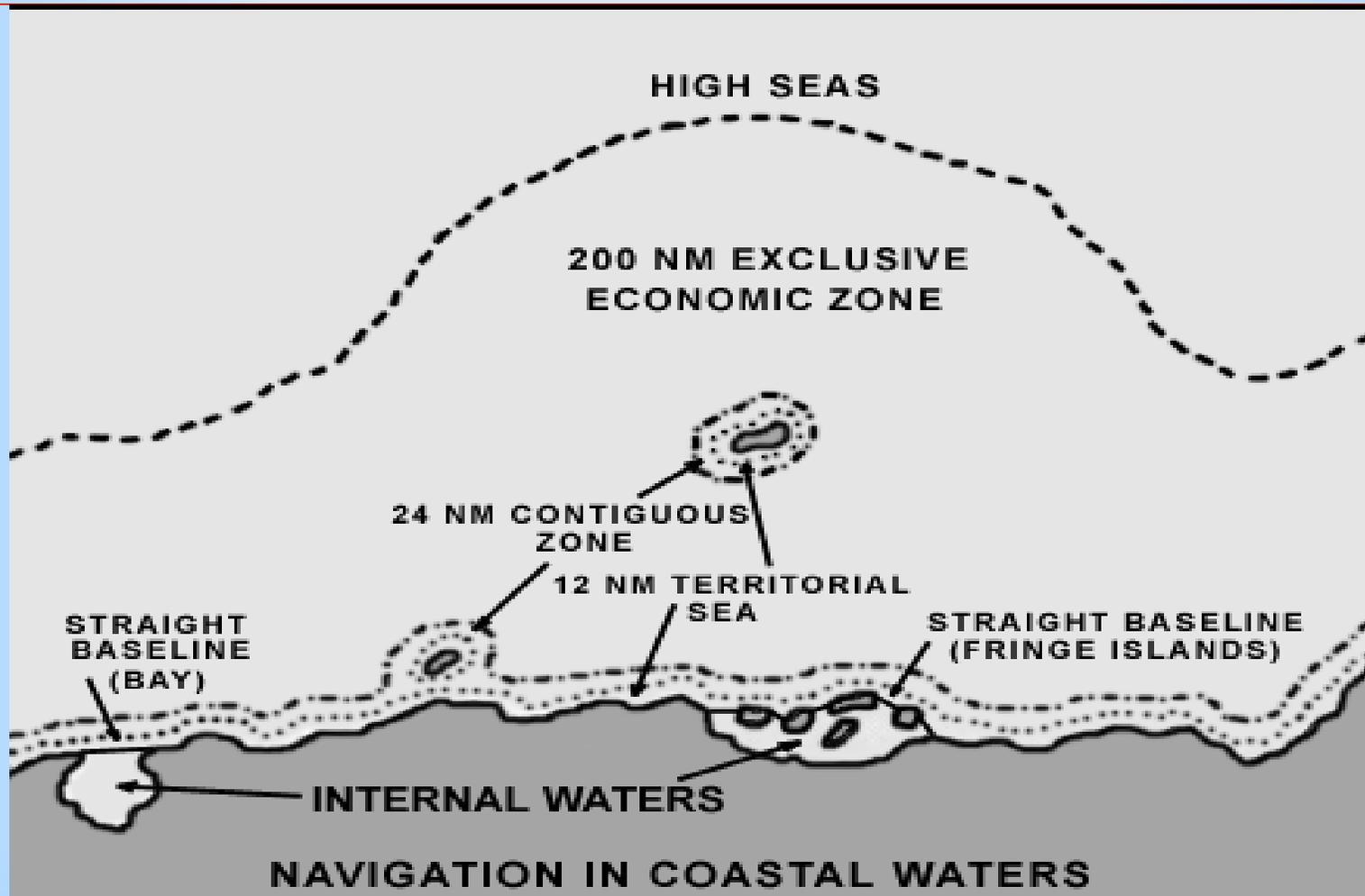
“The high seas are open to all States, whether coastal or land locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII”

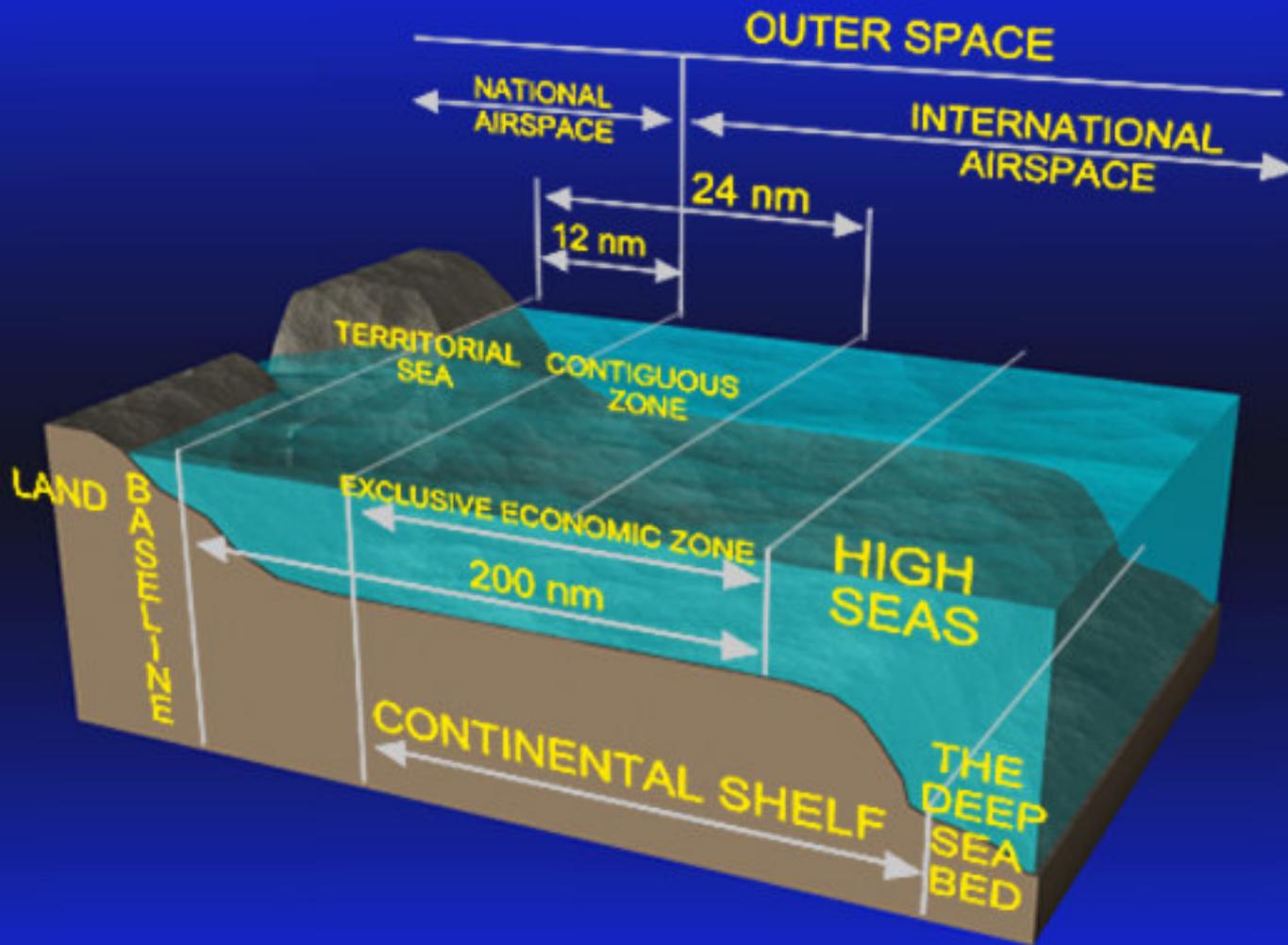
(Article 87 UNCLOS)



Maritime Zones



LEGAL REGIMES OF OCEANS AND AIRSPACE AREA





Nationality of Ships

“Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.”

(Article 90 UNCLOS)

“Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.”

(Article 92 UNCLOS)



Rights and Responsibilities of States

- Control and surveillance in ports and on coasts – full sovereignty
- Territorial waters (12 nm) – Sovereignty of the coastal State (principle of proportionality- right of innocent passage)
- Contiguous zone (up to 24 nm)- Jurisdiction to prevent the infringement of, *inter alia*, immigration regulations
- High Seas (above 24 nm) – freedom of navigation and exclusive jurisdiction of the flag state
- Any state can exercise jurisdiction in international waters on vessels without flag or using several flags at their convenience
- Obligation of States to cooperate in prevention and sanctioning of irregular migration, trafficking in persons and smuggling of migrants (Palermo Protocol on Smuggling of Migrants, 2000)



Right of visit

Any ship can be boarded on High Seas if there is reasonable ground for suspecting that:

- It is engaged in piracy
- It is engaged in slave trade
- It is engaged in unauthorized broadcasting
- It is without nationality
- There are reasonable grounds to suspect that the ship is of the same nationality as the warship



International Maritime Law Instruments

- Convention on Facilitation of International Maritime Traffic, 1965 (FAL)
- International Convention for the Safety of Life at Sea, 1974 (SOLAS)
- International Convention on Maritime Search and Rescue, 1979 (SAR)
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA)



Convention on Facilitation of International Maritime Traffic, 1965 (FAL)

- Regulation and simplification of formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyage
- Passenger list (contents and purpose)
- Facilitation measures for ships calling at ports in order to put ashore sick, injured members of crew or passengers and other persons in need for medical treatment



International Convention for the Safety of Life at Sea, 1974 (SOLAS)

- One of the main international instruments on safety at sea
- Sets minimal standards on safety of merchant ships (technical equipment, construction safety measures and safety of maritime navigation)
- The flag states have to ensure that their ships correspond to the requirements of SOLAS
- The convention also regulates the issues of carriage of persons in emergency, safety navigation, search and rescue services, distress situations – obligations and procedures, master's obligations, etc.



SOLAS – Emergency and Distress Situations

Carriage of Persons in Emergencies (Article V)

“For the purpose of evacuating persons in order to avoid a threat to the security of their lives a Contracting Government may permit the carriage of a larger number of persons in its ships than is otherwise permissible under this Convention.”

Distress situations (Annex, Regulations 33 and 34-1)

- Master of a ship is bound to proceed with all due speed to assist (rescue at sea) - if in a position of being able to do so
- Coordination and cooperation of Governments in the search and rescue operations
- Owner, charterer or the company operating the ship shall not prevent or restrict the master of the ship from taking or executing any decision that is necessary for safety of life at sea



SOLAS - Search and Rescue Services

“ Each Contracting Government undertakes to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and the navigational dangers, and shall, so far as possible, provide adequate means of locating and rescuing such persons.”

(Regulation 7, Annex)



International Convention on Maritime Search and Rescue, 1979 (SAR)

- Contains provisions regarding coordination of search and rescue services
- Provides special delimitation of search and rescue regions (SAR zones) with no prejudice to delimitation of any boundary between States
- States - parties to the convention “shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.”

(Article 2.1.10 SAR)



Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA)

- Defines what is considered as “unlawful act against the safety of maritime navigation”
- Prevention
- Criminalisation
- Rights and responsibilities of masters of ships in transfer of persons involved in unlawful acts
- Inter-State cooperation in criminal investigation



Smuggling Protocol

- If a State suspects that a vessel is being used for smuggling, it must request permission of the flag State to take action
- If there are reasonable grounds to suspect that the vessel is without nationality or flying a flag of convenience, then any State Party can board and search it.
- If any action is taken, States must:
 - a) ensure safety/humane treatment of persons on board
 - b) take due account of security of vessel, its cargo, and legal and commercial interests of interested States
 - c) ensure within available means that measures taken are environmentally sound

(Articles 8, 9 Smuggling Protocol)



Soft Law Instruments

- Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases, 1997
- Interim Measures for Combating Unsafe Practices Associated with Trafficking or Transport of Migrants by Sea, 1998 (Revised 2001)
- Guidelines on the Treatment of Persons Rescued at Sea, 2004



Waving?



No, drowning!



Rescue at Sea

“A party should authorize, subject to national laws, rules and regulations, immediate entry into or over its territorial sea or territory of rescue units of other parties solely for the purpose of searching and rescuing”

(3.1.2 SAR)



Rescue at Sea

- Obligations of Masters of Ships are clearly defined in international law:
 - *Obligation to provide speedy assistance*
 - *Obligation applies regardless of the nationality or status of such persons or the circumstances in which they are found*
 - *Masters should not be prevented or restricted from taking or executing decision necessary for the safety of life at sea*
- The Contracting Governments shall coordinate and cooperate to ensure that masters of ships providing assistance are released from their obligations with minimum further deviation from the ship's intended voyage.
- The Contracting Government responsible for search and rescue region in which assistance is rendered shall ensure that survivors are disembarked and delivered to a place of safety as soon as reasonably practicable.

(Regulation 33, Annex, SOLAS)



“Next port of call”

- Term undefined in international law
- To be determined largely at the master’s discretion in function of the particularities of the case in question
- Not necessarily the nearest or most convenient place of safety nor the port of the flag State



Stowaway

“A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the ship-owner or the master or any other responsible person, and who is detected on board after the ship has departed from a port and reported as stowaway by the master to the appropriate authorities.”

(Section 4 Annex, FAL)



Stowaways

- Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases, 1997
- Conformity with international protection principles of 1951 Refugee Convention
- Cooperation in prevention of and dealing with stowaway incidents
- General rules:
 - masters should not make deviation from their routes to disembark a stowaway after the ship left the territorial waters
 - masters are obliged to inform about stowaways onboard while entering a port
 - no international obligation on a State to admit a stowaway (unless he or she has nationality status or right of residence)



Stowaways

Rights and obligations of States:

- Accept any stowaways having nationality/citizenship or right of residence (State of embarkation, State of citizenship, habitual residence)
- Flag State - Assist in identifying the stowaway and determination of his or her nationality/citizenship
- Flag State- Assist in disembarkation and repatriation of the stowaway
- Costs related with stowaway incidents and return
- Stowaways - asylum seekers



Smuggling of Migrants by Sea

- States may take certain measures regarding vessels if there are reasonable grounds to suspect that they are involved in smuggling

(Article 8 of the Smuggling Protocol)

- Prevention
- Criminalisation
- Cooperation
- Return of smuggled migrants
- Human rights issues



Non-refoulement

No contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(Article 33, 1951 Convention)



Reception Assistance

Assistance to rescued / intercepted migrants:

- identification of vulnerable groups (victims of trafficking, unaccompanied minors, people in need)
- medical assistance
- identity verification
- human rights/legal assistance
- asylum assistance
- family reunion



Problematic Issues

- *How to deal with irregular migrants if they are rescued in the high seas?*
- *Where should they be taken?*
- *What country should accept the irregular migrants?*
- *How long the irregular migrants can stay on board of a ship which rescued them?*
- *How to make sure that they are provided with food, water, get necessary health care, etc?*
- *Who should cover the costs associated with rescue operations?*