

Migration by Sea

The 1982 United Nations Convention on the Law of the Sea
(UNCLOS) Framework for Combatting Crime
and Protecting Migrants at Sea

Nicola King





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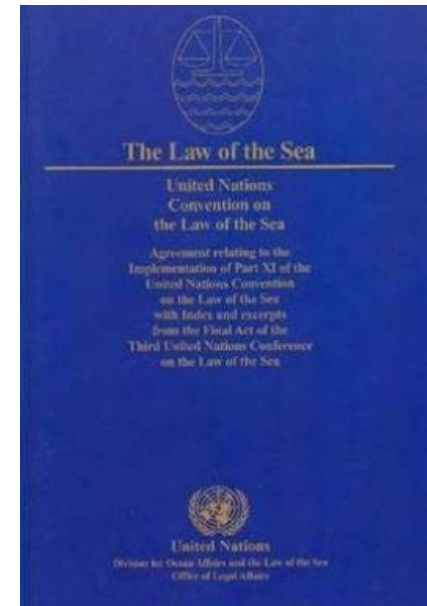
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Part I - Overview of UNCLOS

- 1982 United Nations Convention on the Law of the Sea (UNCLOS)
- There are 167 Parties to the Convention, including the European Union
- General Assembly Resolution 70/235 of 23 December 2015 on Oceans and the law of the sea emphasizes “the universal and unified character of the Convention, and reaffirm[s] that the Convention sets out the legal framework within which all activities in the oceans and seas must be carried out...”
- Framework Convention.





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Jurisdiction

- Coastal State Jurisdiction
- Flag State Jurisdiction

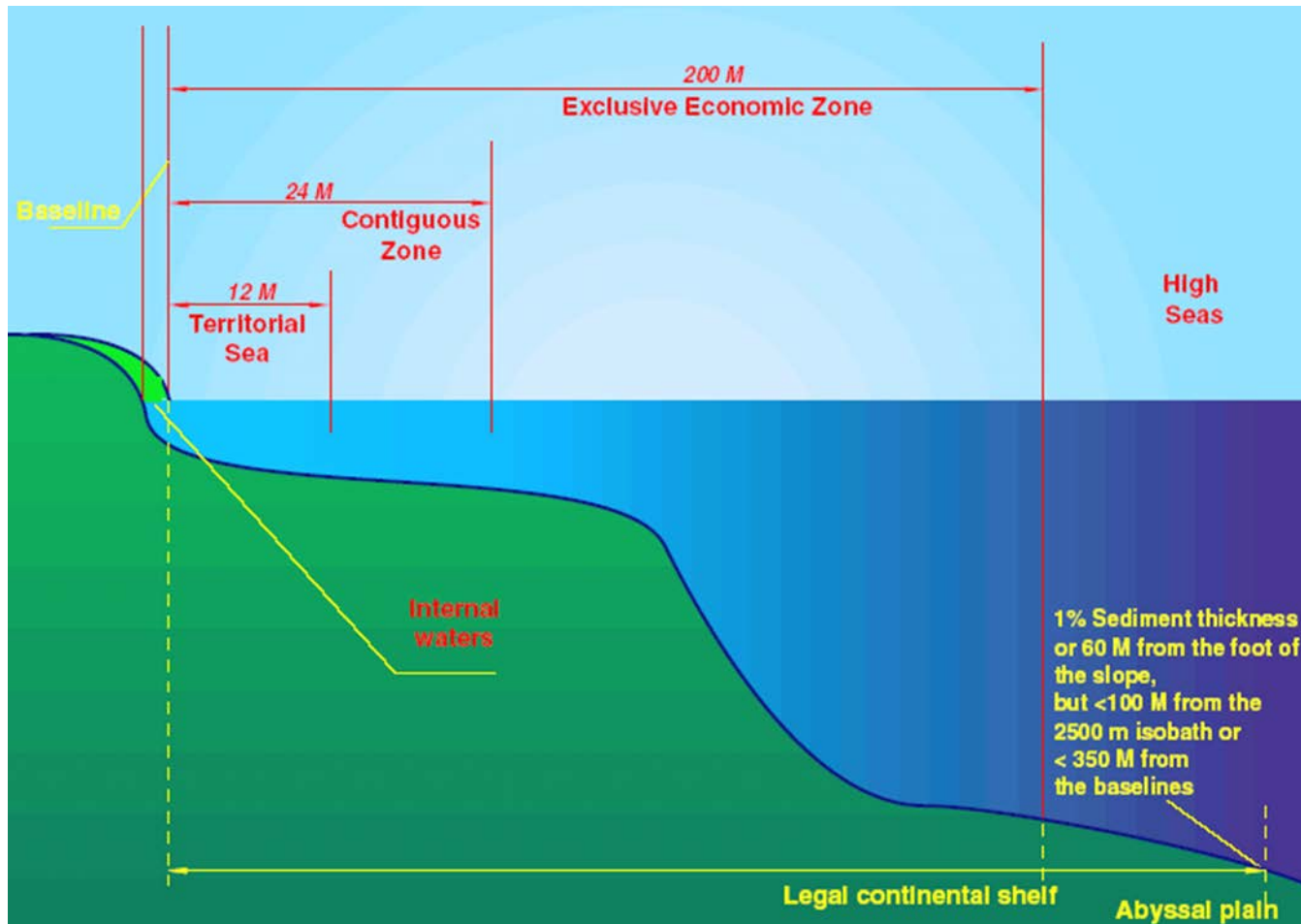


Rights and obligations of States in the various maritime zones are set out in UNCLOS.



Maritime Zones

(For Illustrative Purposes Only)



Coastal State Jurisdiction in the territorial sea



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Article 2.1 of UNCLOS on the legal status of the territorial sea states that “the sovereignty of a coastal State extends, beyond its land territory and internal waters...to an adjacent belt of sea, described as the territorial sea”.



Innocent Passage in the Territorial Sea

(articles 17 to 32 of UNCLOS)



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- Ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea (article 17).
- Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with UNCLOS and with other rules of international law (article 19.1).





Innocent Passage (cont.)

Article 19.2 of UNCLOS provides a list of activities that are considered not to constitute innocent passage through the territorial sea. The list includes, for example:

- 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
- any other activity not having a direct bearing on passage.

Article 27 of UNCLOS addresses the criminal jurisdiction of a coastal State aboard foreign ships passing through its territorial sea.



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Flag State Jurisdiction

- Every State has the right to sail ships flying its flag and ships have the nationality of the flag flown (article 91)
- Flag State has exclusive jurisdiction over ships on the high seas (article 92).
- Right of visit of by a warship in certain cases (article 110) which include:
 - Ships without nationality



Part II - Irregular migration at sea, including Trafficking in Persons and Smuggling of Migrants



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- Geographical Scope
- The distinction between the smuggling of migrants and trafficking in persons



Part III - Duty to Render Assistance

Article 98 of UNCLOS



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Obligation of a master of a ship to:

- render assistance to any person found at sea in danger of being lost
- proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him



Duties Regarding Search and Rescue

Article 98 of UNCLOS



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- Obligation of coastal States to “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.”



GA Resolution 70/235 on Oceans and law of the sea (23 December 2015)



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On migration by sea:

- Calls upon States to ensure that masters on ships flying their flag take the steps required by relevant instruments to provide assistance to persons in distress at sea
- Recognizes that all States must fulfil their search and rescue responsibilities in accordance with international law, including [UNCLOS], reaffirms the ongoing need [...] to take effective action to address, to the extent feasible, the issue of unseaworthy ships and small craft





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GA Resolution 70/235 (cont.)

On organized crime:

- Note[d] that that transnational organized criminal activities are diverse and may be interrelated [...] and call[ed] upon States and relevant intergovernmental organizations to increase cooperation and coordination at all levels to detect and suppress the smuggling of migrants, trafficking in persons [...]



Security Council Resolution 2240 (9 October 2015)



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- The Security adopted resolution 2240(2015) relating to cooperation to combat smuggling of migrants and human trafficking in Libya's territorial sea and on the high seas off the coast of Libya.





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Part IV

Other relevant Legal Instruments



International Maritime Organization (IMO)



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- ❖ International Convention for the Safety of Life at Sea, 1974 (SOLAS)
- ❖ International Convention on Maritime Search and Rescue, 1979 (SAR)
- ❖ 2004 Amendments to SOLAS and SAR Conventions
- ❖ Resolution A.949 (23) Guidelines on the treatment of persons rescued at sea
- ❖ FAL.3/Circ. 194 on Principles relating to administrative procedures for disembarking persons rescued at sea.

<http://www.imo.org/en/OurWork/Facilitation/personsrescued/Pages/Default.aspx>



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United Nations Convention on Transnational Organized Crime 2000

- ❖ Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000
- ❖ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

United Nations Office on Drugs and Crime: <https://www.unodc.org/>

UNHCR



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Publication

Rescue at Sea, Stowaways
and Maritime Interception

Selected References
Materials

2nd Edition,
December 2011





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Other Resources

- DOALOS website: <http://www.un.org/depts/los/>
- United Nations website: <http://www.un.org>

