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WMU Symposium on Migration by Sea Background Paper



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Introduction

This document provides a pacemaker, and sets the scene for the WMU Symposium on Migration by Sea, to be hosted by the World Maritime University, in partnership with the University of Genoa, in Malmö, Sweden, on 26-27 April 2016. The document aims to highlight rather than analyse issues. It is divided into five parts corresponding to the structure of the Symposium's thematic sessions.

Topics covered by the Symposium will range from trends and data connected with migratory flows, to the legal and operational issues. Human rights, maritime safety and security, organised crime, and private maritime law liabilities and insurance will be addressed.

Session 1: Assessment of Migration by Sea

From the Mediterranean to the Andaman Sea, the world is living through a migration crisis of historic proportions. According to the International Organization for Migration, there is an estimated one billion people on the move, including 760 million internal migrants and 250 million international migrants. Out of the latter number, 19.5 million are counted as refugees, and another 50 million as migrants in an irregular situation.

In periods of turmoil, large unplanned migration may displace populations within and outside affected regions. The transnational nature and magnitude of these sudden migratory flows create tensions between States and often strain the legal system protecting migrants.

According to the International Organization for Migration and the UN Refugee Agency, around one million people arrived in the European Union through the waters of the Mediterranean Sea in 2015, almost entirely via the eastern and central Mediterranean routes. With almost 4,000 having been lost or gone missing, 2015 was a black year. This year, the number of sea arrivals has already reached 180,629, with 1,261 persons recorded dead or missing (as at 25 April 2016, according to the UN Refugee Agency).

The sea may indeed be one of the most dangerous routes for migration, but following a hazardous sea passage, the journey is far from over. The final destination and the means to reach it are often riddled with danger and uncertainty.

With situations of conflict in certain parts of the world, imbalanced socioeconomic conditions and climate change stress, the current migration flow has become one of the most serious challenges of our time. Providing solutions for this ongoing crisis poses a great but yet insufficiently acknowledged challenge for the world community.

Session 1 of the Symposium will present the overall situation of migration, including data and trends. The Session will also highlight the economic and social aspects of migration in relation to development, integration and the labour dimension among other topics.

Session 2: Human Rights in Relation to Migration

Irregular migration often poses questions related to the fundamental rights of the individual.

States are required to comply with their obligations under international law, including international human rights law, international humanitarian law, and refugee law. “International refugee law” is derived principally from the Geneva Convention Relating to the Status of Refugees, adopted in 1951, and complemented by the 1967 Protocol. Furthermore, relevant international maritime conventions require States and vessels to rescue migrants in distress at sea. The conduct of States must therefore coincide with the fundamental rights of individuals who are fleeing high-risk situations, by providing them with hosting facilities—at least temporarily—following rescue operations.

Such humanitarian support has substantial legal, operational and financial implications for States. Effective coastal surveillance, and search and rescue must be maintained. Moreover, decent accommodation should be provided for migrants. Host countries are furthermore expected to allocate adequate resources and develop effective procedures for evaluating each individual application submitted by asylum-seekers. At the same time, governments need to combat criminal organizations and traffickers exploiting migrants’ despair, as well as preserve national security from the risk of terrorists’ infiltration and violence.

Session 2 of the Symposium will focus on the human rights perspective of the ongoing migration crisis. The Session will probe the present level of protection offered to sea migrants and its conformity with international law. It will also examine the manner in which States are responding to migration flows and the challenges that arise. The critical issues facing frontline States will also be highlighted. Particular attention will be devoted to the EU, taking into consideration the current context.

Session 3: Migrants and Human Trafficking by Sea

Many migrants turn to smugglers for organizing their journey. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime defines “smuggling of migrants” as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (Article 3(a)).

It is estimated that for every migrant who has reached the other side of the Mediterranean, an amount of between 1,000-10,000 Euros has been paid. The global turnover of the smuggling ‘business’ is around 3-10 billion dollars a year, second only to drug trafficking.

Because migrants are particularly vulnerable, human traffickers target them. Numerous migrants are exploited in transnational networks of forced labour, sexual abuse and organ trafficking.

On 9 October 2015, the United Nations Security Council adopted Resolution 2240 (2015) authorizing Member States for a period of one year to inspect vessels on the high seas off the coast of Libya that they had reasonable grounds to suspect were being used for migrant smuggling or human trafficking from that country.

Session 3 of the Symposium will discuss the criminal activities related to irregular migration. The Session will also highlight examples of monitoring, detection and prosecution for these crimes.

Session 4: Migration by Sea: Safety and Security Aspects

Migration by sea presents complex and multifaceted challenges in the area of maritime safety and security.

Safety of ships is an imperative for persons to survive at sea. To protect life at sea, the international community has developed standards to promote maritime safety by assigning duties to coastal States, flag States and port States. While flag State authorities enforce international requirements on ships to ensure their seaworthiness, the coastal State has the responsibility to initiate and coordinate search and rescue operations as well as to protect the security of the country's coastal areas, supported by port State authorities. As a result, safety of ships and personnel engaged in large rescue operations constitutes an important concern for flag and coastal States. Indeed, some ships rescuing migrants are not fit to host safely large numbers of people.

Irregular migration is also a potential threat to security. The uncontrolled arrival of rescued migrants in huge numbers may pose public health and security risks. It is therefore necessary that adequate biosecurity and security measures are planned, developed and implemented prior to and during search and rescue operations, as well as on arrival.

Session 4 of the Symposium will address salient issues of maritime safety (e.g., search and rescue) and security (e.g., defence and terrorism) related to migration by sea.

Session 5: The International Law Related to Liability and Insurance

The sea migration crisis gives rise to acute questions of liability, compensation and insurance. Liability may ensue at the inter-State level. A case in point is the possible flag or coastal State responsibility for breach of the duty to render assistance laid down in article 98 of the United Nations Convention on the Law of the Sea. How could breach of such a duty be established, and would responsibility open the door for liability to provide reparation?

The extremely poor condition of the vessels used for the transportation of migrants and the likelihood that they find themselves in a situation of peril during the voyage may call into question the possible application of salvage law as a distinct body of rules to the rescuing of persons at sea. Salvage law brings in issues of both public (e.g., duty to render assistance) and private law (e.g., salvage contract and award).

As a result of the increasing engagement of merchant ships in migrants rescue operations, questions of contractual and non-contractual liability that may typically derive from loss of profits or from damage caused to people and property on board take on significance.

This brings the insurance industry into the picture. To what extent does the cost of a rescue operation fall upon the shipowner's or charterer's insurer, bearing in mind the terms and conditions of cover?

The above questions will be discussed in the Symposium's Session 5.

Conclusion

The topics that will be addressed at the Symposium are often interlinked, making it even more difficult to find adequate solutions. The Symposium will provide an international forum for an exchange of information and for advancing knowledge on migration and, in particular, on migration by sea, with a view to exploring the complex issues and challenges that arise, and the lessons learnt.