

Irregular Maritime Migration in Context¹

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The challenge presented by irregular maritime migration

Irregular maritime migration presents a conceptual challenge to States: security interests and the sovereign right of a State to control access to its territory come face to face with fundamental principles of protection of persons. Individuals will always seek to leave their own countries and enter States in an irregular manner, be they persons who are attempting to flee conflict, persecution or natural disasters, as well as those seeking to circumvent migration and border controls, often in order to improve their economic circumstances. In this area, therefore, the rights of States and duties of those same States towards individuals meet and often collide. Apart from conflicting rights and duties, one is also aware of a variety of legal regimes applying to the same factual phenomenon which is notoriously difficult to control.

When analysing what exactly makes irregular migration so difficult to control, a main factor concerns the fact that it is characterised by potentially conflicting interests. In this exercise, States must therefore juggle between two very different considerations: migrants are to be treated with the inherent dignity

¹ Facts in this article are correct as of October 2010.

and respect to be accorded to any human being, irrespective of refugee status or otherwise. However, at the same time, States have security interests and are entitled to take any action in accordance with International Law, which will minimise the risk caused thereby. International efforts at curbing this crime must be directed towards achieving a balance between these interests. Added challenges include the misuse of the asylum system, the growth in smuggling and trafficking of people, the increasingly sophisticated methods used by perpetrators of organised crime, and the struggle to manifest international solidarity to resolve the refugee situation.

In order to effectively combat such phenomena, a multifaceted response is required, founded on the obligations of cooperation and coordination – obligations which are fast becoming core players in the international legal regime. This contribution aims to present these conflicting factors in an effort to tease out the separate strands and make the case that only with a concrete form of cooperation can irregular maritime migration be effectively controlled.

At the outset however, it would be useful, for the sake of clarity, to establish certain parameters of the discussion and define certain issues which may otherwise be overlooked. Primarily, it should be borne in mind that irregular migration goes hand in hand with the offence of maritime migrant smuggling – a type of organised crime recently defined in International Treaty Law, by which individuals are assisted in their attempt to enter a State's territory via the sea in a covert manner in violation of a State's laws, evading detection by a State's border control officials. In this way, the smuggling of migrants by sea constitutes a threat to maritime security, understood to include the preservation of territorial integrity and sovereignty of a State. At the same time, the subjects of migrant smuggling are not commodities (as is the case in drug smuggling, for example) but individuals, thereby importing principles of Human Rights, Refugee and Humanitarian Law.

The next point has to do with boat arrivals: migrant arrivals by sea are often perceived either as being wholly made up of asylum-seekers, or else, entirely composed of economic migrants. This is not the case. There is a mixed influx of arrivals, composed of both groups of persons: persons who are attempting to flee conflict, persecution, or natural disasters as well as those seeking to circumvent migration

and border controls, often in order to improve their economic circumstances. This point is not merely academic as it influences State policies and reactions to such arrivals.

Another core point is the distinction between the undisputed duty to rescue those in distress at sea and the subsequent processing of any asylum claims that may be made by those rescued. Both involve the granting of humanitarian assistance, but they are distinct: fulfilment of the duty of rescue does not necessarily imply that the same State must therefore disembark those rescued.

Overlapping regimes

The 1982 United Nations Law of the Sea Convention (LOSC) lays down a framework regulating the rights of States in the various maritime zones adjacent to their coasts. These powers may be perceived as 'opportunities' for State action, whereas the humanitarian and human rights considerations, to be discussed later, may be more aptly described as 'duties' or 'constraints' on State action.

A brief look at permissible State action in relation to vessels laden with migrants in the various relevant maritime zones is useful since State action is determined by the location of the vessel. A general rule is that a State's powers are stronger in the maritime zones closer to its coasts and diminish the further away one proceeds from those coasts. In this way, the internal waters of a State constitute the maritime area in which the State is best placed to exercise jurisdiction over persons situated and events occurring therein. Indeed, internal waters are assimilated to the land territory of a State and therefore, the coastal State enjoys full sovereignty in this zone. Moving further outwards, the territorial sea (extending as it does over a belt of sea to a limit of 12 nautical miles measured from the baselines of a coastal State)² is seen as an extension of a State's territory. Sovereignty thus exists in this zone also and the coastal State is given legislative (Article 21 LOSC) and enforcement

² See LOSC Articles 2(1)(2), 3. Note that this sovereignty extends also to the air space overlying the territorial sea.

jurisdiction (Article 27 LOSC) over vessels in the territorial sea. However, the right of innocent passage existing in the territorial sea regime renders the quality of sovereignty over the territorial sea different from that which exists in the internal waters. This right is enjoyed by ships of all States and refers to the free and uninterrupted passage across the territorial sea of a State or proceeding to or from the internal waters of a State.³ Passage must however be 'innocent'; in other words, it must not be 'prejudicial to the peace, good order or security of the coastal State.'⁴ Article 19(2)(g) presents 'the loading or unloading of any ... person contrary to the ... Immigration Law and regulations of the coastal State' as an activity which is not 'innocent'. In such case, Article 25(1) LOSC allows the coastal State to 'take the necessary steps to prevent passage which is not innocent' and it may also temporarily suspend innocent passage in certain areas of its territorial sea if this suspension is essential for the protection of its security (Article 25(3) LOSC).

In the contiguous zone (a zone adjacent to the territorial sea of not more than 24nm from the baselines), a State is given the faculty to act against irregular maritime migration since Article 33 LOSC gives specific power to the coastal State: it may exercise the control necessary with respect to two functions: to prevent and to punish the infringement of customs, fiscal, immigration and sanitary regulations within its territory or territorial sea. It is important to note that the contiguous zone is not part of the territorial sea and freedom of navigation of all ships exists therein.

The zone of the high seas is composed of that area of ocean space which 'is open to all States' (Article 86 LOSC) and where the so-called freedoms of the high seas apply.⁵ The main principle applying in the high seas is that of flag State exclusivity whereby, save for a few exceptions, ships are subject to the exclusive jurisdiction of the flag State⁶ while on the high seas (Article 92(1) LOSC). This obviously causes problems when dealing with ships sailing under the so-called

³ LOSC Articles 17, 18

⁴ LOSC Article 19

⁵ See LOSC, Article 87

⁶ That is, the State in which the vessel is registered.

flags of convenience where States either do not have the will or the resources to control such vessels. Indeed, many crime-committing vessels are either stateless (that is, not registered in any State) or else, are registered under flags of convenience. There are however certain exceptions laid down in the LOSC and others in international agreements, whereby non-flag State actors are permitted to act, usually on the basis of consent of the flag State. In default of such agreement between the flag State and the State wishing to take enforcement action, the LOSC only permits non-flag State action in a limited number of instances: the suppression of the slave trade (Article 99),⁷ piracy (Article 100 *et seq.*), illicit traffic in narcotic drugs and psychotropic substances (Article 108) and unauthorised broadcasting (Article 109).⁸ All these provisions are relatively weak and of questionable effectiveness in view of the current maritime security scenario. It is for this reason that the international community has stepped in to fill such jurisdictional gap in the form of international agreements such as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,⁹ the Migrant Smuggling Protocol¹⁰ and also the recent international action spearheaded by the International Maritime Organisation (IMO) and the UN Security Council to fight piracy and armed robbery off the coast of Somalia.

In the context of maritime migration, another very significant zone, albeit not mentioned in the LOSC, is the 'SAR zone', a region defined in the Annex to the SAR Convention as an 'area of defined dimensions associated with a rescue co-ordination centre within which search and rescue services are provided.'¹¹ This area defines which State has primary responsibility for coordinating rescue

⁷ To be dealt with separately below.

⁸ It should be noted that the right of 'hot pursuit' and the notion of 'constructive presence' also provide for increased activity on the high seas. See LOSC, Article 111

⁹ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, (adopted 10 March 1988, entered into force 1 March 1992) 27 ILM 668; 1678 UNTS 201

¹⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000, entered into force 28 January 2004) 40 ILM 384

¹¹ Chapter 1, para 1.3.4

operations in response to a distress situation. Each region has an associated Rescue Coordination Centre (RCC).¹² The SAR Convention provides, in para 3.1.6.4 of its Annex, that it is the States' responsibility to cooperate with other RCCs to identify the most appropriate place(s) for disembarkation of persons found in distress at sea.

A fundamental duty of contracting States which are Parties to the Convention is that of cooperation in the conduct of search and rescue operations.¹³ There is also an obligation, imposed by Chapter 2.1.1 of the Annex to the SAR Convention, that on receiving information that a person is in distress at sea in an area within which a Party provides for the overall coordination of search and rescue operations, the responsible authorities of that Party are to take urgent steps to provide the most appropriate assistance available.

Of course, no legal framework can be seen in a vacuum as one regime constantly influences the other. The broader picture shows that a coastal State has concurrent obligations incumbent upon it, apart from the rights granted by the LOSC. It is for this reason that humanitarian and human rights considerations¹⁴ may be described as constraints on State action as, irrespective of the powers granted under the Law of the Sea regime, States are bound notably by the obligation of *non refoulement* which applies, at the latest, once the vessel has reached the territory of the coastal State. Article 33(1) of the Refugee Convention relates to the prohibition of expulsion or return (*'refouler'*) of a refugee or asylum-seeker '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'. This principle operates wherever a State acts. It is thus not limited

¹² Chapter 1, para 1.3.5

¹³ Chapter 2, para 3.1.1

¹⁴ Human Rights considerations apply to all individuals – even migrant smugglers and traffickers. These have been amply discussed in various texts. For a succinct overview see P Cassar Torregiani, 'Migrant Smuggling by Sea: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework' (PhD thesis 2008) 150-155

territorially, but is also applicable on the high seas and indeed, wherever a State exercises effective control over a vessel.

According to the operation of this principle, on interception migrants cannot be pushed back to a place of persecution without reviewing any asylum claims made on the intercepted vessel. Besides this, it is generally recommended that the status of rescued persons is best determined by the appropriate authorities on land.¹⁵ Therefore, a State would be held to be in breach of the *non refoulement* principle were it to intercept and turn back a vessel to the borders of persecution – or to a non-Party State to the Refugee Convention – without reviewing any asylum claims made on board the intercepted vessel.

While this principle is a foundation stone of humanitarian protection, it is true that it is not without its critics. Indeed, since the 1980s, movements of persons have been more likely to be the result of natural disasters, famine, and other dire social conditions; although the plight of such persons is obvious, it is doubtful whether they can satisfy the well-founded fear of persecution required under the Convention for the conferral of its benefits. Furthermore, the Refugee Convention does not provide an answer to situations of mass influx such as boat arrivals, focusing as it does on individually-targeted persecutions by an oppressive regime.

Rescue at sea

Another feature making up the mosaic of irregular maritime migration is that rescue operations are often rendered necessary due to the unseaworthy and overcrowded vessels used to make the hazardous journey across the sea. While rescue at sea is different to the act of maritime enforcement amounting to interception, differing in both intention and purpose, the two sometimes overlap.

¹⁵ UNHCR, 'Background Note on the Protection of Asylum Seekers and Refugees Rescued at Sea' (18 March 2002) paras 23-24. Final version as discussed at the expert roundtable *Rescue-at-Sea: Specific Aspects Relating to the Protection of Asylum-Seekers and Refugees* (Lisbon) 25-26 March 2002. See further: TA Aleinikoff and V Chetail (eds), *Migration and International Legal Norms* (TMC Asser Press, The Hague 2003) 143-144

Interception is an exercise reserved to State authorities and is an exercise of a programme of maritime enforcement. However, interception may pre-empt the need for a rescue.¹⁶

The duty to rescue those in distress at sea brings with it further obligations which need to be effected alongside the actual interception process. This obligation is enshrined in Article 98 LOSC and may be regarded as part of Customary International Law.¹⁷ The terms of Article 98 impose obligations on both the flag and coastal States in this regard, obligations which also impact ships' Masters. The provision dictates that every State is to require the Master of a ship flying its flag, insofar as he can do so without serious danger to the ship, crew or passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress once informed of their need of assistance and insofar as such action can be reasonably expected from him.¹⁸ Furthermore, every coastal State is to promote the establishment, operation and maintenance of an adequate and effective search and rescue service, and to cooperate with neighbouring States to this end.¹⁹

Again however, while the duty to rescue those in distress at sea is sacrosanct, it is not without its problems. While the rescue obligation exists almost unconditionally (the only reservation being that such action must not seriously endanger the rescuing ship, and its crew or passengers), enforcement of such duty is difficult,

¹⁶ UNHCR, 'Background Note on the Protection of Asylum Seekers and Refugees Rescued at Sea' (18 March 2002) para 18. Final version as discussed at the expert roundtable *Rescue-at-Sea: Specific Aspects Relating to the Protection of Asylum-Seekers and Refugees* (Lisbon) 25-26 March 2002) para 26 states in this regard that 'the responsibility [for admitting asylum-seekers] accruing to the flag State would be stronger still, where the rescue operation occurs in the context of interception measures.'

¹⁷ This duty is also provided for in other international instruments such as: Salvage Convention 1910; SOLAS 1925; HSC 1958; SOLAS 1960; SOLAS 1974; SAR 1979, Annex; Salvage Convention 1989. Note also the ILC's view that this duty is also part of general International Law: UN Doc A/3179 (1956) regarding the proposed draft of Article 12 of the 1958 HSC. See also R Barnes, 'Refugee Law at Sea' (2004) 53 ICLQ 1, 49.

¹⁸ LOSC, Article 98(1)

¹⁹ LOSC, Article 98(2)

especially considering that it is mainly the flag State which can enforce the obligation and that nearly one-third of all ocean-going vessels are registered under flags of convenience. Furthermore, what the lawmakers systematically had in mind were classic shipwrecks and sailors surrounding whom no attendant legal problem was suspected. As nationals of any given State, they could expect to be repatriated from the rescue ships' first port of call. In the case of asylum-seekers, however, repatriation must be ruled out. Whose responsibility they should become is something on which International Law is silent.

The perennial difficulty therefore once again raises its head: the delicate question centres around which State has the responsibility to take on rescued migrants travelling with the European Union (EU) as an intended destination. A solution to this end has been attempted by the IMO.²⁰ On 20 May 2004, the IMO Maritime Safety Committee, during its 78th session, adopted amendments to the SOLAS and SAR Conventions concerning the treatment of persons rescued at sea, and/or asylum-seekers, refugees and stowaways, together with Guidelines on the Treatment of Persons rescued at Sea.²¹

As realised by the MSC in adopting the amendments, the intent of new para 1-1 of SOLAS Regulation V/33 and para 3.1.9 of the Annex of the International Convention on Maritime Search and Rescue, 1979, as amended, is to ensure that in every case a place of safety is provided within a reasonable time. The responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Government responsible for the SAR region in which the survivors were recovered.²² A major drawback in this

²⁰ See further, P Mallia, *Maritime Migrant Smuggling: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework* (Martinus Nijhoff, Leiden 2010) 128-140

²¹ MSC.167(78). Note that relevant legal principles and practical procedures are now laid out in a document produced jointly by the IMO and UNHCR in a bid to further amplify upon the relevant obligations of the Master and the relevant coastal States so as to ensure prompt disembarkation following a rescue operation. IMO and UNHCR, 'Rescue at Sea: A Guide to Principles and Practice as applied to Migrants and Refugees' (2006)

²² Guidelines, paras 2.4-2.5

regard is that the 'place of safety' remains undefined in International Law.

Contracting Governments are now obliged to coordinate and cooperate to release Masters who have assisted persons in distress at sea from their obligations with minimum further deviation from the ship's voyage. The Contracting Government responsible for the SAR area in which the assistance is rendered is charged with exercising primary responsibility for ensuring that such coordination and cooperation occurs in order that survivors are disembarked and are taken to a place of safety.²³ To this end, SOLAS Regulation V/33.1.1 runs as follows:

Contracting Governments shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from the obligations under the current regulation does not further endanger the safety of life at sea. The Contracting Government responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the Organisation. In these cases the relevant Contracting Governments shall arrange for

²³ Note the views of the majority of the delegations of Member States that while the Contracting Governments responsible for the SAR region in which such assistance is rendered are to exercise primary responsibility for providing a place of safety or ensuring that a place of safety is provided, this does not oblige that Government to disembark the persons rescued in its territory. See MSC 79/22/6 (15 September 2004) paras 17-18.

such disembarkation to be effected as soon as reasonably practicable.²⁴

Currently, therefore, the State in whose search and rescue area the rescue takes place bears the main responsibility for the rescue and disembarkation of rescuees.²⁵ The IMO Facilitation Committee also issued a draft circular in January 2009 stating that 'if disembarkation from the rescuing ship cannot be arranged swiftly elsewhere, the Government responsible for the SAR area should accept the disembarkation of the persons rescued into a place of safety under its control.'²⁶ In this way, the State in whose SAR area the assistance is rendered is held responsible for coordinating such cooperative efforts. It seems therefore, that in default of agreement, it is this State which must bear responsibility for those rescued at sea within their search and rescue area. The Maltese delegation, supported by only a few delegations, had registered its disapproval to the position whereby the final responsibility of accepting persons rescued at sea is placed on the Contracting Government responsible for the search and rescue area in which the rescue took place.

This situation led to a number of incidents between Malta and Italy during 2009. Related to such incidents was Italy's announcement, on 6 May 2009, that it would interdict ships on the high seas and send these back to Libya. A week later, the two States announced the beginning of joint naval patrols in Libyan territorial waters. These disputes between Malta and Libya reveal a major weakness in the international maritime legal regime. The practical ramifications of the dispute are that commercial ships rescuing distressed migrants in the Malta-controlled area off Lampedusa are given conflicting instructions about where to disembark the survivors. The 2004 amendments appear to support Italy's position stating that the responsibility to provide a place of safety falls on the State responsible for the SAR region in which the survivors were

²⁴ A synonymous provision exists in the SAR Convention placing this obligation on Contracting Parties to the Convention. See Annex, para 3.1.9.

²⁵ MSC 78/26 (28 May 2004) paras 16.48-16.54

²⁶ 'Principles relating to Administrative Procedures for Disembarking Persons Rescued at Sea,' FAL 3/Circ.194 (22 January 2009)

recovered. However, Malta has formally objected to the 2004 amendments as well as IMO's draft circular, and is therefore not bound by them.²⁷ Malta continues to argue that disembarkation should occur at the nearest safe port to the site of the rescue, which in the Maltese SAR areas is often a port in Italy. Italy, on the other hand, is one of the States which have accepted this amendment. Legally, both States are in the right. This highlights a potential problem with International Law-making in general. The result is that two co-operating States are legally bound by different rules, clearly militating against a uniform and co-ordinated approach to a common problem. The recent guidelines complementing the Schengen Borders Code in relation to Frontex operations, which the Council formally adopted in April 2010, have added to the fray, eliciting disapproval from both Malta and Italy.²⁸

What is needed to effectively combat this problem?

Any successful regulatory framework would need to cater for various interests, *inter alia*, the need of States to respect and ensure respect of the rights and dignity of persons rescued at sea regardless of their status; the need of States need to maintain effective border and immigration controls; the duty of States to prevent and fight the smuggling of migrants and trafficking of human beings; the need to preserve the integrity and effectiveness of the international system for search and rescue; and the role of commercial shipping in providing assistance to those in distress at sea.

Indeed, treating the phenomenon solely as a border control issue is dangerous as it would lead to the risk that immigration control measures will not necessarily distinguish between asylum-seekers and refugees and other intercepted persons. In the absence of adequate safeguards, this may result in persons in need of international protection being turned back, sometimes to situations

²⁷ See FAL 35/17, Report of the Facilitation Committee on its 35th Session, Annex 6 (19 March 2009)

²⁸ These rules are currently being considered before the European Court of Justice, having been referred thereto by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament.

of danger. On the other hand, it is unfair that some States are left to deal with the problem on their own. This is especially true in the EU-context. The EU has produced a vast amount of documents and policy papers over the years, however, a number of Member States, notably Malta, Italy, Spain and Greece, feel that the EU must be more proactive and attentive to their immediate needs. To this end, the recently-unveiled EU pilot burden-sharing project offers a step – even if minimal – in this direction.²⁹

Indeed, the answer to the problem of migrant smuggling is not to be found at the expense of any one State's resources and security. To this end, international cooperation is fundamental. The point to be highlighted here is that the obligation of cooperation in contemporary times should be put forward as an obligation which has a specific legal content and imposes action which goes beyond the expectation of good faith, good neighbourliness or courtesy; it is a distinct and independent obligation. In this area therefore, the obligation implies a positive duty of action on the part of States called to cooperate with others in combating a specific threat to maritime security.

One finds mention of the duty of cooperation in a large number of International Law instruments aimed at combatting contemporary threats.³⁰ Apart from the SOLAS and SAR Conventions which, as has been seen, impose an obligation of coordination and cooperation upon the Parties, one also finds the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime (Migrant Smuggling Protocol). The Migrant Smuggling Protocol tackles this aspect of organised crime by permitting, with flag State consent, non-flag State action over vessels carrying irregular migrants on the high seas. The general obligation in Part II stems from the overriding duty to 'cooperate to the fullest

²⁹ See I Camilleri, 'EU Pilot Burden Sharing Project' *The Times*, (Malta 5 June 2009); I Camilleri and C Busuttill, 'Resettlement Offers Total Just 100 Migrants' *The Times*, (Malta 23 September 2009)

³⁰ See further Mallia (n 19) Chapter 7

extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea' (Article 7).

In the drug smuggling sphere, the 1988 Convention against Illicit Traffic in Drugs and Psychotropic Substances and the 1995 Council of Europe Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, establish a foundation for cooperation between the parties to the Agreement. Also in the field of drug trafficking, one finds the 2003 Agreement concerning cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area (Aruba Agreement) and the Shiprider Agreements which the United States has concluded with a number of Caribbean States, a prime example of which is the US-Bahamas 2004 Agreement on Cooperation in Maritime Law Enforcement (combating both drug and migrant smuggling). As a general structure, these Shiprider Agreements provide a pattern of authorisation of entry by US vessels into the territorial waters of the other State Party. A group of agreements provide for a shiprider on board a US vessel to enforce the laws of a State Party in the waters of that State Party.

The US has also concluded a number of bilateral agreements with various States in the context of the Proliferation Security Initiative. Lastly, one must also mention the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, amended in 2005,³¹ which lay down enforcement jurisdiction mechanisms in a bid to effectively fight maritime threats concerning vessels. All these instruments give concrete steps to the duty of cooperation.

It is time that all States view cooperation in this light: not as a convenient principle of good faith, but as a concrete obligation calling for concrete action. It should be because of the force of this obligation of cooperation that a State is not entitled to leave it to other States to

³¹ LEG/CONF.15/21 (1 November 2005) and LEG/CONF.15/22 (1 November 2001) respectively.

rescue persons in distress at sea. Similarly, it should be on the force of this obligation that States perceive the problem of irregular migration as a common problem stemming from situations which are horribly wrong in other States. At all times, it should be recalled that responsibilities lie with all States concerned and not only with those facing a disproportionate influx of irregular migrants on their shores.