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**International Law of the Sea and Maritime Security Implications  
Arising From the Ongoing Crisis Related to Migration by Sea**  
Devam Eden Denizden Göç Krizinden Kaynaklanan Uluslararası Deniz  
Hukuku ve Deniz Güvenliği Uygulamaları

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**Abstract**

Many refugees fleeing from the conflicts in their countries have been entering the other target states after long sea trips. But these journeys come with some implication of the extent of application of international law of the sea. So migration by sea and human trafficking are both not new practices. The major problem has been to identify the rights and obligations of the concerned states, the vessels and the migrants or trafficked people. This article discusses trends in the migration crises by sea and examines the adequacy and application of international legal and policy instruments regarding human trafficking, migrant smuggling, as well as maritime safety and security. It considers the role and challenges of salient international and national institutions in mitigating and preventing this nightmare aiming with the shortcomings of the international law of the sea for managing irregular migration..

**Keywords:** *Illegal Migration, Human Trafficking, Migrant Smuggling, Maritime Security.*

**Öz**

Ülkelerindeki çatışmalardan kaçan bir çok mülteci uzun deniz yolculuklarından sonra hedef ülkelere ulaşmaktadırlar. Ancak bu yolculuklar, belirli bir derecede uluslararası deniz hukuku uygulamalarının gereklerini de beraberinde getirmektedir. Bu sebeple denizden göç ve insan ticaretinin her ikisi de yeni çalışma alanları değildir. İlgili devletlerin, vasıtaların, göçmenlerin ve mağdurların hak ve yükümlülüklerinin tanımlanması en büyük sorundur. Bu makale, denizden göç krizlerindeki yeni eğilimleri tartışmakta ve insan ticareti ile göçmen kaçakçılığı hakkındaki uluslararası hukuki ve politik araçların yeterliliğini ve uygulamalarını deniz emniyeti ve güvenliği ile birlikte incelemektedir. Makale, önemli ulusal ve uluslararası kurumların bu kabusu yatıştırma ve önlemedeki görev ve zorluklarını dikkate almaktadır.

**Anahtar kelimeler:** *Yemen, Middle East, Neorealism, Houthis, Iran, Saudi Arabia*

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## INTRODUCTION

The issue of migration<sup>1</sup> by sea is not a new phenomenon. Whether in pursuit of a better life, to flee conflict or by coercion, the unsafe and exploitative manner in which migration by sea is carried out has increased and is drawing international attention with regards to safety and security as well as the international legal framework and actions required to address it. The sea is a vital medium for transportation not just for goods but more significantly of human lives which is far more valuable. Due to the large number of migrants and the threat of not just increasing loss of lives but also maritime safety and security, States are trying to strengthening their efforts in the fight against irregular migration<sup>2</sup>, as migrant smugglers<sup>3</sup> and human traffickers<sup>4</sup> have resorted to more life threatening routes and means of transport.<sup>5</sup> However, efforts concerning international law of the sea framework has fallen short regarding, for example, the cooperation of states in dealing with irregular migration, search and rescue and the criminal prosecution of traffickers and smugglers.<sup>6</sup> Also, the extent to which the number of migrants has increased was not anticipated by frameworks such as UNCLOS and the duties of mariners after rescue. Hence, the reluctance of some states in carrying out their international obligations regarding human rights issues does not make international law of the sea any easier in addressing irregular migration.

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1 Migration - The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.

2 Irregular migration - Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term "illegal migration" to cases of smuggling of migrants and trafficking in persons.

3 Smuggling - "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" (Art. 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000). Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights.

4 Trafficking in persons - "The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (Art. 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000). Trafficking in persons can take place within the borders of one State or may have a transnational character.

5 F. H. Valerie, J. T. Daniel, J. F. Hollifield, "Immigrants, Markets, Rights: The United States as an Emerging Migration State," *Journal of Law and Policy* 27, No. 7, 36.

6 Judith Kumin, "The Challenge of Mixed Migration by Sea", *Forced Migration Review* 45, No. 1, 49.

Dynamics relating to coastal state's laws on immigration<sup>7</sup>, border protection, international and humanitarian organizations consist of differing views when considering migration by sea.<sup>8</sup> States' ability to act regarding their obligations on the aforementioned views are further complicated as humanitarian protection, enforcement and maritime security each respond or is accountable to different national regulations, norms and operational standards, making international law regarding migrants much more difficult to resolve.<sup>9</sup> Migration by sea has therefore shifted states priorities particularly with regards to maritime safety and security as some migrants are trafficked or smuggled and may also be terrorist. The challenge therefore lies in ensuring effective and quick responses to crimes of human trafficking and migrant smuggling, while at the same time ensuring states security interests at the national level are not compromised.<sup>10</sup> This paper will discuss the implications of migration by sea on international law of the sea, maritime safety and security as well as examine the significance of international law on the growing issue of human trafficking and migrant smuggling.

## 1. INTERNATIONAL LAW AND POLICY

International law of the sea aims to regulate the world's oceans in a manner which considers the interests of all parties involved and the international community on a whole. Regarding migration by sea, customary international law as codified in the United Nations Convention on Law of the Sea (UNCLOS) article 98 (1)<sup>11</sup>, provides that assistance be given to persons in distress at sea; this is also stipulated in the International Convention for the Safety of Life at Sea (SOLAS) regulation V/33.1.<sup>12</sup> Though the rescue of migrants by sea may be considered humane by nature and is required under frameworks such as UNCLOS and SOLAS, some states are often hesitant which leads to lacking international cooperation. States reluctance in dealing with search and rescue and the disembarkation of migrants after being rescued, for example, leave

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7 Immigration - A process by which non-nationals move into a country for the purpose of settlement.

8 Kathleen Newland, "Irregular Maritime Migration", *JOM Migration Policy Institute Report* 13, 13.

9 Ibid, 2.

10 Virginie Guiraudon and Gallya Lahav, "Actors and Venues in Immigration Control: Closing the Gap between Political Demands and Policy Outcomes", *Policy in Europe: The Politics of Control*, (London: Routledge, 2007), p. 6.

11 United Nations (UN), *Convention on Law of the Sea* (New York: 1982), 56.

12 International Maritime Organization (IMO), *International Convention on Safety of Life at Sea (SOLAS)* (London: 1974), 416.

states with the unwanted responsibility of refugees<sup>13</sup> and asylum seekers.<sup>14</sup> Merchant vessels are sometimes the first respondents to distressed persons at sea but should not be substitutes for coastal states responsibilities. Hence, without accountability and comprehensive agreements outlining specific duties of coastal states in response to migrants from volatile countries of origin, states will continue to be guarded on such issues.<sup>15</sup> Although UNCLOS does not directly address disembarkation procedures or burden sharing of coastal states, the International Convention on Maritime Search and Rescue (SAR) and SOLAS provide that states coordinate and cooperate in order for persons rescued at sea can disembark to a safe place without delay.<sup>16</sup>

Search and rescue at sea also becomes complicated when states, although obligated to assist refugees, are uncertain about the status of some migrants. The status of migrants in need of international protection varies as the 1951 UN Refugee Convention provides that States do not return a refugee to a territory where their life or freedom would be at risk.<sup>17</sup> But what about trafficked and smuggled persons whose status is unknown? The difficult process of distinguishing between those who are refugees from those who are not and where to place those who may need protection then increases a country's security radar; and may also discourage ships from wanting to aid people in distress.<sup>18</sup> It is therefore important to consider the concerns of states if international law regarding irregular migration is to be addressed in order to build stronger frameworks that will help execute assistance at sea in a more coordinated manner. The complexity of search and rescue is just one aspect which highlights a range of issues when dealing with migration at sea and specific obligations under international maritime laws and other bodies of

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13 Refugee - A person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. (Art. 1(A)(2), Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol). In addition to the refugee definition in the 1951 Refugee Convention, Art. 1(2), 1969 Organization of African Unity (OAU) Convention defines a refugee as any person compelled to leave his or her country "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality." Similarly, the 1984 Cartagena Declaration states that refugees also include persons who flee their country "because their lives, security or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order."

14 Asylum seeker - A person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments. In case of a negative decision, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds.

15 Kumin, *The Challenge of Mixed Migration by Sea*, 50.

16 UN High Commissioner for Refugees (UNHCR), "Protection Challenges", *7th High Commissioner's Dialogue*, 10 December 2014. <http://webtv.un.org/watch/opening-plenary-unhcr-7th-high-commissioners-dialogue-on-protection-challenges/3933947430001> (Retrieved 21.07.2016)

17 UN, *Convention Relating to the Status of Refugees* (New York: 1951), 9.

18 Newland, *Irregular Maritime Migration*, 4.

international law such as refugee and human rights laws.<sup>19</sup> Due to irregular migration (trafficking and smuggling), more action plans are required such as those commissioned by the European Union (EU); for example, focusing on all actors within internal and external policies such as international organisations, civil societies and institutions outside the EU. As well as formulating more developed and binding agreements within regional policies in order to combat contemporary threats to migration by sea such as human trafficking and migrant smuggling.

## 2. HUMAN TRAFFICKING and MIGRANT SMUGGLING

Human trafficking and migrant smuggling are crimes which transcend national and international borders. They are different from other organized crimes such as drug smuggling because subjects of these offences are individuals and not commodities.<sup>20</sup> Therefore, where international law and policy are lacking is with regards to finding the criminals carry out such acts and the punishable offenses that goes along with them. The basis for international law related to the prosecution of offenses particularly carried out on the high seas regarding human smuggling and trafficking is limited. Where on the high seas, state response should involve international human rights laws and international refugee obligations with persons in distress at sea, coastal states have greater rights to exercise criminal jurisdiction in their territorial sea, moreover if the vessel carrying these migrants is unseaworthy.<sup>21</sup> Since human trafficking entails the recruitment, sale and transport of person by forms of coercion for slavery or labour purposes,<sup>22</sup> it is the receiving state's duty to deal with the matter in their domestic laws, particularly in protecting individuals as set out in the United Nations Convention against Transnational Organized Crime and the Protocols.<sup>23</sup> This may be demanding for some states concerning their capacity as there will be greater regulation and enforcement requirements within their maritime area.

Another great violation of not just human rights but also a crime against States is the endangerment of lives for illegal profits through migrant smuggling, which involves the entry of asylum seekers or people seeking to enter a country illegally.<sup>24</sup> Smugglers are increasing their methods of illegal entry which pose additional challenge to States and policymakers. In the past, migrant smugglers would avoid border authorities; however, today it is more common

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19IMO, *Rescue at Sea: A Guide to Principles and Practice as Applied to Migrants and Refugees* (London: 2010), 2.

20James Kraska and Raul Pedrozo, *International Maritime Security Law* (Leiden: Brill, 2013), 689.

21Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford: Oxford University Press, 2011), 62.

22Ana Isabel Pérez Cepeda and Demelsa Benito Sánchez, *Trafficking in Human Beings: A Comparative Study of the International Legal Documents* (Groningen, Netherlands: Europa Law Publishing, 2014), 56.

23UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime* (New York: 2000), 4.

24 Khalid Koser, "Why Migrant Smuggling Pays", *International Migration* 46, No. 2, 12.

to intentionally draw attention towards vessels carrying migrants. Also, in learning protection response mechanisms migrants are taught behavioural patterns in an attempt to increase their efforts of gaining refugee status.<sup>25</sup> States are therefore faced with the challenge of protecting their security interests while at the same time having to consider principles of human well-being. States have to consider different policy interests and the varying applications and interpretations of international law areas of migration, which then results in the different operations and agreements reflected in fragmented approaches to international law.<sup>26</sup>

There is no comprehensive binding document that sets out States' obligations under international or regional laws on issues of irregular migrants. However, the EU is a body which sets out to prevent the exploitation of migrants by criminal networks and reduce the motivation of irregular migration as criminal networks of smugglers and traffickers put migrant's lives at risk in unseaworthy vessels.<sup>27</sup> The IMO and the United Nations Office of Drugs and Crime (UNODC) have also taken steps by adopting the Guidelines to Combat Unsafe Practices Associated with the Trafficking and Transport of Migrants by Sea<sup>28</sup>, and the Migrant Smuggling Protocols<sup>29</sup>; however, there needs to be greater initiatives by states at the national level to implement these instruments. For example, the political objectives in some countries may be geared more towards actions of controlling the flow of irregular migration rather than the actual fight against human traffickers and migrant smugglers.<sup>30</sup> Furthermore, it is the human trafficker and migrant smuggler who mainly cause risks at sea and threaten maritime safety because of the use of unseaworthy vessels, resulting in poor conditions onboard migrant vessels. Such risks and threats then increases the challenge operators face with rescues at sea and the significant concern of states regarding their maritime security because of arriving irregular migrants.<sup>31</sup>

### **3. MARITIME SAFETY and SECURITY**

Maritime security is a broad term which can be defined and addressed from different perspectives.<sup>32</sup> It could be a stable order of the oceans which is subject to the rule of law at sea and is often unavoidably combined with

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<sup>25</sup>Newland, *Irregular Maritime Migration*, 13.

<sup>26</sup>Klein, *Maritime Security and the Law of the Sea*, 124.

<sup>27</sup>EU, *Action Plan against Migrant Smuggling* (2015 - 2020) (Brussels: 2015), 2.

<sup>28</sup>IMO, *Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea* (London: 2001), 3.

<sup>29</sup>UNODC, *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime* (New York: 2000), 5.

<sup>30</sup>Cepeda and Sánchez, *Trafficking in Human Beings: A Comparative Study of the International Legal Documents*, 72.

<sup>31</sup>Klein, *Maritime Security and the Law of the Sea*, 10.

<sup>32</sup>Burak Şakir Şeker, "International Maritime Security: The 100 Rules", *International Security* (Ed.) H. Çomak, C. Sancaktar, (İstanbul: Beta, 2016), 122.

maritime safety, which is not a bad thing as the maritime sector can benefit and be strengthened by combining the two.<sup>33</sup> It may be summed up by referring to maritime safety as the prevention or minimization of the occurrence of accidents at sea caused by substandard ships, unqualified crew or operator error, whereas maritime security is related to protection against unlawful and deliberate acts.<sup>34</sup> Since the ocean covers about 70% of the globe and is an area where there is great interaction between different countries and people, such interaction also requires the need for proper governance. The ocean as a medium and mechanism for transportation is very important which then leads to broader issues of threats towards maritime safety and security.

The common pathways of shipping routes are common because they are usually the shortest distances to port destinations, also making them vulnerable as a number of ships pass through these routes daily. Hence, it could also be easy for people to find or obstruct them, and if obstructed, this can significantly impede trade. The common migration routes and when compared to some common pathways between ships and migrant routes are seen. Ensuring safety and the security of ships and passengers or migrants on unseaworthy vessels is therefore important for practicing good maritime policy. There are a number of threats facing seaborne trade and maritime security such as human trafficking and smuggling this is why IMO has played such an important role regarding both safety and security measures.

The IMO has set international standards for maritime safety and security and is also mentioned in UNCLOS<sup>35</sup> as a competent international organization in connection with international shipping standards concerning maritime safety. IMO's mandate focuses on promoting safe, secure, environmentally sound, efficient and sustainable shipping; although previously limited to matters mainly concerning safety issues IMO has expanded over the years to include maritime security.<sup>36</sup> Considering international standards to include navigation, safety of lives at sea, search and rescue and maritime security, it is therefore up to states to enforce these standards by incorporating them into their national legislation as IMO does not possess enforcement powers.<sup>37</sup> In the USA for example, the coast guard and navy are often the enforcement bodies which play an important role regarding the interception of vessels involved in people smuggling. Border protection is important coast guard control, however, it is not the only task delegated to a coast guard as enforcement; search and rescue

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33Kraska and Pedrozo, *International Maritime Security Law*, 1.

34Natalie Klein, Joanna Mossop and Donald Rothwell, *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (London: Routledge, 2010), 22.

35UN, *Convention on Law of the Sea*, 39.

36IMO, *Maritime Safety and Security: to the Secretary-General's Report on Oceans and the Law of the Sea* (London: 2008), 16.

37Felicity Attard, "IMO's Contribution to International Law Regulating Maritime Security", *Journal of Maritime Law & Commerce* 45, No. 4, 479-480.



and other functions can be mandated in national legal instruments as well.<sup>38</sup> While UNCLOS identifies the duties of states regarding search and rescue of persons in distress at sea (also in the SAR Convention<sup>39</sup>) and recognizing state's sovereignty over internal waters it does not directly address contemporary maritime security threats such as those related to irregular migration.

Contemporary law of the sea can contribute to maritime security in four ways. Firstly, through defined maritime zones in which coastal states are able to have total jurisdiction; secondly, providing maritime states navigational rights and freedom of the seas; thirdly, maritime security over economic interest and resources of the ocean and fourthly, the promotion of peaceful usage of the ocean and the settlement of disputes.<sup>40</sup> Customary international law have recognized the importance of innocent passage, transit passage and archipelagic sea lanes passage as vital navigational regimes for the maintenance of maritime security; all of which aims to achieve balances between competing interests of maritime security jurisdiction.<sup>41</sup> States therefore find themselves conflicted between protecting their security interests and other mandates under international law, because states have sovereign rights to protect their borders, as well as their requirements under humanitarian principles of protection.<sup>42</sup> A State's primary rights lies in the protection of its coastal borders rather than developing effective strategies for the protection of migrant human rights; hence the need for drastic improvements regarding such realities.<sup>43</sup>

Another issue as it relates to maritime safety and security is human migration routes as states also border vital shipping routes and users of these routes.<sup>44</sup> State's security and individual's safety can be compromised as the validity of jurisdiction arises when irregular migration occurs in an area where a state cannot legally act.<sup>45</sup> For instance, when a vessel renders assistance at sea and the issue of where to disembark the migrants arises or which State takes up the responsibility. Additionally, international law of the sea role in addressing the interests of migrants and maritime security is not well developed regarding the interception of migrant vessels at sea. Hence, a state's right to assert their jurisdiction within and outside their waters then questions the type of measures to be taken in assisting migrants after interception.<sup>46</sup> It is in such instances

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38Aaron Casavant, "Understanding Maritime Borders", *Journal of Safety & Security at Sea* 71, No. 1, 6.

39IMO, International Convention on Maritime Search and Rescue

40Klein, Mossop and Rothwell, *Maritime Security*, 27.

41Attard, *IMO's Contribution to International Law Regulating Maritime Security*, 482.

42Patricia Mallia, *Migrant Smuggling by Sea: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework* (Leiden: Martinus Nijhoff, 2010), 143.

43EU, *Migrants in the Mediterranean: Protecting Human Rights*, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU%282015%29535005](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU%282015%29535005) (Retrieved 21.07.2016)

44Burak Şakir Şeker ve Hakan Selim Canca, "Mixed Migration by Sea and Maritime Security: Syrian and Libyan Cases", *Syrian Crisis in International Politics* (Ed.) H.Çomak, C.Sancaktar, Z.Yıldırım, (İstanbul: Beta, 2016), 600.

45Svitlana Batsyukova, "Human Trafficking and Human Smuggling: Similar Nature, Different Concepts", *Studies Of Changing Societies: Comparative & Interdisciplinary Focus* 1, No. 1, 42.

46Kumin, *The Challenge of Mixed Migration by Sea*, 51.



related to a state's jurisdiction where comprehensive legal frameworks are required in order to establish and maintain cooperation between states jurisdictional obligations and humanitarian considerations.<sup>47</sup> It would also be in states maritime safety and security interests as such a framework can collectively minimize internal and external threats through the combined effort of all states.

#### 4. CHALLENGES AND POSSIBLE SOLUTIONS

The challenges and threats that are caused by irregular migration continue to require more sound policies within international law of the sea which can commit states to instil effective national legislation and enforcement measures. State's effort to combat human trafficking and migrants smuggling should be focused on solving conflicting interest of national security and human rights issues. The mismatch between state interests and the provision or lack thereof under international legal systems do not create harmonization, which is needed to prevent and clampdown on migrant smugglers and traffickers.<sup>48</sup> Close cooperation among states, particularly those along smuggling and trafficking routes, is important for targeting illegal movements which also threatens maritime safety and security. Effective investigation and prosecution is therefore required to address the root causes of irregular migration.<sup>49</sup> In some countries such as the U.S.A, maritime safety and security is well translated within national and regional legal frameworks which also addresses smuggling crimes against a State and trafficking crimes against individuals.

It is also important to consider the countries of origin of migrants and their circumstances in order to establish a clear link between policy development and human movement in order to protect persons and tackle irregular migration by sea. Although efforts are placed within maritime safety and security instruments such search and rescue, the responsibility should not remain there but also include close connection and cooperation with development programmes and reception facilities to assist migrants.<sup>50</sup> Origin, transit and destination countries of migrants must also have combined efforts in order to control the challenges posed by human traffickers and migrant smugglers Responsibility sharing among states can therefore improve the situation of irregular migration and minimize the burden for some states in handling migrants since the actions, or lack thereof, of one State can either help or increase problems for another.<sup>51</sup>

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47Mallia, *Migrant Smuggling by Sea*, 211.

48Natalie Klein, "A Case for Harmonizing Laws on Maritime Interceptions of Irregular Migrants", *International and Comparative Law Quarterly* 63, No. 4, 796.

49Burak Şakir Şeker and Dimitrios Dalaklis "Contemporary Security Challenges: Human Trafficking and Migrant Smuggling at Sea", *Geopolitics* 63, No. 1, 140.

50James F. Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Cambridge: Harvard University Press, 1992), p. 216.

51Anne T. Gallagher, *The International Law of Migrant Smuggling* (New York: Cambridge University Press, 2012), 576.

## CONCLUSION

From the Mediterranean to the Andaman Sea, the world is living through a migration crisis of historic proportions. It is estimated that 250 million international migrants people are on the move and out of the international migrants 20 million count as refugees and 50 million as irregular migrants, displaced by war, persecution, conflict or natural disasters. Around 1 million people arrived in the EU through the Mediterranean waters in 2015, almost entirely via the Eastern and Central Mediterranean routes. It is estimated that for every migrant who reached the other side of the Mediterranean, someone pocketed enough money to change his/her life. The global turnover of the smuggling 'business' is around tens of billions of dollars a year and is second to drug trafficking. Migrants may also be at the mercy of human traffickers, who exploit the vulnerability of persons and populations, throwing them into the throgs of transnational networks of forced labour, sexual abuse and illegal organ trafficking.

Migration by sea is a predominant issue which requires both international and national decision making and enforcement efforts for effective mitigation measures. International law of the sea requires comprehensive policies which address irregular migration and commits states to act concerning both their security interest and humanitarian obligations. State's response to the complex and increasing challenge of human trafficking and smuggling has drawn more attention to maritime safety and security as well as the need for stricter implementation and enforcement of national and international maritime policies. Although international maritime law highlights the duties of states and merchant vessels, irregular migration causes reluctance by some states in wanting to protect their maritime security interests more so than their humanitarian obligations.

Gaps within migration by sea policies particularly relating to human trafficking and migrant smuggling should be addressed to focus on the individuals who carry out these crimes; and should promote regional agreements and programs as well as reception facilities to protect migrants. Although the framework convention of UNCLOS does not sufficiently address contemporary maritime security threats of human trafficking and migrant smuggling responsibilities should be undertaken by both coastal states and non-coastal states. Such responsibilities are important because it is the duty of states to ensure maritime safety and security; and implement policies that crack down on irregular migration for the protection of human lives.

Through examination of the legal framework and the role of national and international institutions in ensuring maritime security by comprehensively addressing the refugee crises in the EU, it has been established that the 'Constitution of the Oceans', the UNCLOS is for the protection of the lives of migrants at sea is seriously laden with flaws. It submits that integrating international maritime laws with international refugee law could provide a well-equipped system to assume a greater responsibility in ensuring the protection

of those involved and as well as enhancing maritime security. Surely arrivals by sea of migrants and trafficked people challenge not only the interpretation and rights of asylum and in particular the principle of non-refoulement but also the existing rules related to the freedom and safety of navigation.

On the other hand, when it comes to the legal part of coping with the effects of migrants smuggling and trafficking, States have different practices in the application of the different legal regimes involved in the crisis of migration by sea. The difficulty is to keep balance between the protection of different categories of migrants under the obligations of the international Human Rights Law, the protection of the sovereign rights of the States in respect of the enforcement of their domestic migrant policy, and the International obligations to combat people smuggling and trafficking especially in the high seas. There is an increasing need of regional agreements and cooperation programs to help dealing with the issue at its non-point sources, the furthest possible from the crimes hot points. In fact, adding to the security aspect, more preventive approaches should take the social, economical and political factors leading to this crisis.

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