



LAWYERS ON THE GROUND

RESPONSE TO MIGRANT SMUGGLING

Irish Defence Forces Perspective



COMMANDER (NS) Pat BURKE
LEGAL OFFICER NAVAL SERVICE





- Important Caveat – Personal Opinion!
- Applying the law in action
- ‘Interception’ of migrants at sea
- Border Control *Vs* SAR
- Disembarkation Issue – Place of Safety
- The reality of migrant rescue





Interception Vs SAR

- **Interception of Migrants on the High Seas - Vagueness of ‘Interception’**
- **Law enforcement?**
- **SAR Vs ‘Engineered SAR’?**
- **UNCLOS - Warships Right of Approach & Visit -flag, piracy, anti-narcotics, etc.**
- **Migrant Smuggling**
- **Differing Legal Regimes**





MIGRANT ACTIVITY





- “Migrant smuggling involves procuring a person’s entry into a state of which the person is not a national or a permanent member by crossing borders without complying with national migration law and doing so for financial benefit”

The Protocol against the Smuggling of Migrants by Land, Sea and Air – supplementing the UN Convention against Transnational Organized Crime 2000



- “The smuggling of illegal migrants is a highly profitable business in which criminals enjoy low risk of detection and punishment”.
UN Office on Drugs and Crime (UNDOC)
- Of itself illegal migration is not considered a crime under international law

- National *and* International Law
- Defence Act Ireland – Humanitarian Mission
- International Law of the Sea
- International Criminal Law
- International Humanitarian Law Geneva Convention relating to the status of Refugees - *non-refoulement*
- European Convention on Human Rights



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An Outcome of Conflict

Defend | Protect | Support



200-350 Migrants





- United Nations Convention on Law of the Sea (UNCLOS) 1982
- Int'l Convention on Maritime Search and Rescue (SAR) Treaty 1979
- Safety of Life at Sea Convention (SOLAS) 1914
- Migrants at sea - UN Convention against Transnational Organized Crime (UNTOC) & Protocols - relevant from an interdiction perspective but NOT from a SAR one



- *Article 98 UNCLOS Duty to render assistance*
- 1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
 - (a) to render assistance to any person found at sea in danger of being lost
 - (b) to proceed with all possible speed to the rescue of persons in distress

- SOLAS 2004 Amdt - Master of a ship is bound to proceed with all due speed to assist in any rescue at sea
- The Govt responsible for the SAR region in which assistance is rendered *shall* ensure that survivors are disembarked and delivered to a place of safety as soon as reasonably practical
- Does *NOT* require disembarkation at the nearest or most convenient place of safety nor the port of the flag State.



- The provisions of the European Convention on Human Rights are identical in approach to *non-refoulement* and the European Court of Human Rights has held that this also applies to persons taken on board warships
- Warships legally defined in UNCLOS



- ECtHR ruled on the issue of a rescue on the high seas by an Italian warship - *Jamaa Hirsi & Others v Italian Warship (2012)*
- Italian warship returned rescued Libyan migrants to Libya. Court held obligations to those rescued under Article 3 of the European Convention on Human Rights (ECHR)



- ECtHR held that returning the rescued migrants to Libya violated the principle of taking them to a safe place, however the Court did not hold that a warship was 'territory' for the purpose of an asylum application
- The Court also did not hold that rescued persons should be dealt with by the rescuing Flag State – therefore State where rescued migrants are taken to is responsible



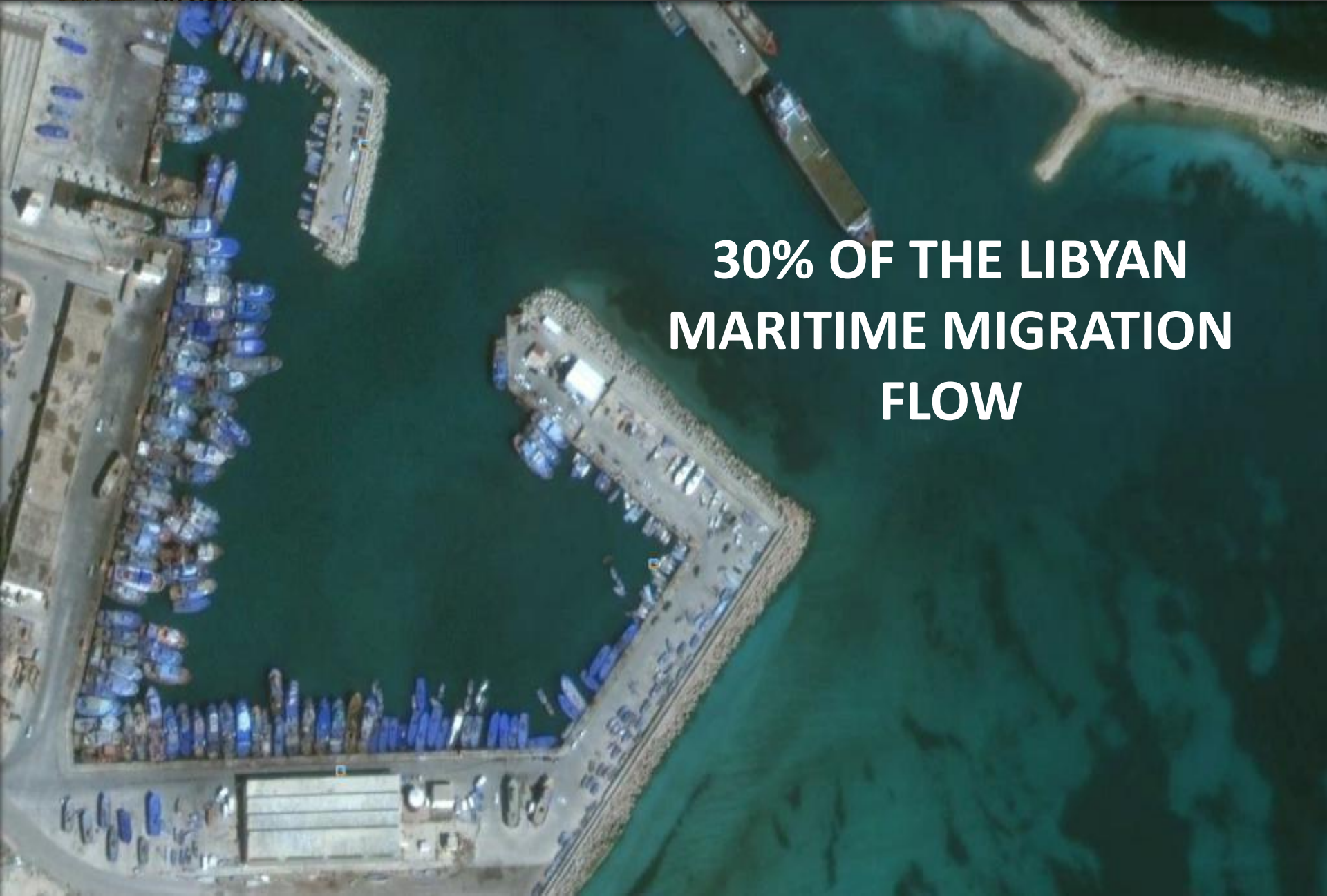
- The United Nations High Commissioner for Refugees (UNHCR) has directed that it is not possible to process applications for asylum on board a ship
- The ‘Dublin Regulation’ provides that in a case of illegal entry to a State the first Member State at which a person seeking international protection arrives is obliged to deal with the application



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ZUWARAH HARBOUR LIBYA

**30% OF THE LIBYAN
MARITIME MIGRATION
FLOW**



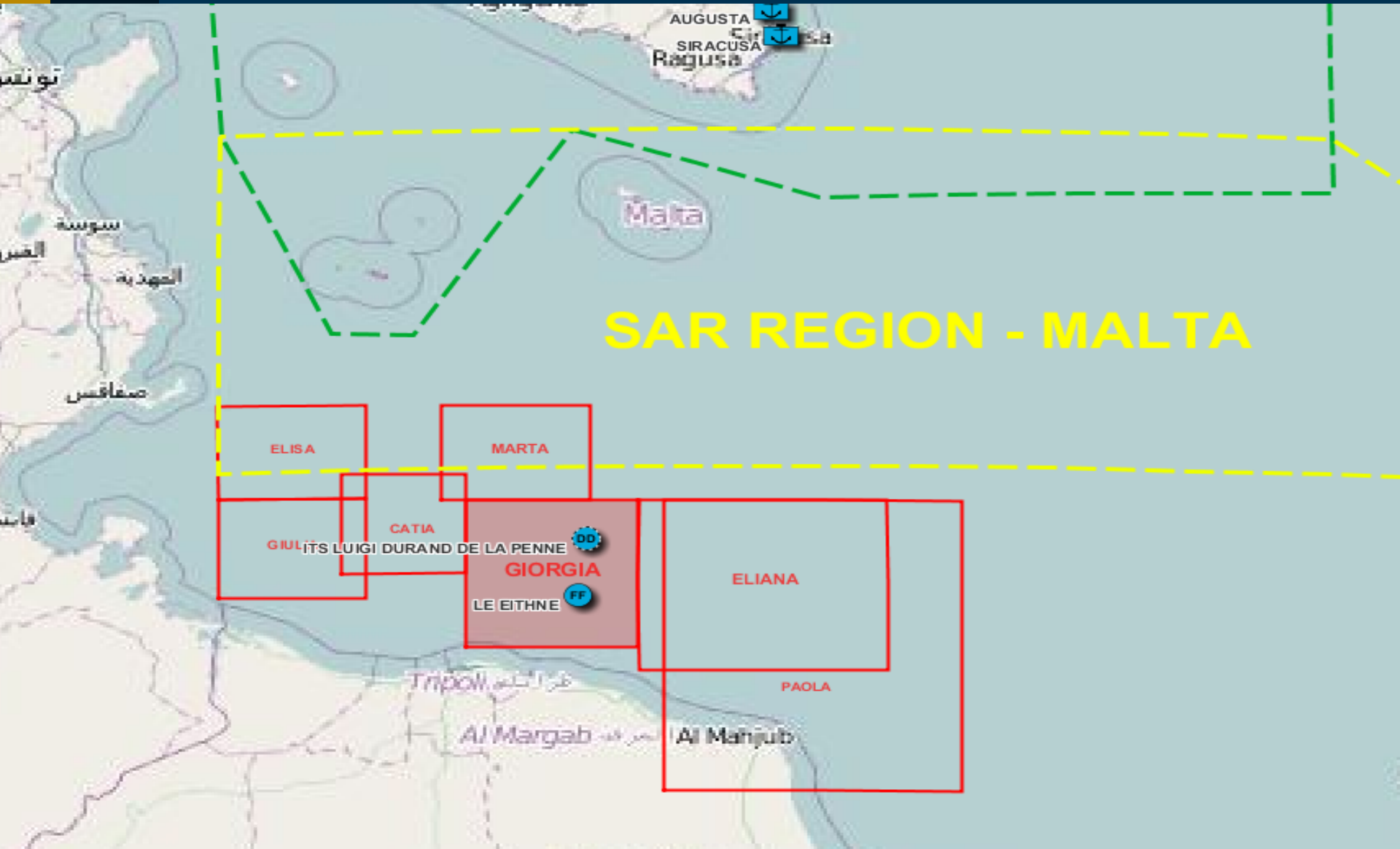


- > Defence Act Sec 348-humanitarian tasks
- > IE Note Verbale & IT Note Verbale
- > OPLAN 1/2015: Op PONTUS
- > Cooperate & Coordinate with ITN CTG – SAR Only
- > Once SAR “declared” deal directly IMRCC
- > Rescued Persons to Place of Safety designated by IMRCC





AREA OF OPERATION



SAR REGION - MALTA



- Migrants contact IMRCC & use “Key Phrases” to initiate SAR
- Boats usually in Libyan SAR zone
- IMRCC contact Libya – NO response
- IMRCC contact Malta, adjacent SAR zone, unable to react
- IMRCC assume responsibility





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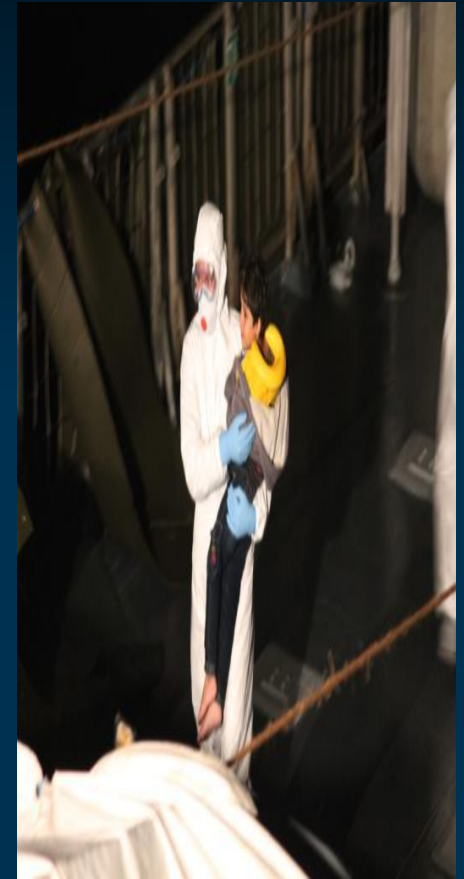
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- LE Eithne departed IE 16 May & began patrolling Sector 23 May 2015
- Over 15,000 people rescued to date – ‘Rescued Persons’
- The crisis continues.....





- Prosecution Witness for Italian Prosecutor Palermo, 19 Dec 2016
- Criminal Trial of alleged migrant smugglers





- The obligation to render assistance to those in peril or lost at sea is one of the oldest and most deeply rooted maritime traditions, and for centuries seafarers have considered it a duty to assist fellow mariners in distress on the high seas
- Comprehensive Approach Required

