

Refugees & Asylum-seekers in Distress at Sea – how best to respond?

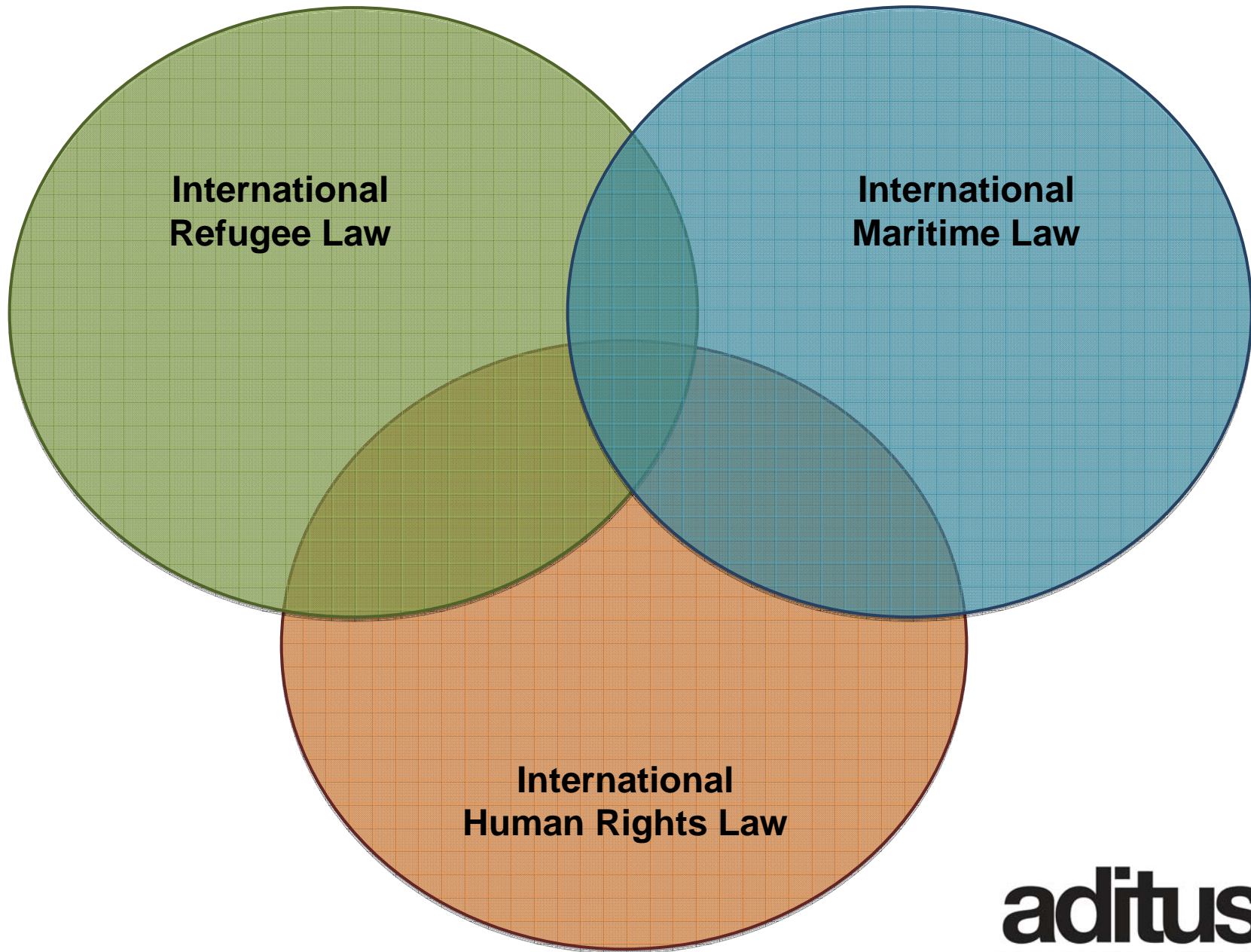
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Overview & Aim

- Highlight the **intersectionality** of 3 areas of international law:
 - Refugee
 - Maritime
 - Human Rights
- Zoom in on **specific elements** falling with this intersectionality
- Aim to provide objective **technical input** as a basis for the discussions



**International
Refugee Law**

**International
Maritime Law**

**International
Human Rights Law**

Intersectionality

- Specific legal instruments, including:
 - Geneva Convention, Cartagena Declaration, OAU Convention;
 - UNCLOS, SAR, SOLAS, Palermo Protocols;
 - ICCPR, ICESCR, CAT, CRC, CEDAW, Regional.
- Set of core principles, such as:
 - *Non-refoulement*, refugee definition, solidarity;
 - Maritime jurisdiction, duty to rescue, cooperation;
 - Jurisdiction, non-discrimination, human dignity.

Intersectionality (contd.)

- Various national stakeholders, such as:
 - Asylum authorities, immigration police, inter-ministerial committees (education...employment);
 - Military, Rescue Coordination Centres;
 - National human rights institutions, specific ministries.
- Range of regional/international actors, including:
 - UNHCR, AU, OAS;
 - IMO, Frontex;
 - UN Committees, regional courts/commissions.

Specific Elements

What *relevant* legal & operational areas are mostly affected by the intersectionality of the three areas?

Non-refoulement, & other human rights

Duties to rescue/coordinate rescue & disembark at a place of safety

International & regional cooperation

Non-refoulement

“No Contracting State shall expel or return a refugee 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 group of political opinion.”

Art. 33(1) Geneva Conv.

Also seen in Art. 2(3) OAU Convention; Concl. 5 Cartagena Decl.; Art. 3 CAT.

Read into Art. 7 ICCPR; Art. 3 ECHR.

Possibly norm of customary international law.

Non-refoulement @ sea

Concrete challenges

- ‘Non-refoulement does not apply on the high seas’
- ‘The rescued persons are economic migrants’
- ‘The port of disembarkation is safe’

Discussion Input

- ‘Non-refoulement applies beyond physical territory’
- ‘Mixed flows of persons could also include refugees’
- ‘Safety also includes human rights considerations, & indirect *refoulement*’

Non-refoulement extra-territoriality

- Territorial waters are straightforward;
- Language & spirit of Art. 33 Geneva Convention (*'protection vacuum'* concept);
- *'Effective control'* triggers *de facto* state jurisdiction
- Other human rights considerations, including:
 - Access to an effective remedy;
 - Excessive use of force.

Mixed flows of persons

- Persons travelling for various reasons:
 - Fleeing persecution or war;
 - For better economic opportunities;
 - Victims of trafficking;
 - Family reunification;
 - Combination of any of the above; & shifting forces
- Malta 2009 figures: 1,475...1,308 (89%)...852 (58%)
- Early identification is key

'Place of safety'

- Once persons are rescued, obligation to disembark at a 'place of safety'
- SAR & SOLAS do not define 'safety'
 - Get to land, provide medical assistance, get food & water, provide appropriate shelter; but also
 - Can they seek asylum post-disembarkation, or will they be immediately returned home?
 - How will they be treated once disembarked? Detention, torture & inhuman treatment...

Other possible challenges...

- Neighbouring SAR states do not fulfil their SAR obligations;
- Difficulties in identifying appropriate place for disembarkation
 - Lack of legal clarity & certainty
 - Disembarkation = asylum procedure, refugee rights, durable solutions
- Impact on private vessels

Intersectionality input

Appreciation of legal norms applicable in any given situation

Increased coordination of national stakeholders

Effective dialogue & operational cooperation amongst neighbouring SAR states

Active involvement of various 'thematic' actors

Strong commitment to the core principles