



**Expert Meeting on Refugee and Asylum seekers in  
distress at Sea**

**Djibouti, 8 - 10 November 2011**

**The United Nations Convention on the  
Law of the Sea and  
Rescue at sea**

Division for Ocean Affairs and the Law of the Sea  
Office of Legal Affairs  
United Nations



# Presentation

- Overview of the legal regime governing rescue of persons at sea
  - The 1982 United Nations Convention on the Law of the Sea
  - Other instruments: SOLAS and SAR
  
- Considerations by the General Assembly



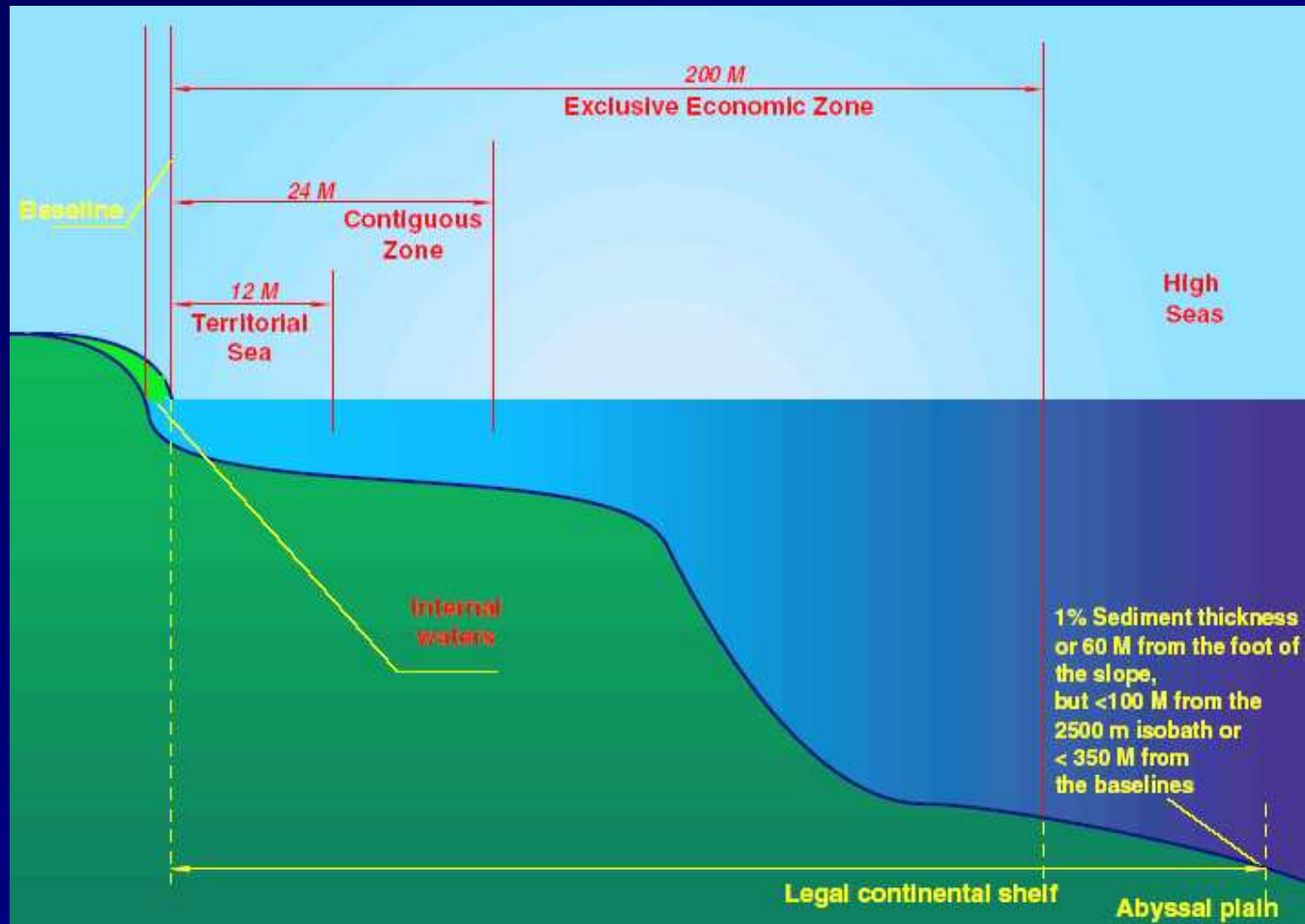
# Introduction



# Overview of UNCLOS

- United Nations Convention on the Law of the Sea , adopted in 1982. Entered into force in 1994
- “Constitution for the oceans” - legal regime governing all ocean space
- Balance struck in UNCLOS between competing interests regarding the uses of the oceans and resources of the oceans

# Limits of maritime zones



# Maritime Zones and States' responsibilities (a summary)

- **In ports and on coasts**, the Coastal State has **full sovereignty** for control and surveillance of immigration/migration
- **Territorial Sea**: 12 nm from baselines: **sovereignty (innocent passage)**
- **Contiguous Zone**: up to 24nm: **Jurisdiction** to prevent infringements of inter alia, immigration regulations (migration)
- **EEZ**: up to 200 nm: Sovereign rights for exploitation and exploration and jurisdiction in relation to immigration laws and artificial islands; also duty of rescue of persons in distress at sea
- **High Seas**: area of sea beyond outer limits of EEZ: Freedom of navigation and exclusive jurisdiction of flag State
- **All States** should cooperate in preventing and sanctioning irregular migration, trafficking of persons and smuggling of migrants

## Rescue of persons in distress at sea

### Legal Regime

- Obligation of masters of ships to render assistance to persons in distress at sea is long-established maritime tradition and obligation
- A number of Conventions contain obligations to provide assistance and to rescue persons at sea:
  - obligations of masters of ships, flag States, and coastal States

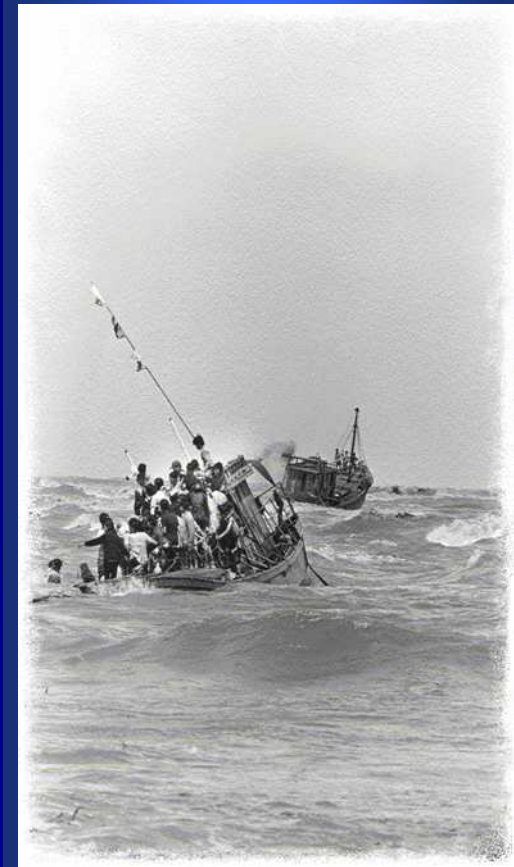
# Duty to Render Assistance under Article 98 of UNCLOS

- Obligation of a master of a ship to :
  - render assistance to any person found at sea in danger of being lost
  - proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him
- Obligation applies in all maritime zones - the high seas, EEZ, territorial sea and other zones



# Duty of Coastal States (search and rescue ) under Article 98 of UNCLOS

- Obligation of coastal States to:  
“promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.” (article 98(2))



# Duties of Flag States

- Duties of the flag State (article 94):
  - Exercise effective control over ships flying its flag
  - Measures must conform with generally accepted international regulations (e.g. IMO Conventions)
  - The operation of substandard ships is not permitted
  - Ensure that ships flying their flag conform to generally accepted international regulations, procedures and practices governing safety at sea
  - Ensure that their vessels comply with international law and not be used for illicit purposes

## Legal regime: SOLAS AND SAR

- Parties to SOLAS/the International Convention on Maritime Search and Rescue (SAR) must coordinate and cooperate to ensure that masters of ships are released from their obligations with minimum further deviation from the ship's intended voyage
- A Party to SOLAS/SAR responsible for the search and rescue region in which the survivors were recovered has primary responsibility for ensuring such coordination and cooperation 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 IMO

## Rescue at sea: Challenges

- Situations of people in distress at sea & loss of life
- Legal framework for search and rescue – participation and implementation
- Inadequate search and rescue facilities
- Reported cases of delayed rescue
- Problems with disembarkation of those rescued at sea and finding a place of safety
- Protection needs of asylum seekers & refugees

# General Assembly

- The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea
  - 9<sup>th</sup> meeting of ICP in 2008 focused discussions on “Maritime safety and security”
    - The provision of assistance to persons in distress at sea is a fundamental obligation under international law, which must continue to be observed in order to fulfill the humanitarian imperative to prevent loss of life at sea
    - All States must fulfill their search and rescue responsibilities

# General Assembly

## ■ Resolution 65/37 A (2010):

- **Paras. 117-120** calls relating to Flag State duties and search and rescue responsibilities of all States
- **Para. 120-** all States to continue to cooperate in developing comprehensive approaches to international migration and development, including through dialogue on all their aspects

**THANK YOU !**

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