



# Operational & Legal Issues in SAR at Sea Irish Defence Forces Perspective



COMMANDER (NS) P. BURKE





- Caveat – Personal Opinion!
- Unique Irish position vis-à-vis EU SOFA
- ‘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’**
- **SAR or Maritime Law Enforcement?**
- **SAR Vs ‘Engineered SAR’?**
- **UNCLOS - Warships Right of Approach & Visit**
- **Migrant Smuggling**
- **Differing Legal Regimes & Interpretation**





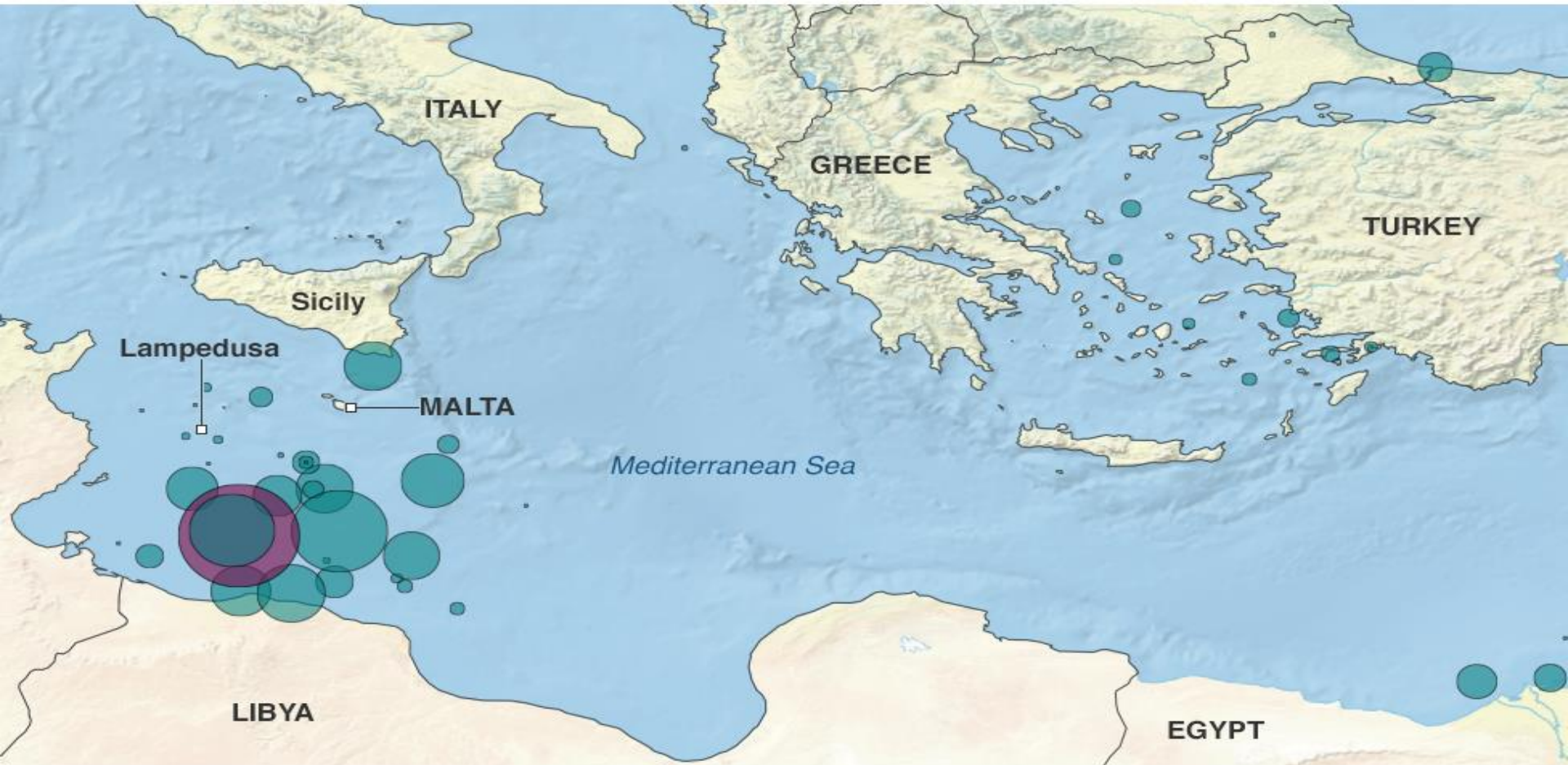
# MIGRANT ACTIVITY





## Migrant deaths in the Mediterranean, 2014-15

-  Circles represent the number of migrants dead and missing in each incident
-  Incident on 19 April, in which more than 800 died



Data covers central and eastern Mediterranean routes. Locations are based on the IOM's Missing Migrants database. Some locations are approximate.



- “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”.

UNDOC

- Of itself illegal migration is not considered a crime under international law
- Disrupting the smuggler’s business model

- National *and* International Law
- Defence Act Ireland – Humanitarian Mission
- International Law of the Sea
- International Criminal 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



- 1979 International Convention on Maritime Search and Rescue (SAR) Treaty
- "Rescue" - An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a *place of safety*.
- Assistance shall be *regardless of the nationality or status* of such a person or the circumstances in which that person is found.



- A place of safety is defined in as a location where rescue operations are considered to terminate.....
- A place where the survivors safety of life is no longer threatened and where their basic human needs (such as food, shelter, medical needs) can be met.....
- A place from which arrangements can be made for the survivors' next or final destination.

- 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.



- *Non-refoulement* under asylum/refugee law - 1951 Geneva Convention - status of refugees
- Replicated in Article 19 of the EU Charter of Fundamental Rights - collective expulsions are prohibited; no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.



- 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 – Art 29





- 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 decision should be read in conjunction with 2004 amendment to both the 1979 SAR Treaty and SOLAS which clarified the obligation of the Master of a ship:
- *"... to render assistance is complemented by a corresponding obligation of States to co-operate in rescue situations, thereby relieving the master of the responsibility to care for survivors, and allowing individuals who are rescued at sea in such circumstances to be delivered promptly to a place of safety"*



- 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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# Irish Navy Deployment

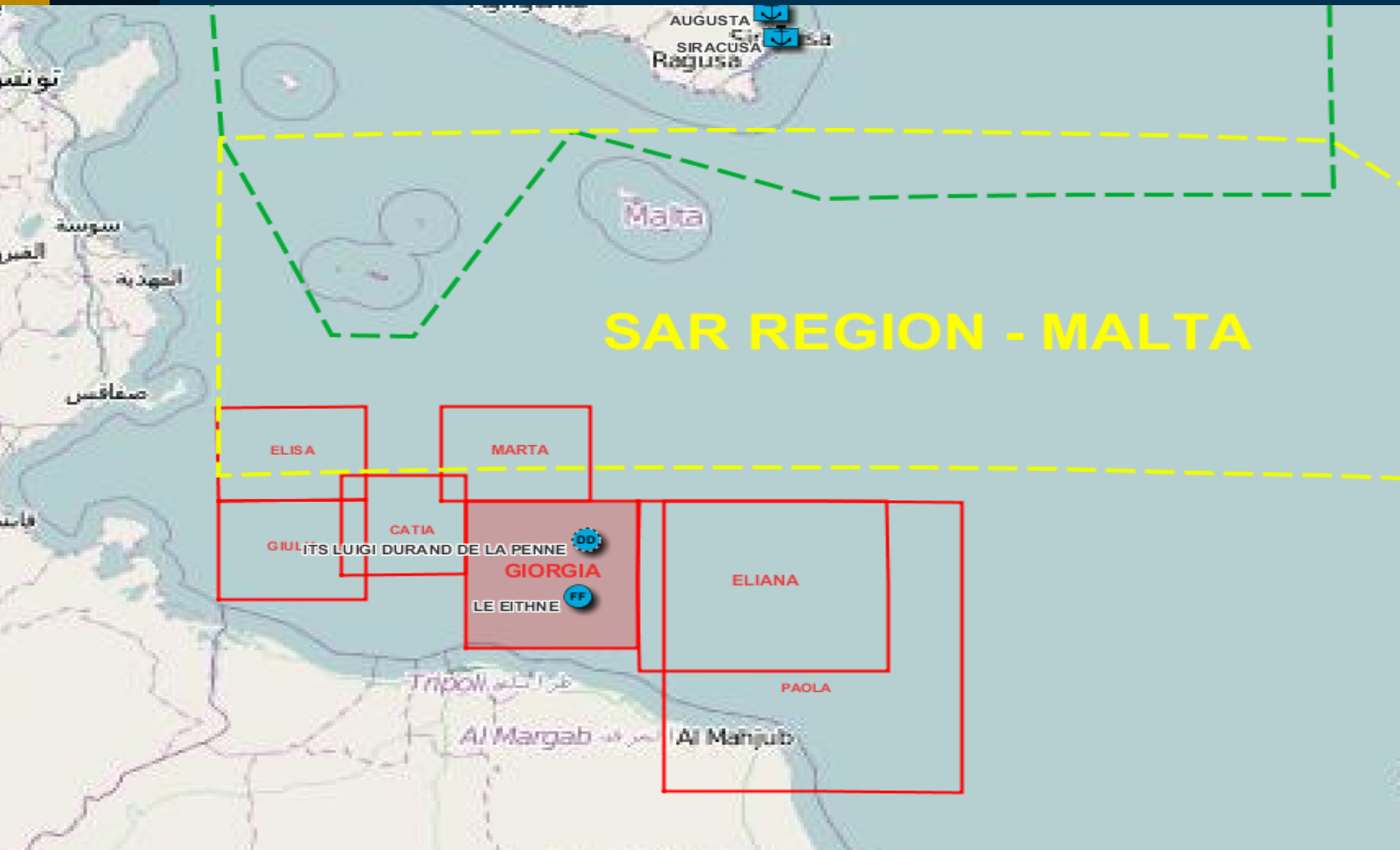
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- > IR Defence Act Sec 348-humanitarian tasks
- > IE Note Verbale & IT Note Verbale
- > OPLAN 1/2015: Op PONTUS
- > Cooperate & Coordinate with ITN CTG –SAR Only
- > Once SAR “declared” deal directly IMRCC
- > Rescued Persons to Place of Safety designated by IMRCC
- > 2017 OP SOPHIA





# AREA OF OPERATION





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





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# SAR – THE REALITY

Defend | Protect | Support







- UNSCRs Arms & Oil Interdiction
- EU - Libyan Coastguard Training & Capacity Building – FRONTEX, IOM, UNHCR
- New Italian Govt & Access to Ports Issue & NGO Activity
- OP SOPHIA of itself will not stop migration





- LE Eithne departed IE 16 May & began patrolling Sector 23 May 2015
- 18 K people saved from drowning to date





- The humanitarian aspect of OP SOPHIA is part of the EU values based approach – this has also evolved due to the Law of the Sea obligation to render assistance





- 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

