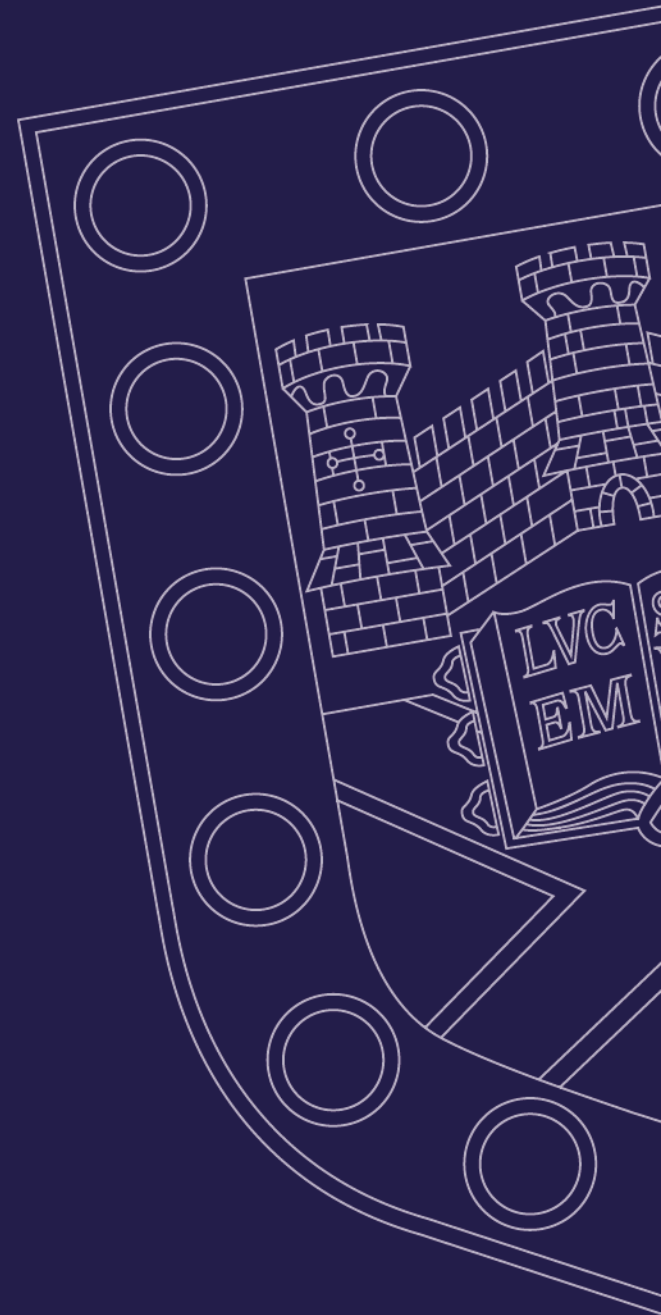


The Refugee Situation and its Effect on Marine Insurance Contracts

Dr. Kyriaki Noussia

k.noussia@exeter.ac.uk



What is Human Migration?

Migration (human) =

- movement of people
- from one place in the world to another
- for purpose of taking-up permanent / semi-permanent residence
- usually across a political boundary



Types of Migration? – Some Definitions

Internal: Move to new home in a state, country, or continent.

External: Move to new home in different state, country, or continent.

Emigration: Leave FROM one country TO move to another

Immigration: Move INTO a new country



People Who Migrate – Some Definitions

Emigrant: Person leaving a country to reside in another.

Immigrant: Person entering a country from another for purposes of new residence.

Refugee: Person residing outside his country of origin due to fear of persecution for reasons of conflict, race, religion, nationality, social group membership or political opinion.



Why Do People Migrate ?

Push Factors: Reasons for emigrating due to difficulty (e.g. war, flood etc.)

Pull Factors: Reasons for immigrating because of a desirable factor (e.g. work, freedom, etc.).

Several types of push and pull factors may influence people in their movements :

- 1. Environmental** (e.g., climate, natural disasters)
- 2. Political** (e.g., war)
- 3. Economic** (e.g., work)
- 4. Cultural** (e.g., religious freedom, education)



Today's Presentation

Focus on refugees → forced to migrate

Legal Regime → re obligations towards them

Implications → for (marine) insurance / maritime law



Global Displacement

Uncontrolled mixed migration by sea

- presents a range of challenges to maritime sector
- quite apart from the humanitarian considerations.

Some Statistics (source UNHCR)

42.500 displaced by conflict / persecution per day (**2014**)

20 million refugees worldwide (**at mid-2015**)

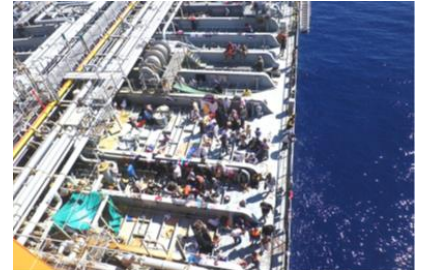
Along **many routes** today

Majority = refugees fleeing conflict or persecution

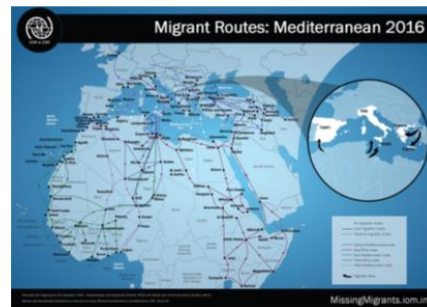
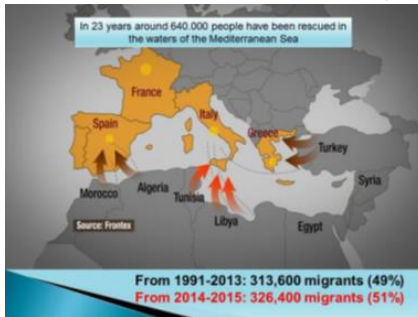
Syria conflict alone → led almost 5 million refugees



Rescue at Sea



- **Merchant Ships:** First Responders
- **Coastal States:** international legal obligations for Search & Rescue (SAR)
- **Statistics:** 1991-2013: 49%, 2014-2015: 51% = In last 2 years more refugees rescued than in past 23 years (*Source: Italian Coast Guard Headquarters*)



Legal Framework at Sea

- UN Convention of Law of the Sea 1982 (**“UNCLOS”**)
- International Convention for Safety of Life at Sea 1974 (**“SOLAS”**)
- International Convention of Maritime Search & Rescue 1979 (**“SAR”**)
- International Convention on Salvage 1989 (**“Salvage Convention”**)



Master's Duties

UNCLOS: (Art. 98)

“render assistance” to persons “in danger of being lost”

“proceed with all possible speed” insofar as “reasonably expected”

Master = only obliged to assist if “he can do so without serious danger to the ship, the crew or the passengers”

SOLAS: (Art. 1, Annex Ch. II, V, Regulation 33)

a ship that is “able to provide assistance” must “proceed with all speed”

the master’s “professional judgement” cannot be interfered with

Salvage Convention: (Art. 2,16)

the master is bound “to render assistance to persons in danger of being lost at sea”



Coastal State's Duties

UNCLOS:

- **Art. 98:** a coastal state must “promote establishment operation & maintenance” of SAR services,
- **GA Resolution 70/235 on Oceans and law of the sea (23 December 2015):**
 - States to ensure masters on vessels flying their flag take steps required by relevant instruments to provide assistance to persons in distress at sea
 - Recognizes that all States must fulfil their SAR responsibilities in accordance with international law, including [UNCLOS]
 - Reaffirms the ongoing need [...] to take effective action to address, to the extent feasible, the issue of unseaworthy ships and small craft



Coastal State's Duties

➤ SOLAS: (Ch. V. Regulation 7)

- “ensure necessary arrangements are made for distress” & “rescue of persons in distress at sea”

➤ SAR: (Ch. 2,3)

- a coastal state must **help those at sea** “regardless of nationality
- where a commercial ship has provided assistance, the coastal state must “as soon as reasonably practicable” **arrange for rescued persons to disembark at “a place of safety”**
- so that the **commercial ship may then proceed “with minimum further deviation”**



Coastal State's Duties

➤ Refugee Convention 1951

- Considerable **responsibility** is **placed** on **coastal states** by the Refugee Convention:

*“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 social or political opinion“.*



Effects on Master Duties

- Delays & changes of route

- In the event that a **master assists refugees/migrants** at sea
- it is **inevitable** that his **ship** will be subject to **delay**.
- **In addition** to sustaining delays
- merchant vessels **may have to change their planned course**
- in order **to rescue and disembark people** requiring assistance



The Doctrine of Deviation

Deviation

- **important doctrine**
- any **unjustified deviation = fundamental breach of contract**
carries serious **consequences for shipowner**
as **other party** may **treat contract** as at **end** &
regard himself **no longer bound** by contract terms

Earlier marine insurance practice: cargo insurance lost if unjustified deviation

Now: policies normally include '**held covered**' clauses allowing **policy extension**
(additional premium, hence also coverage continuation)



The Doctrine of Deviation

Justified Deviation:

Under English law there are **some circumstances** where **deviation** is **justified**:

- deviation to **save human life** or to **answer a distress call**
(*Scaramanga & Co. v Stamp* (1880) 5 C.P.D. 295)
- deviation permitted **under a liberty clause in a c/p**



Cargo Owner: Consequences

SOLAS Chapter V, Regulation 33.1:

Master: → duty to proceed with all speed to assist persons in distress at sea

SALVAGE CONVENTION Article 10.1:

Master: → required render assistance to person in danger of being lost at sea.

=> seems appropriate carrier not liable for losses relating to cargo which result from master having carried out these duties.

QUESTION: → where such losses will fall?

If carrier not liable: → cargo owner will have to bear his own loss unless loss covered by insurance.

Coverage: → depends on type of insurance & cause of loss

Insurer: liable losses proximately caused by peril insured against.



Regarding Cargo Insurance

Cargoes insured on London Market: (Institute Cargo Clauses (A))

INSTITUTE CARGO CLAUSES (A) - EXCLUSIONS

4. In no case shall this insurance cover:

4.5. loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against

Clause 4.5. – purpose:

- **exclude losses** due to fall in market caused by delay.
 - **Cargo arrives intact but value lost** due to delay
- ⇒ **loss not covered** even if delay by risk insured against.

Position more complex if cargo is perishable:

⇒ **Q if loss = recoverable: proximate cause of loss & exclusion operation (4.5)**



Shipowner: Consequences

If shipowner held liable: his insurance position becomes relevant

Many shipowners belong to P&I Clubs:

→ enjoy **3rd party liability insurance**

→ **claims** for cargo loss or damage = **risks which can be insured** in this way

If shipowner is liable for deviation: no recovery under insurance cover

Certain dispensations: where shipowner notifies P&I club of deviation



M.I.A. 1906: s.49

Excuses for deviation or delay.

(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused—

(e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

Commentary:

Deviation: excused for saving life

not for property, except incidentally to saving life

Scaramanga v Stamp (1880) CPD 295; Lawrence v Sydebotham (1805) 6 East 45



I.A. 2015

U.K. Insurance Reform – I.A. 2015

Insurance Act 2015 → enters into force on August 12th, 2016
& grants massive measure of relief to assureds.

Changes benefiting assured:

- insurer **cannot sit back and take purely passive role** in risk assessment
- **threshold for denial of coverage**: significantly higher
- **"deliberate or reckless" action from assured required** → threshold much higher than in M.I.A. 1906
- **If no "deliberate or reckless" action** → insurer obliged to take moderate steps to limit assured's coverage (e.g. claim damages for too low premium)



P&I Clubs

P&I Clubs:

Receive questions from ship owners regarding SAR operations:

- *Costs and expenses incurred as a result of a SAR : recovered?*
- *SAR operations and deviations result in P&I cover being excluded?
(especially re cover for cargo liabilities)*

e.g. THE STANDARD CLUB - Club Rule (Rule 3.4)

“Port and other charges solely incurred for the purpose of landing stowaways or refugees, or others saved at sea, or landing or securing the necessary treatment for an injured or sick person, other than crew, including the net loss to the member in respect of fuel, insurance, wages, stores and provisions incurred for such purpose.”



P&I Clubs

Members should be able to recover:

- Extra cost of bunkers
 - Insurance
 - Wages
 - Stores
 - Provisions
 - Port charges
 - Costs of maintaining those rescued / Costs of security at receiving port
- All of above → must be evidenced
 - For Loss of Hire not covered by P&I Club → need of express contract provision



P&I Clubs

QUESTION / ISSUE:

Whether **SAR operations** and **deviations**:

- result in **P&I cover being excluded**, in particular cover for cargo liabilities

(Vessels often laden with cargo when ordered to assist & deviation may be breach of contract of carriage (under any bill of lading issued))



P&I Clubs

Possible exclusions: e.g. THE STANDARD CLUB - Rule 3:13 (Exclusion):

*“...there shall be no recovery [from the Club] in respect of [cargo] liabilities arising out of...deviation, or a consequence of a deviation, from the contractually agreed voyage, **which may deprive the member of the right on defences or rights of limitation which would otherwise have been available to him...**”*

BUT

Hague-Visby Rules, Article 4:

*“...Any deviation in saving or attempting to save life or property at sea or any reasonable deviation **shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage**, and the carrier shall not be liable for any loss or damage resulting therefrom.”*



Conclusions - General

Crisis as an opportunity for a paradigm policy shift :

- People in distress at sea: need to be rescued
- Tribute owed to: hundreds of merchant ships diverted to rescue refugees
- Unsafe sea migration: symptom of ashore challenges: → need be addressed
- Focus on short-term: not enough
- Need to address: root causes, reduce push factors (e.g. fact that population of sub-Saharan Africa will more than double by 2050)
- Problem root: Youth unemployment & war instability → promote:
 - violent extremism - criminal activities (e.g. piracy / drug abuse)
 - breakdown of social cohesion

NEED: for joined-up thinking & positive action !!!!



Conclusions - The Criminal Business & The Lack Of Legal Ways For Migration

Migrant/Refugee smuggling: 2.500-6.000€(single passage - wooden boat/ship)
Plus: **300€** «first» class (upper bridge) – **200€** one blanket – **100€** 2 water bottles
(Source: Italian Coast Guard Headquarters)

Migration/ Refugee Flow by Sea: business of criminal network

EUROPOL REPORT 02/2016:

“A rough estimate of the yearly turnover of the smuggling of migrants / refugees can be produced by multiplying the approximate number of irregular migrants / refugees reaching the EU, most of whom had to pay to migrants / refugees smuggling networks a high price. Overall, the estimated criminal turnover associated with migrants / refugees smuggling within the EU is between EUR 3-6 billion for 2015 alone.”



Conclusions - The Refugee Situation & Implications For The Maritime Sector

Maritime Sector → challenged by unsafe mixed migration by sea

Need for long term strategy → **focus** → create conditions of increased employment, prosperity & stability

Ways to achieve this → enhance maritime sector
→ promote sustainable blue economy

Effect → positive impact on maritime transportation & marine insurance



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Thank you for your attention !!!

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