MIGRANTS AT SEA:
WHAT ROLE FOR INTERNATIONAL LAW?

This panel was convened at 3:00 p.m., Thursday, March 31, 2016, by its moderator Chiara Cardoletti-Carroll of the Office of the United Nations High Commissioner for Refugees, who introduced the panelists: Siobhán Mullally of University College Cork; Melissa Phillips of the Danish Refugee Council, Non-Resident Fellow, Center on International Cooperation – New York University; Maria Theodorou of the Greek Embassy; and Ralph Wilde of University College London Faculty of Laws.

Refugees and Migrants at Sea:
A View from the Middle East and North Africa Region

By Chiara Cardoletti-Carroll* 

More than one million people crossed the Mediterranean in 2015. In the first ten weeks of 2016—during the supposedly quieter winter months—more than 165,000 people had already attempted the dangerous journey across the Mediterranean.

What is happening in the Mediterranean reflects, from a displacement perspective, the state of the world today and the profound protection crisis it is confronted with. Conflicts in Syria and throughout the world are generating profound levels of human suffering. The scale of forced migration and the responses needed dwarf anything we have ever seen before. There are now more than sixty million people displaced worldwide—more than at any time since the end of World War II. As of mid-2015, there were over 20.2 million refugees in the world, and asylum applications jumped 78 percent over the same period in 2014. The number of internally displaced people now stands at an estimated 34 million people.

How did we get here? Over the past five years, at least fifteen conflicts have erupted or reignited throughout the world: eight in Africa; three in the Middle East; one in Europe; and three in Asia. Old crises continue unabated, with protracted displacement becoming a preoccupying feature of the world displacement crisis. When a refugee spends an average of seventeen years in displacement, it is not surprising that secondary movements—like the ones we are seeing today in Europe—are increasingly becoming a coping mechanism for families seeking a dignified future for their children.

The United Nations High Commissioner for Refugees approaches this not as a “migrant problem,” but as a complex forced displacement/refugee situation requiring sustained protection responses and commitment to address the root causes of flight. While border management is a responsibility of all countries, orderly and protection-sensitive procedures that ensure every individual’s claim can be heard are fundamental in ensuring that the principle of non-refoulement, or the return of an individual to a country where his life or freedom would be threatened, is respected and properly applied. Border closures and pushbacks, including at sea, exacerbate vulnerabilities and sustain “market opportunities” for smugglers. Furthermore, evidence suggests that they do not work. Such tactics just change, and indeed complicate, the dynamics of irregular movements. At sea, all countries are bound by the imperative of assisting those in distress in keeping with the time-honored tradition of rescue at sea. 

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prohibition of non-refoulement also applies here, resulting in an obligation not to disembark people in territories where their rights would be threatened.

As we confront what has been referred to as the “worse displacement crisis in history,” the urge is to do so in a spirit of shared responsibility to a common challenge while preserving the institution of asylum as a central, fundamental anchor in the development of effective regional and global responses.

**When Migrants Make Perilous Sea Crossings: The Causal Role of International Law**

*By Ralph Wilde*

When the fate of migrants at sea is discussed, it is common for the implementation of international law to be invoked as a remedy. The present paper interrogates some of the assumptions about the value of international law that lie behind this. What is at stake in viewing international law as a solution to current challenges relating to migrants at sea?

First of all, it is important to acknowledge how the law sometimes plays a major role in preventing migrants from obtaining protection from human rights abuses. Most fundamentally, the law does this by allowing other states, where protection might be forthcoming, to control their borders, both at their side of these borders, and outside this, at ports of exit—whether directly, through the extraterritorial posting of immigration officials, or indirectly, via the operation of legal sanctions against carriers. So, one reason why people pay smugglers significant amounts of money to travel on unseaworthy vessels is because they are legally prohibited, via these visa restrictions and carrier sanctions, from taking the safer and, usually, much cheaper options of regular sea vessels and flights.

This is where the term “illegal migrant,” much hated by refugee advocates—no person should be labelled “illegal”—reflects the general international legal proposition that a state has a right to control its borders, and individuals who cross such borders in contravention of this are, by international legal definition, “illegal migrants.” The term is helpful in reminding us that international law is directly involved in determining the dangerous and expensive nature of sea crossings.

It might be said, then, that certain state entitlements in international law are very much part of the problem. But there are, of course, other areas of law being invoked as the solution—notably, refugee law and human rights law. Refugee advocates and many international lawyers more generally are calling for states to comply with their obligations here. It is suggested that if compliance happened, things would improve. Indeed, perhaps even the operation of the general legal entitlements of states to control their borders might be somehow modified if these other rules were followed.

The main relevant substantive obligation is that of non-refoulement, the requirement not to send someone back to face human rights abuse, which exists expressly in the refugee law...