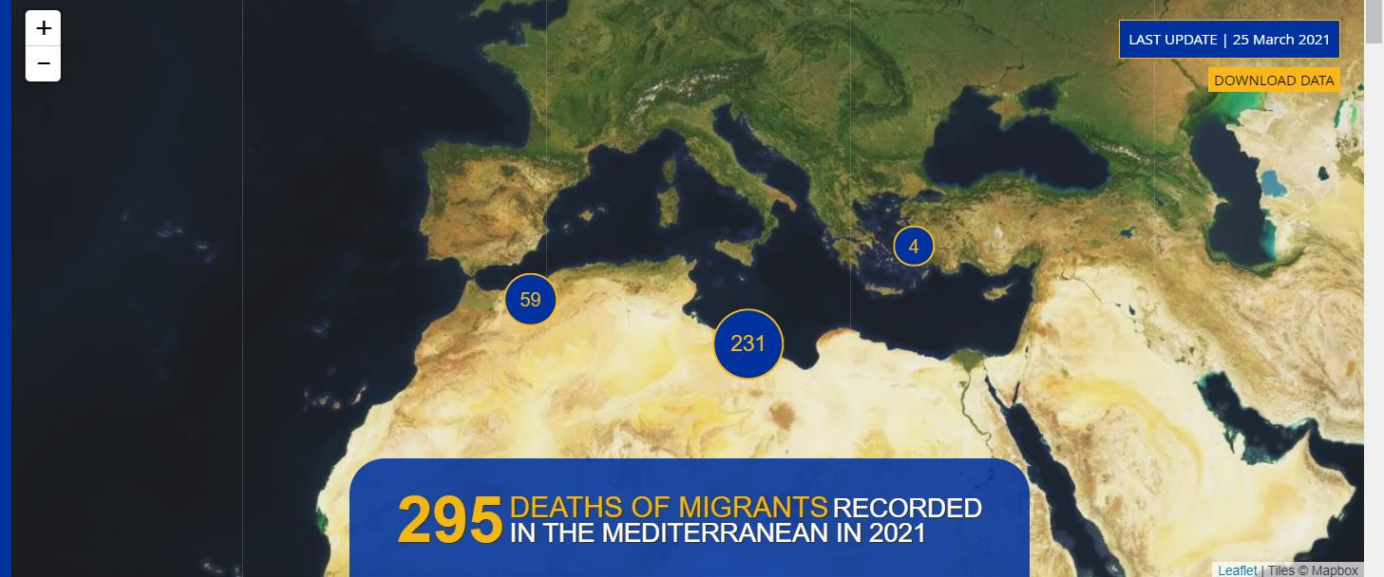
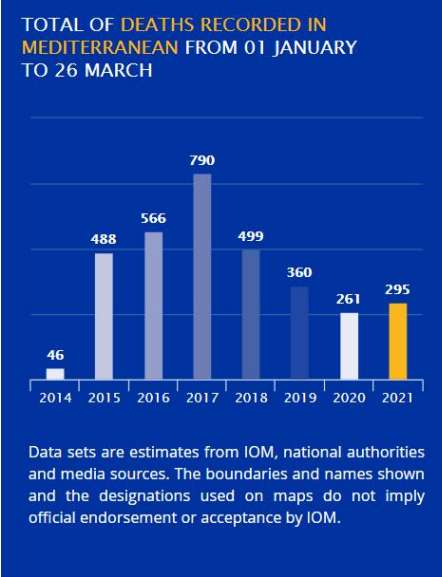


Immigrazione irregolare via mare, tutela della vita umana e organizzazioni non governative

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Università di Milano-Bicocca

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Migration Route

- Central Mediterranean
- Eastern Mediterranean
- Western Mediterranean





AP



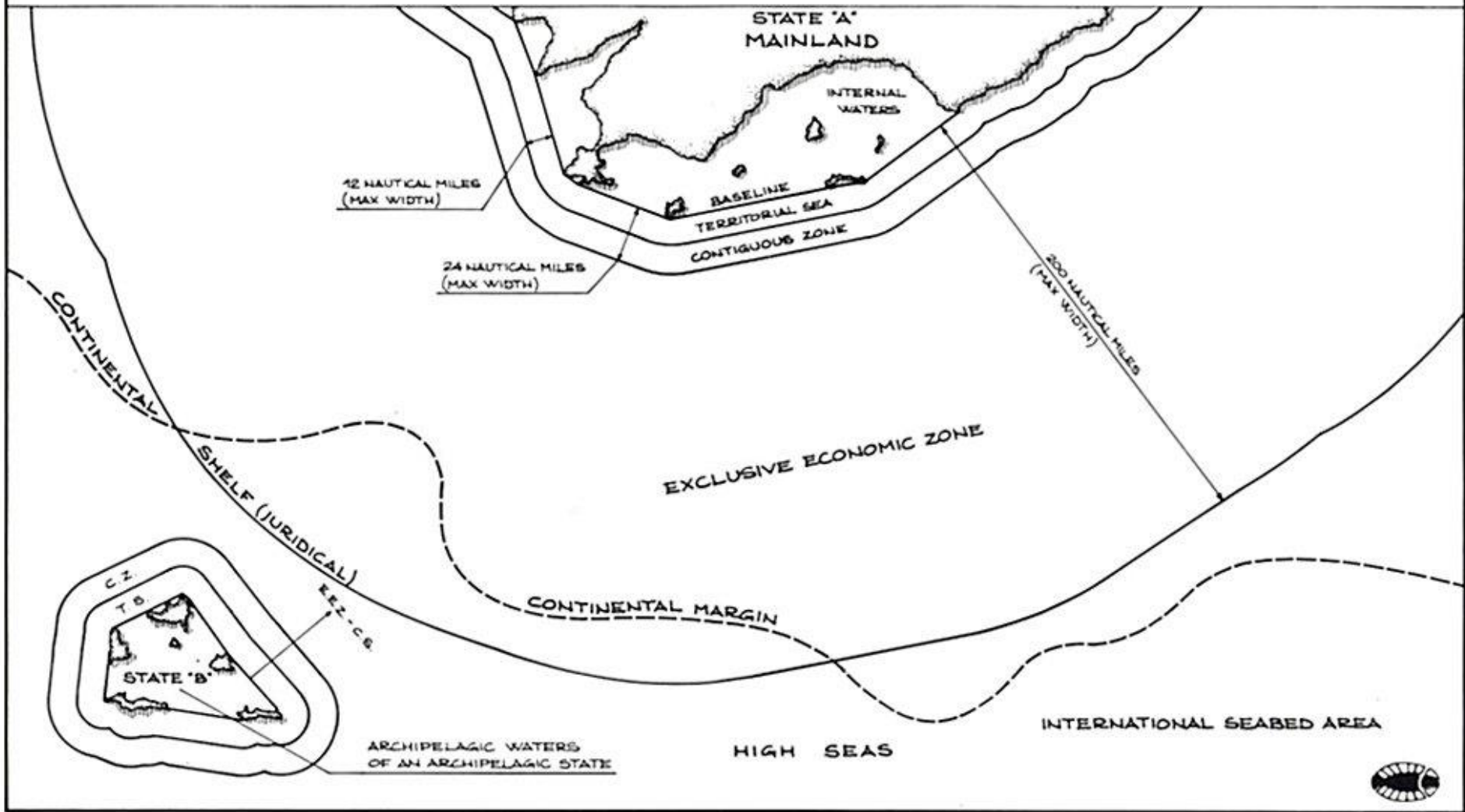


Diritto applicabile

- Diritto del mare
 - Zone marine
 - Giurisdizione dello stato di bandiera
 - Obbligo di salvare la vita umana in mare
- Diritti umani
 - Diritto alla vita
 - Libertà personale
 - Libertà da tortura e altri trattamenti inumani e degradanti (include *non refoulement*)
 - Diritti procedurali
- Diritto dei rifugiati
 - Diritto a chiedere asilo
 - *Non-refoulement*
- Diritto penale transnazionale
 - Obbligo di prevenire e combattere la tratta di esseri umani
 - Obbligo di prevenire e combattere il traffico di migranti

COASTAL ZONES

ACCORDING TO THE 1982 U.N. CONVENTION ON THE LAW OF THE SEA



Obbligo di salvare la vita umana

- Norma consuetudinaria
- Applicazione universale
- Irrilevanza di nazionalità/status/attività
- In tutte le zone marittime
- A tutte le navi (anche navi militari/di stato)
- In tempo di pace e in tempo di guerra
- Comporta obblighi successivi:
 - Trattamento umano
 - Consegna in un luogo sicuro

Ambito di applicazione

- Stato di bandiera
 - Obbligo di regolare
 - Obbligo di *due diligence* 'to deploy adequate means, to exercise best possible efforts, to do the utmost'
- Comandante
 - Obbligo in base a diritto internazionale/nazionale
- Stato costiero
 - Obbligo di predisporre servizi di ricerca e soccorso (SAR services)

Eccezioni

- ‘Without serious danger to the ship, the crew or the passengers’
- Unable
- Unreasonable
- Unnecessary

Interpretazione restrittiva
Onere prova a carico di chi le invoca

IMO Guidelines MSC.167(78)

- Lifesaving
 - All persons in distress at sea should be assisted without delay.
- Preservation of the integrity and effectiveness of SAR services
 - Prompt assistance provided by ships at sea is an essential element of global SAR services; therefore it must remain a top priority for shipmasters, shipping companies and flag States.
- Relieving masters of obligations after assisting persons
 - Flag and coastal States should have effective arrangements in place for timely assistance to shipmasters in relieving them of persons recovered by ships at sea.

Considerazioni di umanità

‘on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’

ICJ, Corfu Channel case

UNCLOS

Art. 98 - 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, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
 - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
2. Every coastal State shall 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.

SOLAS

The master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so.

If the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress and, taking into account the recommendation of the Organization, to inform the appropriate search and rescue service accordingly.

Reg. 33.1

SOLAS

Each Contracting Government undertakes to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around their coasts. These arrangements shall include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary, having regard to the density of the seagoing traffic and the navigational dangers and shall, so far as possible, provide adequate means of locating and rescuing such persons.

Convenzione SAR (2004)

1.3.1 "Search". An operation, normally co-ordinated by a rescue co-ordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress;

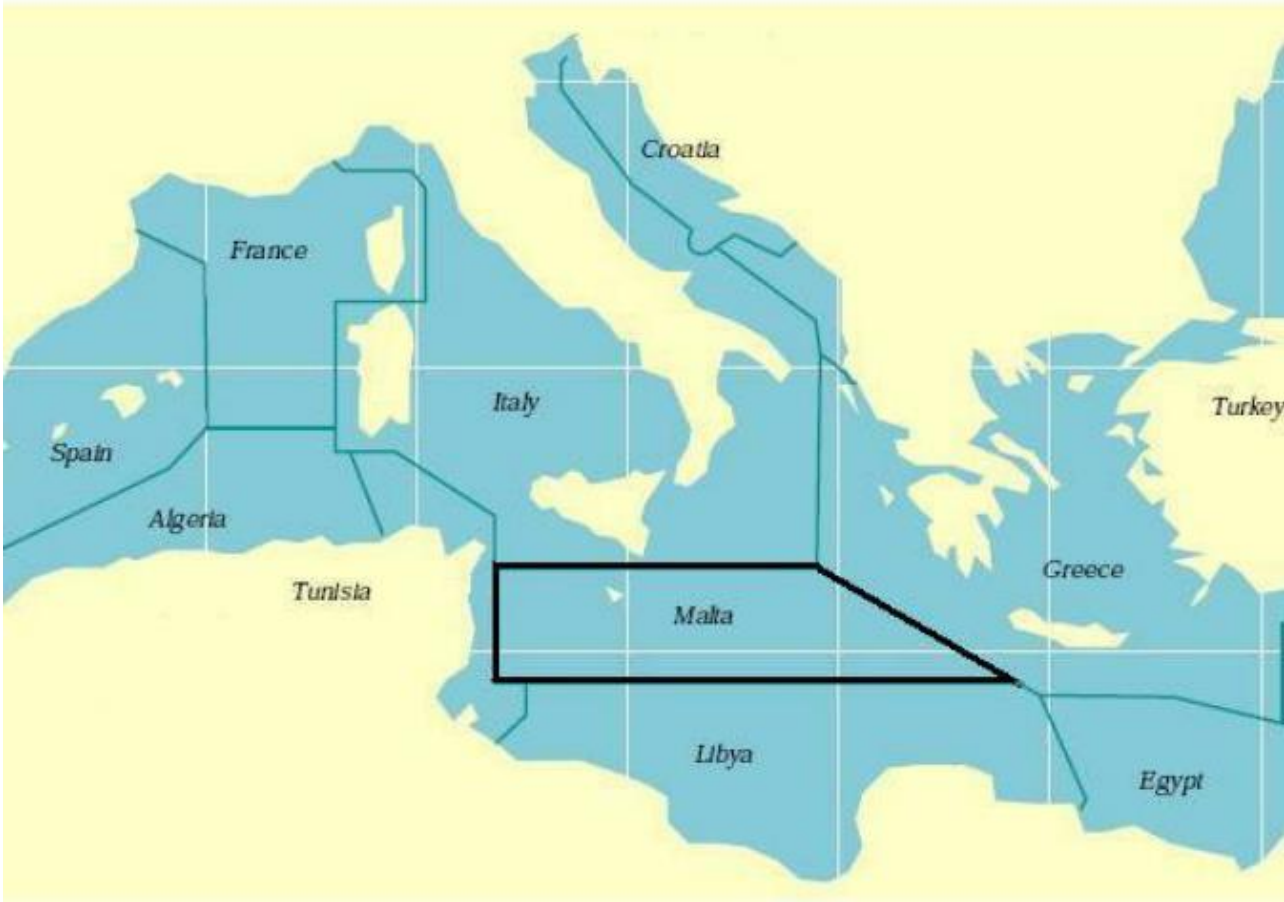
1.3.2 "Rescue". An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety;

Convenzione SAR (2004)

1.3.3 "Search and rescue service". The performance of distress monitoring, communication, co-ordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including co-operating aircraft, vessels and other craft and installations;

Convenzione SAR (2004)

2.1.3 To help ensure the provision of adequate shore-based communication infrastructure, efficient distress alert routing, and proper operational co-ordination to effectively support search and rescue services, Parties shall, individually or in co-operation with other States, ensure that sufficient search and rescue regions are established within each sea area in accordance with paragraphs 2.1.4 and 2.1.5. Such regions should be contiguous and, as far as practicable, not overlap.



Libya Maritime SAR Region



SAR regions

- Dichiarazione:
 - Unilaterale
 - Tramite accordo
- Al fine di salvare la vita umana in mare
- Non attribuiscono diritti ma obblighi

Convenzione SAR (2004)

3.1.1 Parties shall co-ordinate their search and rescue organizations and should, whenever necessary, co-ordinate search and rescue operations with those of neighbouring States.

Convenzione SAR (2004)

3.1.9. Parties shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from the obligations does not further endanger the safety of life at sea. The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation 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 the Organisation. In these cases, the relevant Parties shall arrange for such disembarkation to be effective as soon as reasonably practicable.

Luogo sicuro

- 6.12 A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) is a location where rescue operations are considered to terminate. It is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors' next or final destination.
- 6.15 The Conventions, as amended, indicate that delivery to a place of safety should take into account the particular circumstances of the case. These circumstances may include factors such as the situation on board the assisting ship, on scene conditions, medical needs, and availability of transportation or other rescue units. Each case is unique, and selection of a place of safety may need to account for a variety of important factors.
- 6.17 The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea.

I diritti umani in mare

‘the special nature of the maritime environment relied upon by the Government in the instant case cannot justify *an area outside the law* where ships’ crews are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected’

(ECHR, Medvedyev Judgment, 81)

Non-refoulement

Refugee Convention, Art. 33

Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) 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 group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Divieto di tortura

ECHR, Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Caso *Hirsi Jamaa*

“expulsion, extradition or any other measure to remove an alien may give rise to an issue under Article 3, and hence engage the responsibility of the expelling State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country”.

Ingresso nei porti

«Il n'en est pas de même de cas de nécessité, comme, par exemple, quand un vaisseau est obligé d'entrer dans une rade qui vous appartient, pour se mettre à couvert de la tempête. En ce cas, le droit d'entrer par-tout, en n'y causant point de dommage, ou en le réparant, est, comme nous le ferons voir plus au long, un reste de la communauté primitive, dont aucun homme n'a pu se dépouiller ; & le vaisseau entrera légitimement malgré vous, si vous le refusez injustement».

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