Duty to render assistance
Challenges to Maritime operations

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Introduction
Mass migration and military response

- UN mandated: EU – NATO military response *under peacetime regulations*
- Interplay: Law of the Sea, HR Law, (refugee law)

Refugee Convention, National Law, EU Common Policy

UNESCO, SOLAS, SAR Convention: Duty to render assistance

EU HR Treaty, ECtHR (Hirsi Jamaa), *non-refoulement*
Mass migration and military response (1)

CG like ops, military means

UNSCR 2240:
- Assisting Libya:
- Inspect vessels suspected of human smuggling and – trafficking
- “good faith efforts to obtain consent”
- Disposal if confirmed

Source: Netherlands Maritime Doctrine
Mass migration and military response (2)

[...use *all measures commensurate* to the specific circumstances in confronting migrant smugglers or human traffickers in carrying out activities under paragraphs 7 and 8 and in *full compliance with international human rights law*...]

Full compliance

- 1: Pick-up: Monitor, inspect, apprehend, **save**
- 2: Push-back? : Jurisdiction, human rights, *non refoulement*
- 3: Drop off? : National law; smugglers/traffickers, economic migrant, asylum seeker
Duty to render assistance in practice
### Figures

- **5143 deaths in 2017**

#### TOTAL ARRIVALS BY SEA AND DEATHS IN THE MEDITERRANEAN 2016-2017

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<tr>
<td></td>
<td>Arrivals</td>
<td>Deaths</td>
</tr>
<tr>
<td>Italy</td>
<td>119,310</td>
<td>2,832</td>
</tr>
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<td>(Central Med. route)</td>
<td>(as of 20 December)</td>
<td>(Central Med. route)</td>
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<tr>
<td>Greece</td>
<td>29,595</td>
<td>61</td>
</tr>
<tr>
<td>(Eastern Med. route)</td>
<td>(as of 20 December)</td>
<td>(Eastern Med. route)</td>
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<td>Cyprus</td>
<td>1,067</td>
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<tr>
<td>(Eastern Med. route)</td>
<td>(as of 20 December)</td>
<td>(Eastern Med. route)</td>
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<tr>
<td>Spain</td>
<td>21,663</td>
<td>223</td>
</tr>
<tr>
<td>(Western Med. route)</td>
<td>(as of 20 December)</td>
<td>(Western Med. route)</td>
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<td>Estimated Total</td>
<td>171,635</td>
<td>3,116</td>
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<td>(as of 20 December)</td>
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Data on deaths of migrants compiled by IOM’s Global Migration Data Analysis Centre.

All numbers are minimum estimates. Arrivals based on data from respective governments and IOM field offices.

Source: International Organization for Migration (UN)
Duty to render assistance

- Distress?

Main element of the duty to render assistance
Some other challenges

- Human smuggling vs human trafficking; how to define?
- International mandate; national law (OPCON shift)
- Illegal activity: security frame vs. human rights obligations/limitations
- Involvement of NGO activity
Questions?

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