

Written evidence submitted by Admiral Sir George Zambellas

Op Isotrope

BLUF: UNCLOS obliges rescue at sea, including in French territorial waters, up to the low water mark, which in practical terms can be considered the surf zone. Any maritime organisation, UK, French, military, law-enforcement, voluntary, public or private, is so obliged. Therefore, once at sea, response to a request for assistance results in a legal obligation. Where the rescued are taken, is defined as a place of safety. Shoreline and at-sea intervention opportunities are limited. Increased presence at sea might increase the flow of immigration. The solution lies in breaking the business model, through intelligence-led disruption to profitability and criminal pursuit of senior organisers, all governed by an appetite for coordinated political action to deliver strategic and operational effects.

Background – The Legal Provision

UNCLOS Law of the Sea: Search and Rescue

The United Nations Convention on the Law of the Sea (UNCLOS) creates an obligation to rescue anyone in danger at sea. Article 98 (Duty to render assistance) obliges *Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to his ship, the crew or the passengers: to render assistance to any person found at sea in danger of being lost; 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;*

The right of assistance permits entry into the territorial sea by ships or, under certain circumstances, aircraft without permission of the coastal State for the limited purposes of rescue or assistance. Normally, the baseline from which the territorial sea is measured is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal state.

Options for Intervention:

Agreement for geographical delineation of responsibility: Unless a political arrangement is agreed with the French to wholly delineate geographical responsibility, with national assets allocated accordingly, response to a request for aid is first-come, first-served responsibly, under (UNCLOS). **An option would be to agree a geographic delineation of responsibility.** This is not necessarily a delineation by conventional territorial waters, and could be whatever is operationally practical and efficient.

The delineation of geographic responsibility is problematic: Notwithstanding the responsibilities within UNCLOS Article 98 and the use of existing national boundaries, delineation of the maritime transit areas by geography would not offer significant additional advantages. It would likely emphasise France's responsibility within its own territorial waters, creating the possibility that any vessel that launches

from France is free to transit to U.K. or international waters, without French intervention, before such a vessel declares the need for assistance. In this way, without French exercising an early rescue at sea, for which a call for assistance is required, and without French returning the rescued to a place of safety in France, the likely outcome is the rescue and transfer to U.K. territory.

Actions to stop sailing: Given the ambition of the smugglers, the vulnerability of the smuggled and the lengthy coastline, action by French authorities to stop sailings is extremely difficult. Even with a significant French operational effort, in intelligence, surveillance, and reactive forces, the window of intervention to stop a sailing is very narrow.

The UK can offer to support the French, through the contribution of additional intelligence, surveillance and reactive forces. Such a contribution is operationally possible but politically difficult. However, the basic challenge of preventing a sailing remains unchanged.

A significant increase in patrolling at sea in ships or aircraft, manned or unmanned, of any flag, military or civilian, does increase the opportunity to effect an early rescue in notoriously busy waters, with high density of shipping and strong tidal stream conditions. But it does not change the basic responsibilities in UNCLOS Article 98, nor is it likely to disrupt or reduce the scale of immigration.

Nevertheless, some **seaborne intervention options** include:

- High definition surveillance of French coastline, either (by agreement) in French territorial airspace and waterspace, or from outside it, to create critical information. The transfer of this data, from surveillance, can be passed 'privately' to French authorities, or passed 'publicly', supporting actionable intelligence, and an audit trail, in relation to safety.
- Return of the rescued, from French territorial waterspace, or outside it, back to French beaches, with or without French political support. This is a robust political stance, but probably acceptable under UNCLOS, as France is a place of safety.
- Return of the rescued to another nation (not being the safe place of France or the UK). This is impractical and unlikely to be a valid option in international law.

Therefore, the critical issue is to prevent the transition to a seaborne opportunity.

Physical intervention in the seaborne launch opportunity. Physical intervention is preventative action to stop a sailing by physical restraint of persons and/or the vessel, or by damage to the vessel or its propulsion, such that it cannot leave the shore, but without creating physical risk to the persons.

This can be achieved by law-enforcement authorities, but requires the authority to prevent the launch of a vessel. The challenge of achieving this in human resource terms has been discussed above.

An option is to supplement physical human intervention with unmanned (but human-controlled) equipment, through the use of air or waterborne drones. In practical terms, this constitutes, firstly, unmanned surveillance within French territorial seas and airspace (most likely operating at low level so as to minimise air safety risk) and, secondly, unmanned physical intervention by damaging vessels or propulsion systems, before or at deployment in to the sea, rendering them unusable. This untried option would have to demonstrate the necessary benefits in concert with robust human intervention, and in complex presentational and political circumstances.

Options for preventing the transition to a seaborne opportunity

Increasing the at-sea assets, vessels or aircraft, from any source, will increase safety at sea by creating additional surveillance and rescue opportunities, but are unlikely to deter, delay or reduce sailings. Arguably, the more assets that are at sea, or in the air, the safer the crossings become. The business model is not significantly disrupted by at-sea intervention, unless the rescued are returned to French territory from where they are unable to re-attempt a crossing.

And, the at-sea intervention is also the final part of the delivery contract with the smugglers. Money has already changed hands, and into the hands of the organisers, and has likely passed up the business chain.

There are some parallels with the intervention experience in the East African coastal piracy. Notwithstanding the significant effect of embarked armed guards on vessels to prevent piracy, the breaking of the business model has to be 'ashore', removing the incentives for profitability, and increasing the possibility of criminal prosecution for the 'seniors' in the business model, and not the 'junior' at-sea operators.

Intelligence-led, disruptive, multinational and multi-agency coordination is key, so that timely action is possible, and prosecution and conviction of senior organisers is achieved. A real or virtual coordination centre is sensible, and there are many such models in existence, including in the counter-narcotics and counter-piracy world. **This requires shore-based, not sea-based resources, and collective political will.** Such an approach is less visible, publicly and politically, but is likely to be the more effective.

24 January 2022

Admiral Zambellas was First Sea Lord from 2013 to 2016. He was architect of an ambitious agenda in Naval re-armament, in the face of Defence cuts. He accrued senior command and operational expertise at sea and ashore, from Sierra Leone to Iraq and Afghanistan. He has strategic and political expertise, as a 4 NATO Commander, transatlantically, within Whitehall, and across the global maritime community. He now has a portfolio of commercial roles, executive and advisory, in security, in leading edge technologies, in robotics, artificial intelligence, encryption and cyber security and satellite launches.*