



# Does international maritime law forbid turning back the boats?

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Illegal Immigration: MW495

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1. The Home Secretary has reportedly instructed the Border Force to turn away migrant boats from British waters. The question of whether this is legal often brings in discussion of the interpretation of maritime law. For example, the French government has a divergent interpretation of this compared with the UK, stating that the coastguard is barred from intercepting boats unless those on board request assistance. However, evidence provided by legal experts to a House of Commons Parliamentary Committee<sup>1</sup> suggests that there is provision in international maritime law to stop unseaworthy boats which are not making innocent passage, and to return them to a place of safety such as France.
2. The first key provision is paragraph 3.1.9 of the [International Convention on Maritime Search and Rescue \(1979\)](#), otherwise known as the **SAR convention**. Under this, the UK has responsibility for arranging delivery of people in an unsafe craft to a place of safety<sup>2</sup>. There is no obligation under international maritime law for the country that asylum seekers are trying to enter to tolerate them going ashore there<sup>3</sup>.
3. This would not preclude migrants found in British waters being taken to France given that France is a safe country which, for example, as an EU member state, is required by Article 2 of the Treaty on European Union to respect human rights. For an example of how this situation has been addressed outside of Europe, the Australian Maritime Powers Act 2013, amended in 2017, states that a maritime officer may detain a person on a vessel and take the person to a place outside Australia. Section 72 of that Act partially provides for Australia's implementation of the SAR convention, in terms of setting out a requirement that when Australian officials take somebody to another location, they need to ensure that it is essentially a place of safety. That is a fundamental component of the search and rescue obligations: that when someone in distress is rescued they are taken to a place of safety.
4. Another relevant provision in maritime law is the [International Convention for the Safety of Life at Sea \(SOLAS\)](#)<sup>4</sup>. Unseaworthy boats that are crossing in this manner breach fundamental principles of safety of life at sea based on the SOLAS Convention. French or British authorities have the power to intervene to avert such a risk to life. Regulation 19(c) of SOLAS means states can impede the passage of a vessel until it can continue its voyage without danger to the ship or the persons on board. That article is not related to unsafe practices associated with smuggling of migrants, but has a very heavy bearing on this.
5. Also relevant is the [UN Convention on the Law of the Sea \(UNCLOS\)](#)<sup>5</sup>. Although this does include a duty to rescue anyone in distress<sup>6</sup>, it is also important to look at Article 17, under which ships of all states are able to enjoy 'innocent passage' through a state's territorial waters. As per Article 19(2)(g), passage is

not deemed to be 'innocent', for example, if the vessel is unloading people in violation of immigration laws. Following on from that, Article 25 says the state may take **'necessary steps'** to prevent passage of those vessels whose passage is not innocent<sup>7</sup>. As MP Tim Loughton has said: **"Clearly a migrant boat full of people coming from France, which is not a country of danger, would... not have the right to land in the UK, so they would not be under innocent passage."**

6. Suggestions, for example most recently by French government ministers, that violence is increasingly involved in these crossings add further weight for the belief that the passage of such vessels is not 'innocent' (see our [piece](#) and report by [independent watchdog](#)). After all, it is a well-established fact that organised criminal gangs and people smugglers have a central role in these crossings and are profiting from them hugely, something that the National Crime Agency noted in May 2021<sup>8</sup>.

7. In addition, as Mr Loughton has stated: **"The occupants of those boats are committing two crimes. One is trying to enter the UK illegally and the second is paying money to organised crime, both of which provide grounds for those boats to be intercepted and the occupants apprehended in as safe a way as possible and returned to France."**

8. Mr Loughton added: **"International maritime lawyers gave us evidence that the French authorities are entitled within international maritime law to intercept boats in the water and return the passengers to French territory or to allow Border Force to return the migrants to French territory if they are picked up in British territorial waters."**<sup>9</sup>

9 September 2021

## Notes

1. For example, see testimony to the House of Commons Home Affairs Committee on 11 and 18 November 2020, URL: <https://committees.parliament.uk/oralevidence/1195/html/> and <https://committees.parliament.uk/oralevidence/1242/html/>
2. International Convention on Maritime Search and Rescue, URL: [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)
3. For example, see the view of legal expert Alexander Proelss. 'Are pushbacks legal?', URL: <https://www.dw.com/en/european-refugee-policy-are-pushbacks-at-sea-legal/a-54080544>
4. International Convention for the Safety of Life at Sea, URL: <https://arquivo.pt/wayback/20150109051954/http://www.imo.org/OurWork/Legal/Documents/Implications%20of%20UNCLOS%20for%20IMO.pdf>
5. United Nations Convention on the Law of the Sea (UNCLOS), URL: [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)
6. See Article 98 of UNCLOS, which states that '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**; Separately, those defending the ongoing transport of irregular migrants to the UK point to the International Convention on Maritime Search and Rescue which makes plain that responsibility lies with the state in whose waters the rescue takes place. This states that 'the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Party responsible for the SAR region in which the survivors were recovered.' URL: [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)
7. In addition, the [Migrant Smuggling Protocol](#) supplementing the UN Transnational Organised Crime Convention (2000) foresees interventions at sea and taking necessary measures when a vessel is known to be engaged in smuggling activities. Such provisions recognise that states have legitimate interests in protecting state sovereignty from violation by organised crime groups. Indeed, the UN has emphasised is the responsibility of coastal states of departure (e.g. France in this case) to intercept smuggling vessels before they embark on sea journeys.
8. See NCA, National Strategic Threat Assessment, May 2021, URL: <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/533-national-strategic-assessment-of-serious-and-organised-crime-2021/file>
9. Home Affairs Committee oral evidence session transcript, July 2021, Q232, URL: <https://committees.parliament.uk/oralevidence/2602/html/>