

# Is there a right to disembark? Clarifying contested law of the sea concepts through international human rights law and refugee law

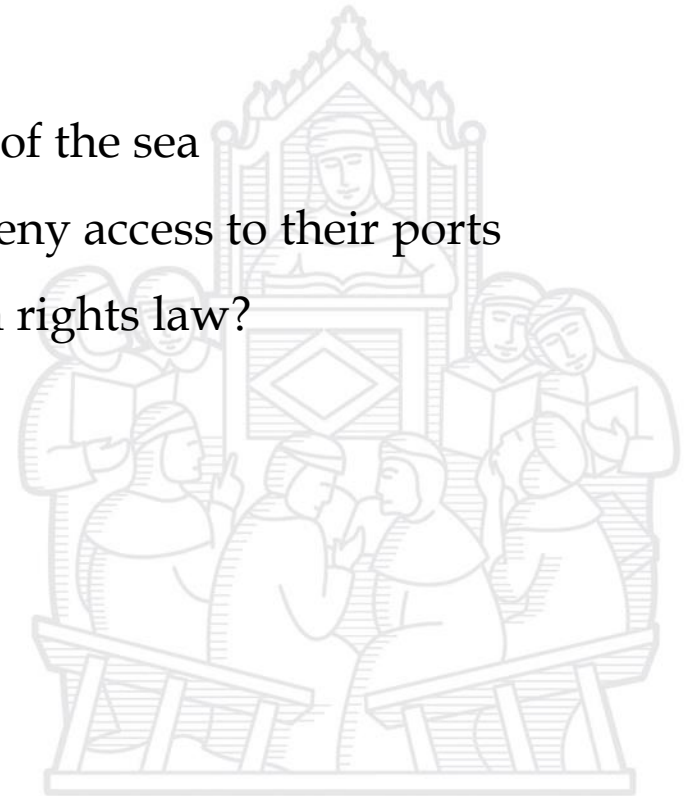
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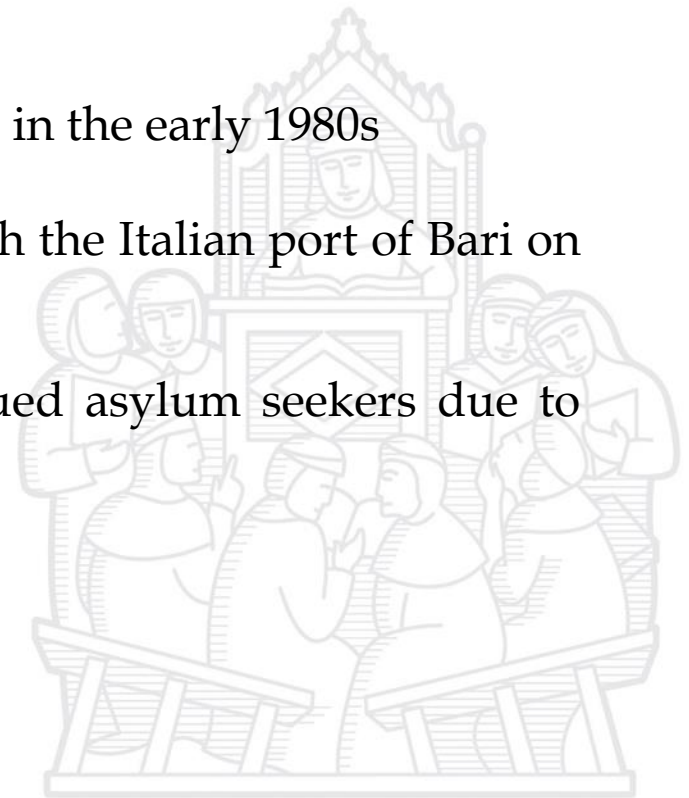
# Outline

- The origin of the problem
- The closure of ports under the international law of the sea
- Exceptions to coastal States' sovereign right to deny access to their ports
- A right to disembark under international human rights law?
- ... and refugee law?
- Conclusion



# The origin of the problem

- Vietnamese “boat people” in 1975
- Cubans and Haitians across the Carribean Sea in the early 1980s
- 1991: eighteen thousand Albanian citizens reach the Italian port of Bari on board of the cargo ship *Vlora*
- Today: problem with disembarkation of rescued asylum seekers due to Dublin Regulation



# The closure of ports under the international law of the sea

- coastal States have the power to close their ports and refuse access to territorial waters to foreign ships → V. LOWE, *The Right of Entry into Maritime Ports in International Law*, 1977, pp.597-622
- Article 2(3) UNCLOS: “[t]he **sovereignty over the territorial sea** is exercised subject to this Convention and to other rules of international law”
- ICJ: “[t]he basic legal concept of State sovereignty in customary international law [...] extends to the **territorial waters and territorial sea** of every State [...] It is by virtue of its sovereignty that the coastal State may regulate access to its ports” → *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States), Merits, Judgment of 27 June 1986, §§ 212-213



# Exceptions to coastal States' sovereign right to deny access to their ports

- Article 18(2) UNCLOS: the concept of innocent passage “includes stopping and anchoring [...] in so far as the same are incidental to ordinary navigation or are rendered necessary by **force majeure or distress** or for the **purpose of rendering assistance to persons, ships or aircraft** in danger or distress”.
- exceptions contained in international agreements between the flag State and the coastal State
- multilateral treaties e.g. Convention and Statute on the International Regime of Maritime Ports, Article 2: “[s]ubject to the principle of reciprocity [...] every Contracting State undertakes to grant the vessels of every other Contracting State equality of treatment with its own vessels [...] in the maritime ports situated under its sovereignty or authority [...]”.



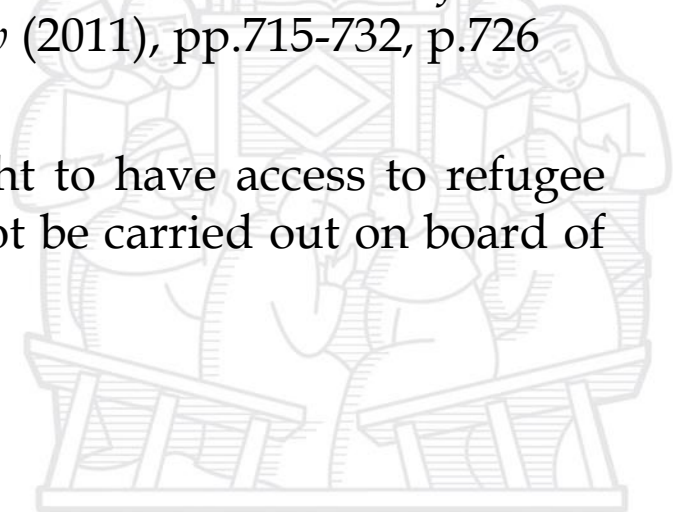
# A right to disembark under international human rights law?

- Interdiction decree sufficient to trigger Italian jurisdiction pursuant to Article 1 of the European Convention on Human Rights?
- Possibility that an interdiction to enter territorial waters may trigger State jurisdiction under human rights law accepted by the ECHR in *Women on Waves v. Portugal*
- Positive obligation to protect the life and safety of the persons on board (if jurisdiction of coastal State is triggered)
- “Functional jurisdiction” model by Moreno-Lax → *any* exercise of public powers by means of which the State explicates its functions may trigger the jurisdiction of such State
- Milanovic → “the notion of jurisdiction in human rights treaties relates essentially to a question of fact, of actual authority and control that a State has over a given territory or persons” → M. MILANOVIC, *Extraterritorial Application of Human Rights Treaties – Law, Principles, and Policy* (OUP: 2011) 160-63, 168-69 and 193



# A right to disembark under refugee law?

- “although the principle of *non-refoulement* does not provide an absolute right to disembark, its practical implementation by coastal States will usually require a **temporary granting of access to a territory** until such time as the refugee status of the rescuees can be determined” → K. S. O’BIEN, *Refugees on the High Seas: International Refugee Law Solutions to a Law of the Sea Problem*, in *Goettingen Journal of International Law* (2011), pp.715-732, p.726
- Does the right to seek asylum include the right to have access to refugee status determination procedures? (which cannot be carried out on board of a rescue vessel)





Thanks for the  
attention!



Any questions?



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