Explainer: the law of the sea and asylum seekers

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Abstract
Prime minister Tony Abbott said on Monday he expects Jakarta to take responsibility for the asylum seekers that Australian authorities rescue in Indonesia’s search and rescue zone. He claims this is the international law of the sea – but this is only half right.

What the law of the sea actually says on this issue can be found in the 2006 amendments to the International Convention on Maritime Search and Rescue, known as the SAR Convention. The amendment to Chapter Three of the convention says the country responsible for the region in which the search and rescue takes place shall take responsibility for co-ordinating efforts to have survivors disembarked from the assisting ship and delivered to a place of safety as soon as possible. This includes ensuring the rescuing vessel suffers minimum deviation from its intended voyage.

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What are Australia’s legal and moral responsibilities under the relevant conventions and the law of the sea to rescue and ‘turn back’ asylum seeker boats? AAP

Prime minister Tony Abbott said on Monday he expects Jakarta to take responsibility for the asylum seekers that Australian authorities rescue in Indonesia’s search and rescue zone. He claims this is the international law of the sea – but this is only half right.

What the law of the sea actually says on this issue can be found in the 2006 amendments to the International Convention on Maritime Search and Rescue, known as the SAR Convention. The amendment to Chapter Three of the convention says the country responsible for the region in which the search and rescue takes place shall take responsibility for co-ordinating efforts to have survivors disembarked from the assisting ship and delivered to a place of safety as soon as possible. This includes ensuring the rescuing vessel suffers minimum deviation from its intended voyage.

The convention says nothing about the country itself accepting the people rescued. So Abbott is entirely wrong when he goes on to say that:

…the normal international law is that if you are rescued in a country’s search and rescue zone, that country has an obligation to take you. You can go to the nearest port. And the nearest port is normally in the country whose search and rescue zone you’ve been picked up in.

Australia has accepted a responsibility for a very large search and rescue region stretching well out into the Indian Ocean, up to within 600 nautical miles of Sri Lanka, and south to Antarctica. If Abbott was correct on this point, we would have the ludicrous situation where
Australia was obliged to accept refugees in distress picked up anywhere in that large area. And the “nearest port” may not be in Australia.

**Search and rescue**

A search and rescue region (SRR) by itself is not a zone of maritime jurisdiction where a country has any exclusive rights or obligations. A country does not have exclusive jurisdiction over search and rescue in its national SRR, nor is it bound to accept people found in distress at sea within its SRR. Rather, it is everyone’s responsibility to save lives at sea.

This may explain why some countries in the region have been reluctant to ratify the SAR convention, which *does* come with responsibilities. Indonesia was reluctant to ratify the convention and only *did so* last year. One of the reasons for the delay was its potential inability to fulfil any binding responsibility to act in its SRR due to a lack of resources.

In search and rescue situations, there are legal and moral responsibilities. In the case of tragedies in the waters between Australia and Indonesia, both countries have a moral responsibility to act – if they are able to. Both countries also have legal responsibilities to act in their respective search and rescue regions, as parties to the SAR convention.

The law of the sea has many grey areas when it comes to responsibilities for looking after persons found in distress at sea. That’s not necessarily a bad thing, as it would be unconscionable to try to set strict obligations. Also, if obligations were too strict, countries would simply not ratify the relevant international agreement.

**International co-operation**

Australia has been in a tense diplomatic stand-off with Indonesia over asylum seeker boats. AAP/Dan Peled
The one thing that international law is crystal clear on is that neighbouring countries should co-operate on search and rescue missions to save lives at sea.

Tragically, many lives were lost in the waters between Indonesia and Australia before the two countries established effective co-operation, including Indonesia becoming party to the SAR convention.

But recent events suggest this may be falling apart. Much of the blame for this must rest with the Abbott government. The “stopping the boats” policy, now implemented through Operation Sovereign Borders, always suggested some disregard for Indonesia’s sovereign sensitivities, as well as a preparedness by Australia to act unilaterally.

Recent pronouncements by Abbott and immigration minister Scott Morrison – who remarked that he saw “no rhyme or reason” for Indonesia to refuse to accept returning asylum seeker boats – only make the situation worse.

These pronouncements attribute obligations to Indonesia that are not so clear under international law and assert rights to unilateral action by Australia. Instead, a co-operative approach should be the “name of the game”.