

AMERICAN UNIVERSITY OF BEIRUT

KEEPING SOLIDARITIES AT BAY:  
THE EUROPEAN UNION'S SYSTEMATIC OBSTRUCTION  
OF CIVILIAN SEARCH AND RESCUE ORGANIZATIONS  
IN THE CENTRAL MEDITERRANEAN SEA  
BETWEEN 2016 AND 2023

by  
GESINE KLIPSTEIN

A thesis  
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for the degree of Master of Arts  
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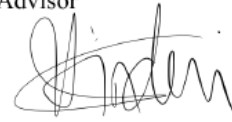
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# ABSTRACT OF THE THESIS OF

Gesine Klipstein for Master of Arts  
Major: Public Policy and International Affairs

Title: Keeping Solidarities at Bay: The European Union's Systematic Obstruction of Civilian Search and Rescue Organizations in the Central Mediterranean Sea between 2016 and 2023

This master's thesis critically analyzes the increasingly adversarial stance adopted by state actors within the European Union (EU) towards Search and Rescue Civil Society Organizations (SAR CSOs) operating in the Central Mediterranean between 2016 and 2023.

Rooted in the theoretical frameworks of politicization, securitization, criminalization, and techno-morality, this study further examines the intricate mechanisms that drive the EU's deterrence policies vis-à-vis migrants and pro-migrant CSOs.

By analyzing the cases of three different SAR CSOs, namely Jugend Rettet, Sea-Watch, and Sea-Eye, this thesis reveals the multifaceted nature of the EU's obstructionist measures aimed at their solidarity work, primarily through the detention of rescue vessels. The *instruments of insecurity* employed by the EU against these SAR CSOs include bureaucratic techniques, arbitrary policing and legal tactics. The impact of the EU's arbitrary detention of SAR vessels is examined in detail, revealing their far-reaching effects in undermining civil society initiatives and hampering life-saving operations at sea.

By introducing the innovative [SAR Ship Detention Map](#), this research then provides a concrete visual representation of the recurring obstacles faced by SAR CSOs due to the actions of EU Member States. The purpose of this visualization is not only to increase understanding and awareness, but also to serve as a long-term resource for SAR CSOs beyond this thesis.

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## ABBREVIATIONS

AS	Aberystwyth School
CFR	EU Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
CS	Copenhagen School
CSO	Civil Society Organization
ECHR	European Court of Human Rights
EUNAVFOR MED	European Union Naval Force – Mediterranean
FA	Forensic Architecture
FO	Forensic Oceanography
IHRL	International Human Rights Law
IL	International Law
IML	International Maritime Law
IMO	International Maritime Organization
IR	International Relations
IOM	International Organization for Migration
MRCC	Maritime Rescue Coordination Center
PS	Paris School
PSC	Port State Control
RCC	Rescue Coordination Center
SAR	Search and Rescue
SOLAS	International Convention for the Safety of Life at Sea
UDHR	Universal Declaration of Human Rights
UNCLOS	United Nations Convention on the Law of the Sea
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council

# CHAPTER 1

## INTRODUCTION

Since 2014, as the number of migrants crossing the Mediterranean to Europe in search of refuge and safety increased, the number of search and rescue civil society organizations (SAR CSOs) grew steadily in parallel. Against the backdrop of global migration dynamics, the EU's attitude towards those assisting people on the move in the Mediterranean has undergone remarkable changes, ranging from early expressions of solidarity to subsequent criminalization measures.

Going along with the declaration of a “migration crisis”, the EU and its member states have treated irregular migration as a threat to their security. This development testifies to the resurgence of the EU's exclusionary border policies, the roots of which go back more than 40 decades. Moreno-Lax (2017) notes that by 2015, the EU's approach to Mediterranean migration and responsibility sharing represented a clear policy shift from a humanitarian to a securitarian approach, with increasingly militaristic enforcement tactics.

As a result, the EU adopted a new strategy to manage and control migration in the region (Moreno-Lax 2017). The Union and its member states began offering incentives to third countries, such as Libya and Turkey, to help reduce the number of irregular migrants crossing the sea (Cuttitta 2022). However, these states have poor records of respecting human rights, meaning that the EU's agreements with these nations violate the international right to non-refoulement and the right to seek asylum, laws that have been recognized since the end of World War II (Baldwin-Edwards & Lutterbeck 2019).

Current research suggests that there are three broad strategies that the EU has adopted to address irregular migration. These strategies include policy development, public perception management, and practical enforcement (Balzacq et al. 2016). The Schengen Treaties (1985, 1990) and the Dublin Treaty (1990) form the basis of the EU's current approach to migration. Baldwin-Edwards and Lutterbeck (2019) note that these treaties, with their subsequent but slight modifications, were designed from the outset to prevent migrants and refugees from entering EU territory.

Scholars such as Hintjens & Bilgic (2019) argue that these tactics, such as detaining migrants at entry points and expelling them to unsafe areas, amount to war by proxy. These tactics and operations are often highly publicized, manipulating public perceptions of migrants along cultural and often racial lines. The spectacularization of border apprehensions fuels the "myth of invasion" (Walters et al. 2022:214).

As a result, mobility activism and solidarity with migrants and refugees have become highly politicized (Swyngedouw, 2020). This, in turn, provides political justification for the criminalization of European maritime solidarity movements that assist migrants in reaching and entering EU territory (Kosmatopoulos 2019; Dickson 2021). The work of these organizations, while initially praised for the assistance they provided to Frontex, has been increasingly restricted by EU securitization policies and in some cases outright criminalized. (Cusumano 2019; Mainwaring & DeBono 2021).

However, as the issue of irregular migration and asylum-seeking has received preferential attention from the academic world, there is a growing need to examine the practical measures that the EU and its member states are using, and may use in the future, to criminalize SAR CSOs in the Central Mediterranean. Therefore, this research aims to analyze how the EU manages to consistently and without consequence tighten

restrictions and reduce the space of activism for pro-migrant solidarity networks in the Central Mediterranean.

To do so, this research focuses on identifying the different systematic strategies that the EU uses to continuously block solidarity flows in the Central Mediterranean - tactics that this thesis will refer to as *instruments of insecurity*.

## **1.1. Definition of Terms**

Some of the generic terms used throughout this thesis will now be explained and defined in order to avoid any potential confusion. Since there are many different interpretations of the following terms, it should be emphasized that the ones chosen are by no means exhaustive, but are considered appropriate for the purposes of this thesis.

### ***1.1.1. Asylum seeker/s***

The term “asylum seeker” is used to refer to an individual who, upon arrival in another country, has formally requested protection and is awaiting a decision on his or her legal status. However, it is recognized that this term is closely associated with European hierarchies of so-called “migration management”. Therefore, it will not be used extensively.

### ***1.1.2. Civil Society Organization/s***

Civil Society Organization/s (CSO/s) is the term that will be used throughout this thesis to refer to organizations that operate independently of governmental bodies and act as pillars of voluntary and collective efforts to address the challenges faced by migrants, particularly those crossing the Mediterranean Sea. In addition to search and

rescue (SAR) activities, these CSOs also advocate for human rights and for EU states to comply with international maritime and refugee law. CSOs can also be characterized by different forms of activism, grassroots mobilization and other solidarity-related activities.

### ***1.1.3. Migrant/s***

In the frame of this work, the term “migrant” will be used to refer to all individuals who cross international borders in order to move to another location for a variety of reasons. It is important to note that this term is used in a neutral way, with no intention of creating negative connotations and no desire to distance this thesis from the individuals it refers to.

While some actors make distinctions between migrants by categorizing them as “regular” or “irregular”, this thesis does not support attaching these adjectives to people.

In this regard, it is crucial to understand that even though migrants may cross the Mediterranean under irregular conditions, EU member states are still obliged to protect their human rights and are not allowed to impose inhumane restrictions or penalties on them if they arrive “directly from a territory where their life or freedom was threatened” (UNHCR 1951:31, Art. 31, §1).

Furthermore, in this thesis migrants will not be referred to as “illegal” migrants or immigrants – a label that is regularly used in EU legislation – because this term carries an unquestionable criminal connotation and can be detrimental to ensuring legal rights to migrants, especially when they are not in possession of their legal documents.



#### ***1.1.4. Pullback/s***

In this thesis, the term “pullback” refers to any illegal action taken by the authorities of an exit country to prevent migrants from leaving. In the Mediterranean, this often includes the actions of coast guards and other security forces who intercept refugee boats at sea and take them back to the country of departure, depriving them of their right to seek asylum in another country and violating the right to seek asylum and the principle of non-refoulement<sup>1</sup>.

#### ***1.1.5. Pushback/s***

As for the term “pushback”, it refers to any illegal action taken by the authorities of a country of arrival to prevent migrants from entering its territory. In the Mediterranean, this often includes the actions of coast guards and other security forces who intercept refugee boats and return them to their country of departure or hand them over to the authorities of the country of departure. In this case as well, the right to seek asylum and the principle of non-refoulement are violated.

#### ***1.1.6. Refugee/s***

This thesis adopts the definition of the term “refugee” from the 1951 Geneva Convention Relating to the Protection of Refugees, which states that a refugee is a person who

“owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country

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<sup>1</sup> This principle is explained in more depth in Chapter 2.2.2.

of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (ibid., Art. 1, §A.2)

Moreover, a definition used by the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) complements the 1951 Refugee Convention and will also be included in this thesis. Article 1, §2 of this Convention adds that the

“term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” (OAU 1969:2, Art. 1, §2)

### ***1.1.7. Solidarity***

Finally, it is of significance to explain how this thesis engages with the notion of solidarity, specifically in relation to search and rescue civil society organizations in the Mediterranean.

More generally, this thesis considers solidarity movements in the context of the Mediterranean Sea to be made up of civilian individuals who share a sense of responsibility, empathy and commitment to uphold international law and human rights in the Mediterranean by carrying out rescue operations. These individuals form groups that are often made up of land and sea crews, civil activists, journalists, human rights observers, and legal professionals. Solidarity is a core guiding principle of these groups and an attitude they adopt towards people on the move, assisting them in distress at sea, regardless of their nationality or legal status and without prejudice.

For the SAR CSOs described in this thesis, solidarity therefore means protecting human rights at sea, while also defying the political, legal and bureaucratic barriers

erected against them by EU authorities. This includes actively challenging obstructionist practices that hinder their life-saving missions by monitoring the EU human rights violations at sea, conducting awareness-raising campaigns, building alliances with other civil society actors, and filing legal complaints against EU authorities. Therefore, solidarity isn't just a moral imperative for these organizations, but a practical necessity that underscores their mission to create safe passages for people on the move in the Mediterranean. Furthermore, many of these SAR CSOs use the slogan "solidarity and resistance". Notably, the acronym of "search and rescue" (SAR) shares the same initials, serving as a symbolic representation of the interconnectedness of saving lives at sea while also challenging the systemic injustices of the EU as manifested through racism, nationalism and neo-colonialism.

In the context of this thesis, therefore, the notion of solidarity is defined as an action-oriented commitment to support the migrant mobility community in the Mediterranean. Here, solidarity involves the joining of collective efforts, connecting diverse individuals from different socio-political backgrounds, who share their practices and knowledge with each other to advance differentiated yet interconnected struggles. Thus, Kosmatopoulos asserts that the sea as a maritime space can be understood "as an 'insurgent terrain'," (2023:7) a notion echoed in this thesis. In the maritime context, solidarity then means the determination to break embargoes, challenge restrictions, and provide aid and assistance to populations in dire circumstances, even in the face of asymmetrical power dynamics between the migrants, sea rescuers and EU state actors.

It's important to emphasize, however, that the notion of solidarity in the Mediterranean is not limited to the actions of search and rescue civil society organizations alone. Migrants themselves demonstrate remarkable agency and resilience

in their quest for safety and dignity, often forming tight-knit communities of support and expressing solidarity with their fellow travelers. Moreover, by entering the contested maritime space of the Mediterranean, migrants inherently challenge the EU's hard borders and, in doing so, also demonstrate a form of solidarity that transcends the Mediterranean realm and extends to others fighting against oppressive border regimes globally. For that reason, solidarity doesn't emerge as a unidirectional flow but is constituted of a dynamic interplay among various actors involved, challenging dominant narratives that often categorize migrants as helpless victims or "others" vis-à-vis white European "saviors" (ibid. 13).

## **1.2. Research Questions**

In the following I present my research questions, which include one main question that is the most central to this thesis and four sub-questions that are also of important significance and to which this thesis finds answers along the way.

### ***1.2.1. Main Question***

Since one of my main interests before writing this thesis and during my research phase was *how* the EU obstructs search and rescue initiatives in the Mediterranean, my main question is as follows:

- Main Question:

What are the strategies used by authorities and state actors of the European Union to obstruct search and rescue civil society organizations and to detain their vessels in the Central Mediterranean?

### *1.2.2. Sub-Questions*

My sub-questions then refer to further processes that led to the securitization and criminalization of search and rescue civil society organizations in the first place, while also analyzing the consequences that these organizations have had to face because of the EU's obstruction, and what kind of counter-strategies they have responded with. Finally, since these state crimes against solidarity movements in the Mediterranean are visualized as part of this thesis, sub-question four will answer the purpose of doing so and the possible benefits that search and rescue organizations can gain from using such visualizations in the future.

- Sub-Question 1:

How did the EU's initial support for solidarity aid from civilian search and rescue organizations in the Mediterranean in 2015 change to their criminalization in subsequent years?

- Sub-Question 2:

What were the consequences of EU state actors' bureaucratic, legal and policing measures on search and rescue civil society organizations and on humanitarian conditions in the Mediterranean between 2016 and 2023?

- Sub-Question 3:

How did these search and rescue organizations respond to and resist the challenges of EU state actors' efforts to impede their solidarity work?

- Sub-Question 4:

What is the purpose of visualizing the EU's criminalization of search and rescue civil society organizations in the Mediterranean? Can such visualization be a useful tool for these organizations prospectively?

### **1.3. Methods and Methodologies**

#### ***1.3.1. Methods***

The methods of this thesis follow a qualitative, empirical research model. The sources used are a combination of primary and secondary sources. The primary sources consist of legal documents such as responsive pleadings, treaties, national and international statutes. Primary sources also include archived documents from government institutions, updates from civil society organizations on their websites and social media feeds, and ship tracking data. The secondary sources are made up of academic books, articles from scientific journals, newspaper articles, and other online sources.

For all foreign language content requiring translation, I have personally translated the relevant sources and citations into English. This primarily pertains to German sources, as I am a native German speaker and have a background in professional translation.

I use the "I" form in my work whenever I consider it advantageous, because I find that it enhances the readability of the text and avoids over-complication through the use of phrases such as "the author of this thesis" or similar expressions.

#### ***1.3.2. Methodologies***

In terms of methodologies, the overarching framework of this thesis consists of various approaches to effectively answer its research questions.

By utilizing the frameworks of politicization, securitization, and criminalization as analytical tools, it will be examined how European state actors undermine pro-migrant solidarity networks in the Mediterranean Sea. Furthermore, the extent to which these concepts intertwine and influence each other will be analyzed.

Another method will be to examine the legal basis of migration in the Mediterranean under international law. During the course of this thesis, this will be used to assess whether EU authorities are complying with these laws and, if not, how they are being violated and circumvented.

Yet another methodology used in this thesis is that of visualization, specifically online geospatial mapping, to depict the locations where ships from three different SAR CSOs have been detained in the Mediterranean Sea between 2016 and 2023. Google My Maps serves as the visualization tool for this purpose. Info boxes that pop up by clicking on a ship/case, will explain the specific story behind each incident. The map data includes details about the date, location, and other particulars of each ship detention. Where necessary, the researched data is cross-referenced with CSOs, and their raw data is obtained for verification purposes. While the benefits and challenges of visualization are also discussed in Chapter 2.3., a more complete explanation of the map can be found in Chapter 5.1.

In a broader sense, this thesis also concerns itself with the concept of technopolitics, realizing that “technology and expert knowledge are central to the formation of modern society and its governance of social conduct,” while also being “sceptical about the positive valuations of the political and societal consequences of these developments” (Huysmans 2006:11).

The definitions and approaches to the above-mentioned methodologies of this thesis are explained and established in Chapter 2, "Theoretical Perspectives".

The case studies used in this thesis, which relate to ship detentions experienced by the SAR CSOs Jugend Rettet, Sea-Watch and Sea-Eye, later serve to analyze how EU state actors obstruct their work through bureaucratic techniques, arbitrary policing measures and legal tactics (also referred to as the EU's *instruments of insecurity*). In addition to analysis, these case studies also serve as

“single unit[s] (a relatively bounded phenomenon) where the scholar’s aim is to elucidate features of a larger class of similar phenomena.”  
(Gerring 2004:341)

## **1.4. Rationale for Conducting this Study**

### ***1.4.1. Personal Reasons***

My personal interest in the field of civil society and migration studies first grew during my time as a volunteer with an international non-governmental organization between 2011 and 2015. During this time, I interacted with many people who had fled their homes due to war, political unrest, religious persecution, and economic hardship.

These encounters left a lasting impression on me. In Morocco, I met young West African men driven by the hope of finding work in Europe. In Djibouti, a Yemeni family told me about their harrowing escape from civil war and how they had crossed the Bāb al-Mandab Strait. In Lebanon, I taught English at an educational center for war-displaced children from Syria and Iraq and was confronted with the post-traumatic trauma these children were experiencing. In an internship report, I later wrote about the



psychological effects of PTSD on children who have experienced war and approaches to teaching traumatized students in an empathetic and mindful way.

Another experience from 2012, when I traveled to Amsterdam, the Netherlands, recently took on new meaning for me, especially in relation to this master's thesis, written 11 years later. While there for a week-long conference, I was awakened one night and asked if I could drive a van to pick up migrants from the streets of West Amsterdam. They had been evicted from an asylum center and later from their makeshift camp called Notweg. Due to not having documentary identification evidence and having their asylum claims rejected, they were told to leave the Netherlands. However, as they didn't have the means to do so or were rejected to go back for lack of visas, about 130 people were stranded on the streets of West Amsterdam that night in November 2012. A group of activists who were aware of the situation started to take in some of the people and asked me and a friend to drive them to different locations in a van. That night we ended up doing just that, literally picking people up off the side of the road with a few pieces of luggage and taking them to safe places. I remember driving about 10 different men and women from East Africa at a time. We also took them to a place called the Vondelbunker, a nuclear bunker built into the Vondelbridge in Amsterdam. Once my van broke down one of the men who was a mechanic had the van running again within 10 minutes. The night went on until we were sure that everyone had a safe place to stay. Two days later, these people, who found themselves in an "asylum gap", squatted the St. Joseph Church, which they renamed the Vluchtkerk, meaning "church of refuge" in English.

“In the evening of 2 December, the owner of the church – an Amsterdam real estate developer – arrived on the scene. He decided not to press charges with the police or to pursue legal proceedings. Instead,

he committed himself to preparing the facility as a refugee shelter for the winter months.

A coalition of churches, individuals and aid organizations decided that evening – in session – to stand with the refugee group on a provisional basis. The goal: to help them secure a safe base from which to organize themselves in a plea to Dutch policy makers.” (Squat!net 2012)

My friend and I visited them at the church a few days later. We were impressed by the civil society that had come together to help these women and men create a livable space for the next few months. In fact, people were helping to make this place a home by installing hot water heaters, putting up new walls for the rooms, laying carpet, donating food and other supplies. It was incredible to witness and to be a part of. Out of these events in 2012, the migrant collective called "We Are Here" emerged, which is active in Amsterdam to this day and has squatted about 50 other buildings in the past 10 years. They stand up for the human rights of both their members and all migrants lacking proper documentation.

Researching these events 11 years later, I realized that I had briefly been part of a larger civil movement that was just beginning to develop at the time. I was also incredibly moved to find an article with a picture of my friend and I playing ping-pong with the men in the Vluchtkerk that we had picked up in our van. Amazingly, this article was published just last year in December and gives a recap of the last 10 years after Vluchtkerk (Wagemakers 2022). What also strikes me now is that I could easily have been sued and accused of aiding and abetting "illegal immigration", as so many others are these days, especially those who rescue people in distress in the Mediterranean.

While completing my undergraduate degree in Leipzig, Germany, I continued to work with refugees and became increasingly aware of the EU's interference in SAR

operations, including hearing first-hand accounts of perilous journeys across the Mediterranean. Later, an interest in broadening my perspective on public policy and international affairs led me to the American University of Beirut, Lebanon.

In this journey, my personal experiences forged a path driven by empathy, an urge to promote awareness, a hunger for knowledge and understanding, and a belief in the power of civil society to write a thesis on the complex landscape of the Mediterranean where human lives and political dynamics intersect.

#### ***1.4.2. Academic Reasons and Contribution***

My academic reasons for choosing this research stem mainly from my interest in contributing something meaningful to the field of sea politics in the Mediterranean, especially to the "how" of politicization, securitization and criminalization in relation to the EU's strategies of obstructing search and rescue operations.

Recognizing that there is much research on the EU's violations of international law, human rights, the law of non-refoulement, and the externalization of the EU's borders, the field of Mediterranean politics lacks more content on the EU's *modi operandi* in literally *keeping solidarities at bay*. Together with my visualization of the EU's orchestrated detentions of civilian search and rescue vessels in the Mediterranean, my thesis fills this niche and may serve as a door opener for further publications in the future. In addition, the thought that this academic work could produce something lasting, such as the online map, which I will pass on to SAR CSOs operating in the Mediterranean for further development, also motivated my research.

Thus, this thesis contributes to the academic fields of maritime politics, civil society studies, international law, migration studies, geopolitics, and critical security studies.

Furthermore, this thesis addresses debates about the criminalization of SAR CSOs by states and how civil society can respond to the often-unlawful proceedings against them. It may also provide insight into why states choose to criminalize human rights defenders and uncover the underlying mechanisms of how they do so.

Besides my knowledge and interest in sea politics, my advantage is that I am a native German speaker, and the CSOs I focus on in this thesis have their roots in Germany as well. Therefore, it was easy for me to read their news and updates and research their court cases. In Chapter 3.3., I briefly discuss the prominent presence of German SAR CSOs in the Mediterranean.

## CHAPTER 2

### THEORETICAL PERSPECTIVES

This chapter explores the various conceptual frameworks that influence this thesis' approach to understanding events in the Mediterranean. They underpin this thesis from a theoretical standpoint. Chapter 2.1 begins with four "Conceptual Frameworks of Influence" that explore the themes of politicization, securitization, and criminalization to establish how they will be interpreted and referenced throughout this thesis.

Moving from theory to law, chapter 2.2. examines the principles and laws that govern the Mediterranean Sea with respect to search and rescue operations. These include international maritime law, international refugee law and human rights law, while also considering the constraints of these international legal frameworks.

Shifting the focus to chapter 2.3., this thesis' approach to visualization will be discussed along with its benefits and challenges. To explore the practical aspects of visualization in a scientific setting, the notable Forensic Oceanography project will be presented as an example of how EU transgressions in the Mediterranean Sea can be uncovered. Finally, the rationale behind adopting geospatial mapping as a tool for visualizing the topic of this thesis is explained.

#### **2.1. Conceptual Frameworks of Influence**

Chapter 2.1. explores and establishes a frame of reference for four different concepts that often intersect in the field of international relations and are particularly relevant to the EU's approach to migrants and SAR CSOs in the Mediterranean.

First, the chapter examines the transformation of everyday issues into contentious political affairs (politicization) or matters that are partially removed from the political arena, often constituting indirect technocratic state control (depoliticization). It then provides insights into the expansion of security concerns beyond traditional military aspects (securitization) and the processes of criminalizing actions within social frameworks (criminalization).

### ***2.1.1. Politicization and Depoliticization***

#### **2.1.1.1. Politicization**

Politicization in international relations refers to the process of turning certain issues or events into matters of political contention or debate, often to advance specific agendas or garner public support. Various issues can become politicized in international relations, including economic matters, security concerns, environmental issues and also, as this thesis addresses, flows of migration and solidarity.

When an issue becomes highly politicized, it is often framed to fit a particular political narrative or ideology. This can lead to increased tensions, polarization, and difficulty in finding cooperative solutions between nations, something that has been very evident in EU policymaking on migration since the 1970s.

While initially, “the legal status of the immediate post-war immigrants was not politically sensitive” (Huysmans 2000:753 f.), the situation changed especially in the 1970s and 1980s when EU state actors and the general public began to view immigrants as a destabilizing factor. Western European countries started “to shift from a permissive immigration policy to a control-oriented, restrictive policy” (ibid. 754). This kind of

positionality and governmentality towards migrants and asylum seekers continues to shape much of the EU's policymaking today.

#### 2.1.1.2. Depoliticization

Processes of depoliticization, on the other hand, refer to instances in which certain issues are wholly or partially stripped of their political significance. This can be seen in the EU's discourse on "migration management" – a term that in itself suggests that migrants are a group of people who need to be "managed". Such discourse often treats migration through a universal lens and avoids addressing power imbalances and contested debates, leading to the governance of migration through technocratic practices. As Rancière once aptly put it:

"In reality, however, this reasonable politics is nothing but the disappearance of politics in favour of management." (Rancière 2004:8)

However, in the context of EU migration and border policies, depoliticization cannot simply be understood as the complete removal of migration from the political sphere, but rather represents a shift in the political arena. As Flinders and Buller (2006) argue, political influence does not simply disappear in depoliticization processes, but is rather transferred when ruling politicians decide to transfer their direct political power to other groups and institutions (governmental and/or non-governmental), while still retaining

"significant indirect control mechanisms (e.g. appointments), reserve powers (e.g. immediate authority in certain situations) or discretion (e.g. the creative interpretation of rules)." (ibid. 296)

In cases of policy failure, such an indirect mode of governance allows politicians to shift their political responsibility “and with it, the potential for blame” (ibid. 297) to other institutional actors. In the field of EU migration politics, this “buffer zone between politicians and certain policy fields” (ibid.) means in practice that EU state actors can redirect responsibility or blame to refugees and migrants themselves or to those who come to their aid.

While this type of depoliticization is institutional, Flinders and Buller distinguish two other types: rule-based depoliticization and preference-shaping depoliticization (ibid. 303, f.; 307, f.). In the rule-based approach, government officials may impose technical rules on issues that they perceive as ungovernable challenges, often to legitimize their own passivity and protect themselves from social criticism.

In terms of preference-shaping depoliticization, political withdrawal is characterized by discourses that aim to promote favorable views of certain situations, i.e., the biased labeling of mixed migration flows to Europe as a “crisis” and “invasion”. To give an overall definition, depoliticization can be summarized as

“the range of tools, mechanisms and institutions through which politicians can attempt to move to an indirect governing relationship and/or seek to persuade the demos that they can no longer be reasonably held responsible for a certain issue, policy field or specific decision.” (ibid. 295 – 296)

#### 2.1.1.3. The Dual Approach of the European Union

Regarding these notions of politicization and depoliticization, the EU oscillates between the two, or sometimes even acts on both simultaneously. Drawing on Mainwaring and DeBono’s notions of *mare nullius* and *mare nostrum* (2021), I explore



below the complex interplay of politicization and depoliticization and how the EU moves from one to the other, often blurring the lines between them.

According to Mainwaring and DeBono, when the EU embraces the notion of *mare nullius* (nobody's sea), then the Mediterranean is seen

“[...] as ‘empty’ in response to migration flows, erasing the historical connections of colonialism, empire, trade, and exchange in the Mediterranean as well as the contemporary legal geographies that govern the space.” (ibid. 1032)

In this setting, where the Mediterranean is perceived as an ungovernable, lawless space, it becomes essentially devoid of direct political decision-making, as the EU strategically distances itself from engaging in sea rescue and taking responsibility for those in distress at sea. Rather, it delegates authority to agencies like Frontex, which today is mostly involved in pushbacks and working together with the so-called Libyan coast guard. This kind of maneuvering results in technical or administrative “management” rather than political decision-making. Therefore, I argue that *mare nullius* is a notion that entails depoliticization as the EU avoids direct involvement and maintains a perception of non-interference, “while framing migration flows as an ahistorical ‘crisis’” (ibid.).

In contrast, *mare nostrum* (our sea) is the notion invoked by the EU when it seeks to reassert control over the Mediterranean. In this mode, the EU takes direct action to address migration issues by implementing agreements and laws to externalize and militarize its borders, as well as developing policies to curb irregular migration. Furthermore, the outright criminalization of SAR CSOs is another example of EU actors taking direct action to reestablish authority over the Mediterranean and reframe it in terms that suit its political interests. Moreover, during governmental election periods,

immigration is a topic that is often politicized by various EU state actors in order to increase voter turnout. Parties will most commonly portray immigration as a security threat to their nation's sovereignty, thereby calling for a tighter securitization of the EU's borders. Therefore, I argue that *mare nostrum* is a notion that entails politicization.

The lines between politicization and depoliticization can become blurred when they are used simultaneously. For example, it is possible for the EU to politicize the issue of migration in political and public debates while at the same time using indirect measures of control by delegating responsibility for migration issues in the Mediterranean to other state and non-state actors, which constitutes depoliticization.

Mainwaring and DeBono further state:

“Indeed, though paradoxical at first glance, *mare nostrum* and *mare nullius* reinforce each other in evoking a neo-colonial sea, a space claimed by states as theirs to control and theirs to empty.” (Mainwaring and DeBono 2021:1043)

As I continue to examine the mechanisms surrounding securitization in the next section, it is interesting to keep in mind that politicization and depoliticization play a role in these processes, because for an issue to be securitized, it often “requires a prior politicization, even if the consequence of securitization is depoliticization” (Salter 2011:120).

### **2.1.2. Securitization**

Understanding securitization, particularly from a theoretical viewpoint, is complex. It's a topic rooted in the studies conducted by the Copenhagen School (CS), which delves deep into critical security studies. Yet, it's worth noting that the exact

definition of securitization remains ambiguous; scholars are still debating whether there should be one unifying theory or several interpretations. Looking at the literature, the latter is more likely, as various academic approaches exist, each with its own unique perspective.

#### 2.1.2.1. The Copenhagen School

The Copenhagen School (CS) emerged in the 1980s with the intent of broadening the concept of security beyond mere military concerns (Huysmans 1998:482)<sup>2</sup>. Key figures like Ole Wæver and Barry Buzan posited that security issues can be presented through linguistic expressions or *speech acts*. For instance, a state official could frame a particular issue as a threat simply by labeling it a "security" concern.

“[...] when a securitizing actor uses a rhetoric of existential threat and thereby takes an issue out of what under those conditions is “normal politics,” we have a case of securitization.” (Buzan et al. 1998:23 f.)

This utterance, then justifies power holders to execute extraordinary securitization measures, often leading to the circumvention of democratic norms. This was why Wæver, Buzan and de Wilde went on to describe securitization as an “extreme version of politicization” (Buzan et al. 1998:23).

The *speech act* later became understood as a *securitizing move*, which could only lead to a successful securitization if an audience perceived the issue at hand as an existential threat and responded accordingly (ibid. 25).

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<sup>2</sup> The notion of securitization first crystallized through Wæver’s writings on *Securitization and Desecuritization* (1995).

These foundational views from the CS concentrate on the speech act/securitizing move, the logic of exception and the relationship between actor and audience (Stępką 2022:11). Concluding from the above text, the CS embraces a discursive and social constructivist approach. Moreover, scholars of the CS have called for *deseuritization* as they argue that more security allows actors to use “less democratic controls and constraints” and therefore “security should be seen as a negative, as a failure to deal with issues of normal politics” (Buzan et al. 1998:29).

#### 2.1.2.2. Beyond the Copenhagen School

However, the notion of securitization extends beyond the Copenhagen School. Other schools, such as the Aberystwyth School (AS) and the Paris School (PS), have proposed alternative frameworks.

##### 2.1.2.2.1. The Aberystwyth School

The Aberystwyth School (AS) analyzes security from a more idealist and normative ontology and is committed to promoting social justice and progressive change. Spearheaded by Ken Booth and Richard Wyn Jones, the AS perceives security as being closely tied to emancipation, suggesting true security is achieved when individuals are free from oppressive systems (van Munster 2007:241). This approach is non-state centric and cosmopolitan (Booth 2005:268).

Furthermore, the AS is firmly grounded in the epistemological principles of the Critical Theory of the Frankfurt School (Sezal 2019:85), accentuating the role of critique in illuminating underlying hierarchical structures that shape social reality (ibid. 102).

#### 2.1.2.2.2. The Paris School

Unlike the AS, which views security as an aspect of emancipation, the Paris School argues that “emancipation is only possible by moving away from security” (van Munster 2007:239).

In its analysis of security, the PS employs the concept of *insecuritization* as a lens of inquiry (Sezal 2019:104). This concept is similar to how the CS conceptualizes securitization, as insecurity is always an inherent component of these processes (ibid. 97). But instead of focusing on security threats which revolve around exceptional measures only, the PS emphasizes the everyday security routines that affect daily life (Bigo 2014:211). Accordingly, Didier Bigo, has been instrumental in discussing how certain societal groups become securitized through surveillance, policing, and border control practices, especially within the context of the European Union.

Another essential theme in the Paris School's work is the concept of the "banopticon". Inspired by Michel Foucault's "panopticon," the "banopticon" framework underscores the exclusionary aspects of contemporary security practices, such as the ways in which certain individuals or groups are singled out as threats and subsequently monitored, controlled, or excluded.

In Chapter 4, this perspective will offer a valuable approach as it allows for a close examination of institutionalized EU procedures against CSOs involved in search and rescue missions.

Finally, the Paris school is based on a praxis-oriented ontology and uses discourse analysis and interviews to study security (Sezal 2019:96).

### 2.1.2.3. The Interdisciplinary Nature of Securitization

In his *Hitchhiker's Guide to Critical Schools of Security in Europe* (2007), van Munster suggests a collaborative approach. He believes that these schools should not limit themselves to their individual frameworks but should stay “interested in conceptual innovation through dialogue and engagement” (ibid. 240). Instead of segregating research by school, he proposes to focus more on

“[...] conceptual themes and questions that exist as unresolved tensions between the schools as well as other forms of critical scholarship (e.g., feminism, postcolonialism).” (ibid.)

Reinforcing this interdisciplinary perspective, Balzacq et. al assert that many comparable concepts akin to securitization have been studied in other fields, like sociology and history without ever using “the specific term ‘securitization’” (ibid. 2016:496).

As illustrated, it becomes evident that the literature on security and securitization is vast and spans wide circles around other academic disciplines. However, themes like audience, power relations, context, practices and instruments seem to permeate modern critical security studies (ibid. 499 ff.).

In terms of more inclusive and collaborative approaches, it is important to acknowledge that a school has indeed emerged that embraces the interdisciplinary of security and insecurity: the Beirut School of Critical Security Studies. Born out of a working group of diverse scholars in 2016, it is a relatively new addition to the landscape of security studies, and a very significant one at that.

That is to say, the Beirut School of Critical Security Studies certainly enriches the discourse by drawing from different academic fields and generating research related to the Arab region and the Global South. This approach challenges the Western-centric

perspectives that tend to permeate security studies on these regions, often limiting research to "well-rehearsed framings of sectarianism, conflict, underdevelopment, and terrorism" while focusing on "Cold War bipolarity and Anglo-American policy interests" (Abboud et al. 2018:274).

Unlike other schools of thought, the Beirut School does not define itself by fixed conceptualizations of security or insecurity, but organizes itself around five broad themes that are overlooked by a network of scholars. These themes include the

“political economy of (in)security, [...] (in)security of daily life, [...] technologies of security, [...] discourses and knowledge production and rethinking global norms and practices, [and] borders, migration, and mobility” (The Beirut Forum, n.d.).

The Beirut School also places a strong emphasis on contextualized research and individual human security by studying the everyday lived experiences of people from the Eastern and Southern regions, a dimension often overlooked by other schools.

Through its diverse, open, and inclusive framework, the Beirut School provides an interesting platform for shaping new approaches and perspectives on (in)security, as well as for scholars to explore and learn about this topic from a non-Western and decolonial perspective.

Concluding from the findings of this chapter, this thesis does not deal with the securitization of SAR CSOs in the Mediterranean Sea in a theory-limited way, but reiterates that

“[s]ecuritization is not [only] a speech act but a multidimensional process in which skills, expert knowledge, institutional routines as well as discourses of danger modulate the relation between security and freedom.” (Huysmans 2006:153)

In chapter 4.1., it will be examined how the evolution of securitization in the Mediterranean Sea enabled further forms of policing to emerge.

### ***2.1.3. Criminalization***

What has been said so far about politicization and securitization will now be condensed into the notion of criminalization. It is argued here that politicization and securitization are two frameworks that influence, correlate with, and lead to the occurrence of criminalization.

In this thesis, criminalization then refers to the process by which certain actions, behaviors, individuals, or groups are designated as criminal offenses within a legal, social, or political context. It involves the classification of certain behaviors or activities as violations of established laws, rules, or norms, often resulting in legal penalties, sanctions, or other forms of punitive measures. Criminalization can be influenced by societal values, political agendas, and cultural perceptions of what constitutes unacceptable or harmful behavior.

Thus, both the concept of criminalization itself and the implementation of policies related to criminalization are subjective in nature, rooted in social constructionism. This subjectivity is also similar to the processes of politicization and securitization. As a result, criminalization is not limited to actions that are intrinsically harmful but can also include activities that are considered undesirable within a particular political setting.

In the broader political context of the EU, migrants are often perceived as undesirable and seen as “a collective force that endangers the community they seek to enter” (Huysmans 2006:48). This perception has led to a consistent pattern of



criminalization of migrants in recent years. Unsurprisingly, civil society actors who step in to assist these migrants and counteract the EU's deterrence strategies are also seen as posing a significant threat to the EU's desired humanitarian image. As a result, they too become objects of criminalization. The mechanisms underlying these dynamics will be explored further throughout this thesis.

## **2.2. Foundational Legalities in the Mediterranean Sea**

To better understand the fundamental international legalities which govern the rights of people in distress at sea and the corresponding obligations to render assistance, this part will focus on explaining the most relevant legal pieces that are important for the context of this thesis.

### ***2.2.1. International Maritime Law***

Some of the generally known conventions that fall under the classification of IML are the 1974 *International Convention for the Safety of Life at Sea* (SOLAS), the 1979 *International Convention on Maritime Search and Rescue*, and the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS). All of these conventions mutually bear the obligation to rescue people who are in distress at sea “without regard to their nationality, status or the circumstances in which they are found” (IMO et al. 2015:4). This principle has been prevalent in maritime law since the 1910 *Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea*<sup>3</sup> was agreed upon in Brussels. During a rescue operation, the above-mentioned

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<sup>3</sup> Article 11 states that „Every master is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost” (British Ratification 1913:341, Art. 11).

conventions further address specific responsibilities which are to be carried out by shipmasters, flag states, coastal states, rescue coordination centers (RCCs), coast guards, SAR CSOs and all other navigators of the seas.

All three conventions determine that shipmasters are responsible to assist and come to the rescue of persons afflicted at sea. Under UNCLOS, the shipmaster is further compelled

“[...] 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.” (UN 1998:27, Art. 98, §1b)

SOLAS also underlines the speedy advance of rescue missions but adds that, if possible, the ones to be rescued should be informed that rescue is underway (IMO et al. 2015:5). Additionally, the SOLAS and SAR conventions provide that state parties should

“[...] ensure that the shipmaster is released from all responsibility with the least deviation as possible from the ships voyage, provided that the safety of the persons rescued is not compromised.” (Smit 2020:500)

Furthermore, SOLAS outlines that if a shipmaster determines that it is unreasonable or unjustified to carry out a rescue, “he must enter in the logbook the reason for failing to proceed to the assistance of the persons in distress” (UN 1980:414, *Anx., Ch. V, Reg. 10*). The intentional failure of a shipmaster to render assistance may result in criminal prosecution depending on the ship’s flag state. (UNHCR 2002:2). Moreover, the shipmaster is held accountable for the overall safety of his/her vessel and the wellbeing of his/her crew members (*ibid.*). Besides, he/she ought to ensure that the

appropriate life-saving equipment for the rescue operation is available (IMO et al. 2015:10)<sup>4</sup>. As for coastal states, UNCLOS requires them to

“[...] promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements [to] cooperate with neighboring States for this purpose.” (UN 1998:27, Art. 98, §2)

The SAR convention then provides the more detailed procedures that are to be followed during search and rescue missions, including the rescue itself, medical aid to those in distress, and their swift disembarkation to a place of safety.

If it comes to the attention of a shipmaster that people are in distress at sea, then he/she should immediately report the case to a rescue coordination center. From the first contacted RCC, the mission gets passed on to the RCC responsible for the SAR zone in which the emergency took place. This RCC will then “immediately accept responsibility for coordinating the rescue efforts” (IMO et al. 2015:13) and is liable to provide the shipmaster with a safe place for disembarkation. In addition, while the passengers are still on board the ship, the RCC is also in charge of arranging “temporary provisions for hosting rescued persons” (ibid. 13) if their asylum status is not clarified. Surely, as will be explained in the next section, it is considered a violation of law to forcibly return undocumented migrants at sea without providing them appropriate access to legal protections in the EU.

In all of these proceedings, international organizations mostly play the role of advisers and watchdogs over different areas of concern. The International Maritime Organization (IMO) is overseeing the development of IML and observes if states

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<sup>4</sup> More about the specific procedures of the ship master in case of a rescue emergency can be read in: *Rescue at sea: A guide to principles and practice as applied to refugees and migrants*. (IMO et al. 2015:10 f.).

comply with it. Besides, it gives technical policy advice to governments, which usually focus on “safety aspects” (UNHCR 2002:3). As for the UNHCR, it “has a specific responsibility to guide and assist states and other actors on the treatment of asylum-seekers and refugees found at sea” (ibid.) and monitors if these entities uphold their obligations regarding the safety and protection of people in distress. Concerning the IOM, it gives recommendations on “humane and orderly migration for the benefit of all” (IOM 2023) while its broader mission encompasses the engagement with various aspects of migration (ibid.). Meanwhile, the obligation to adequately implement the principle of responsibility-sharing rests with the international community at large (UNHCR 2002:3 f.). In the 2016 *New York Declaration for Refugees and Migrants* member states of the UN reaffirmed their commitment

“[...] to address the needs of refugees and receiving States, [...] [and to] commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees, while taking account of existing contributions and the differing capacities and resources among States.” (UNHCR 2016:13, chapter III, paragraph 68)

The 2016 New York Declaration is part of International Refugee Law (IRL), which is explained in more detail in the following subsection.

### **2.2.2. *International Refugee Law***

The central legal document of IRL is the 1951 *Geneva Convention relating to the Status of Refugees*<sup>5</sup> and its *1967 Protocol*. The Refugee Convention was adopted after World War II and entered into force in 1954. In it, the standards for the protection

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<sup>5</sup> Frequently referred to simply as the “Refugee Convention”.

of refugees and the fundamental principle of non-refoulement are established. In case of the EU, all member states have signed and ratified the convention except for the microstates of Andorra and San Marino. Art. 33, §1 states:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (UNHCR 1951:32)

Furthermore, Art. 31, §1, declares that undocumented refugees shall not be subject to penalties by contracting states as they may come from unsafe places and life-threatening circumstances. However, they should “present themselves without delay to the authorities and show good cause for their illegal entry or presence” (ibid. 31). §2 further specifies that restrictions to the movement of irregular refugees shall only apply as long as their asylum status in the receiving country is still unclear. In case of refugees applying for entry into another state, the receiving country “shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country” (ibid.).

In the subsequent years following the 1951 Refugee Convention, its provisions have been complemented by the UNHCR Executive Committee Conclusions (EXCOM Conclusions). In 1998, the consensus was added that, in addition to not sending refugees back to unsafe territories, there should be “no rejection at frontiers without access to fair and effective procedures for determining status and protection needs” (UNHCR 2017:197 f., No. 85, §q).

Additionally, IRL establishes standards for the status identification of asylum seekers. While the procedure of asylum admission lies within the competence of state authorities themselves, the UNHCR determines that all asylum processing should be done on mainland. Especially when large numbers of people have been rescued, they can hardly be attended to aboard a ship due to possible impairments of their physical and mental state along with a lack of translators and adequate facilities. Regarding disembarkation, a 1981 conclusion of the UN Executive Committee stated that

“[...] persons rescued at sea should normally be disembarked at the next port of call. [...] In cases of large-scale influx, asylum-seekers rescued at sea should always be admitted, at least on a temporary basis. States should assist in facilitating their disembarkation by acting in accordance with the principles of international solidarity and burden-sharing in granting resettlement opportunities.” (UNHCR 2017:51, No. 23, §3)

While it is not within the competence of IRL to choose the states responsible for the determination of the refugee status and the implementation of asylum procedures, the UNHCR offers its assistance and policy advice to states in these matters.

### **2.2.3. *Human Rights at Sea***

The *Universal Declaration of Human Rights* (UDHR), officially recognized in 1948 and adopted by the United Nations General Assembly (UNGA), presents a common international standard that needs be considered here. As these human rights are universal in nature, they also apply to people in distress at sea as well as to governmental and non-governmental SAR operations.

Under Art. 1 and 2 of the HR declaration everyone shall be treated equally and without discrimination based on exclusionary preconceptions (UN 1948). Furthermore,

Art. 3 states that “[e]veryone has the right to life, liberty and security of person” (ibid.). Art. 4 and 5 then provide for the prohibition of slavery, torture, and inhuman treatment. Art. 6 rules that everyone should be recognized “as a person before the law” (ibid.) anywhere in the world. While Art. 9 forbids any discretionary acts of detention and arrest, Art. 12 further elaborates that anyone shall be protected from “arbitrary interference with his privacy [...]” (ibid.). In Art. 13 the “freedom of movement” (ibid.) for every person is proclaimed, including the right to leave or to return to one’s country. The universal right to seek asylum is established in Art. 14.

All in all, the UDHR contains 30 articles. Although it is not legally binding, it has served as a catalyst for the development of international human rights law (IHRL) and has been incorporated into various international treaties. The articles mentioned in this thesis have been selected because they appear to be most relevant to the rights of people in maritime distress, as well as to those conducting state-led or voluntary rescue operations and for those coordinating SAR operations from ashore.

#### ***2.2.4. Limitations of International Law***

In contrast to domestic legal systems which feature clear hierarchies that dictate the conformity of domestic sources, laws, and legal authorities to higher norms of a state’s constitution, the international legal system is based on decentralized structures and therefore characterized by flat hierarchies. Even though some states are perceived to be more powerful than others, from a legal perspective, all states are sovereign and equal. Thus, they all theoretically have the same legal power and operate in a horizontal manner. The creation of international law therefore requires consent amongst the states which are affected by it.

This decentralized structure is fundamental to the functioning of the international legal system, providing the necessary flexibility to adapt to the evolving needs and circumstances of the international community. Nevertheless, this exact characteristic also presents a challenge as International Law (IL) is not governed by a superior institution or entity, unlike domestic law. As a result, IL is mostly determined on a case-to-case basis and through learning from former international disputes. In light of this, the absence of uniform enforcement mechanisms or higher authorities, as well as a universal and dominant legislative body, poses a challenge in holding states accountable to IL. However, the implementation of such hierarchies in international law could be perceived as a threat to state sovereignty, leading to tensions between domestic and international dimensions of law.

Furthermore, if a state wants to leave a treaty, it is quite easy for it to do so as most treaties simply ask for a notice of withdrawal. Thus, there is no guarantee that states which are parties to certain treaties will continue to abide by and remain in them.

It is argued here that these limitations of international law also apply to its maritime dimensions. Although decentralized structures should be supported in a world full of hierarchical systems, the confrontation with the argument of state sovereignty is often where IL seems doomed to fail. Of course, states can still be held accountable before the International Court of Justice (ICJ) for violating IL, but an international arbitration tribunal always requires the consent of the violating state. This is precisely why it is often difficult to hold states accountable for violations of international law. The same is true for the EU, which frequently violates human rights, international maritime law and international refugee law in the Mediterranean and finds legal



loopholes to continue its practices of securitization and criminalization of people in distress at sea and those who assist them.

### **2.3. Visualization**

As one of the aims of this thesis is to visualize the findings of Chapter 4, “Keeping Solidarities at Bay”, some short definitions of visualization will be given in the following paragraphs. Additionally, this chapter will examine the advantages and limitations of visualization as a data representation method. To further illustrate the utility of visualization in revealing state crime and state neglect, the Forensic Oceanography project will be discussed exemplary, and its benefits and challenges will be analyzed. Finally, there will be an explanation of the choice of mapping as the visualization method for this thesis and a justification of its suitability for this research.

#### **2.3.1. Definition**

Robert Spence, who is a British professor in engineering and well-known for his research in information visualization as well as the invention of the bifocal display<sup>6</sup>, simply takes his definition of visualization from the dictionary and says it is “the activity of forming a mental model of something” (Spence 2014:1).

Imagine searching for a new family home. Spence uses this relatable example to illustrate the concept of information visualization. By comparing photographs of houses, their prices, and considering the locations they’re in, the potential buyer gains

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<sup>6</sup> The bifocal display has served to solve the problem of not having enough screen space to display lots of information and is basically the distortion and compression of information into a small space, or simply the stretching of information space without losing important context (i.e.: the display of the google calendar where it is possible to see the whole year but it is also possible to zoom into a single day and see the individual times of a day).

more of an understanding of where they might establish not just a house, but a future home (ibid.). This example shows that information visualization isn't confined to quantitative data (i.e.: house prices), but also includes qualitative data (i.e.: location, social dynamics, infrastructures). Together, these data forms then contribute to a greater understanding of a given space. In other words, information or data visualization can be defined as:

“The representation and presentation of data that exploits our visual perception abilities in order to amplify cognition.” (Kirk et al. 2016:13)

Regarding this thesis, through looking at a visualization of the systematic obstruction of *Jugend Rettet*, *Sea-Watch* and *Sea-Eye* in the Mediterranean Sea, the viewer gains more *awareness* of the Mediterranean space in terms of EU criminalization and policing of SAR CSOs. Besides, the viewer will get an *impression* of the dimensions of this problematic by seeing the amounts of cases displayed as markers on the geographic map. Moreover, the visualization has the potential to evoke *emotions*, depending on the viewer's political stance and personal imprint.

In conclusion, the visualization of data serves to enrich the viewer's cognition, and the information displayed may convey different meanings to the viewer depending on the viewer's own beliefs and perspectives.

### **2.3.2. Benefits**

John Tukey once said in his book *Exploratory Data Analysis*: “The greatest value of a picture is when it forces us to notice what we never expected to see” (Tukey 1977:vi). This is what data visualizations are created for, as well: they often bring

something to the attention of the viewer that had either gone unnoticed before or remained completely unknown to them until then. Most often they also support and amplify scientific findings and increase the cognitive understanding about different matters. De Regt, a professor in physics and philosophy, argues that while visualization may not be indispensable for the scientific understanding of a topic, “visualization contributes to the intelligibility required for developing explanations” (de Regt 2014:392).

Other benefits of visualization techniques include the potential for new insights that can be gained through alternative perspectives on a topic. One is able to gain a comprehensive *bird's eye view* of the data or information being presented. As a result, the viewer's ability to see correlations and relationships within data sets is enhanced. Information that may have previously been invisible before or buried under large amounts of written or numerical information becomes visible.

Allen (2021), who analyzes how visualizations of migration data can influence public perceptions and migration policies, aptly notes that "images encode rules" (ibid. 1). Thereby, he is referring to the visual cues and principles that guide our understanding of visualizations. He further states:

“[...] visuals are important objects of study because they provide windows onto political, social, and cultural processes that may have otherwise remained hidden from a primarily text-based analysis.” (ibid.)

Following this, Allen shows that the way in which migration is visualized can provide a nuanced understanding of a nation's political climate, through subtle cues such as the choice of color in a graph or chart (Allen 2021).

What's more, visualizations can also help to "facilitate memory recall" (Chen et al. 2014:82) in a faster way than other data. This time-saving factor also proves beneficial in decision-making processes when large amounts of data are effectively conveyed in a concise manner (Marty 2009:5 f.). Moreover, visualizations not only provide answers, but also raise new questions (ibid.). Similarly, the map that accompanies this thesis will help answer the research questions, but it may also raise new ones.

### **2.3.3. Challenges**

While visualization methods effectively convey information, they also present challenges. As mentioned earlier, visualized data carries an inherent subjectivity due to design choices that can influence its interpretation. In addition, the context in which a visualization is created and the perspective of the audience shape how the information is presented and received. Thus, visualizations always have the potential to be the result of subliminal value systems or deliberate manipulation.

Historically, colonial visualizations, especially geographical maps, distorted reality to serve imperial ends. To reinforce colonial power and sustain the narrative of expansion and progress, such maps enlarged colonized areas and minimized the presence of indigenous peoples. By drawing arbitrary boundaries, colonizers ignored the history and culture of indigenous peoples. In particular, the Sykes-Picot Agreement of 1916 is a prominent example of how arbitrary borders drawn on a map reshaped the Middle East through Western colonial aspirations, fueling geopolitical tensions and conflicts to this day.

Currently, visualized information conveyed through various media platforms continues to be weaponized for political agendas. Images can reappear in unrelated contexts, erasing the original context and meaning. An example of this phenomenon is illustrated by Heller & Pezzani (2022), who show how a single photograph of an overcrowded migrant boat kept reappearing in unrelated articles about migration, only to fuel the myth of a migrant “invasion” (ibid. 211 ff.). It is therefore crucial to approach visualizations with a critical attitude, as uncritical consumption can lead to confirmation bias and "deliberate and unintentional prevarication" (Monmonier 2005:216).

Technical limitations of information visualization relate to its reductionist character, as reality is often compressed into “graphical primitives” (Manovich 2011:38). Hence, the trade-off is that visualizations often oversimplify complex structures (ibid.).

Based on the above, it is important to recognize these challenges and remain critical of the context, history, and agendas behind visualizations.

#### ***2.3.4. Forensic Oceanography***

An example that relates to and informs this thesis in so far that it visualizes state criminality and neglect is Forensic Oceanography (FO)<sup>7</sup>.

“It seeks to critically investigate the militarised border regime imposed by European states across the EU’s maritime frontier, analysing the political, spatial, and aesthetic conditions that have transformed the waters of the Mediterranean into a deadly space for the illegalised migrants who attempt to cross it.” (FO, n.d.)

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<sup>7</sup> Forensic Oceanography is a subdivision of Forensic Architecture (FA), originally founded by Eyal Weizman and based at Goldsmiths, University of London. The investigations of FA and FO have been presented in various legal and political forums, such as national and international courts, parliamentary hearings, and exhibitions in renowned cultural institutions (FA, n.d.).

Working with a multidisciplinary team of academic researchers, legal experts, software developers, filmmakers, designers, architects and more, FO creates comprehensive visualizations of “human rights violations including violence committed by states, police forces, militaries, and corporations” (FA, n.d.). By combining various technological methods, they aim to create objective representations of the EU's crimes in the Mediterranean Sea.

Thus, FO’s visualizations offer insights into political contexts, violations of law, and state crimes at sea. FO’s founders, Charles Heller and Lorenzo Pezzani, have also published on the EU’s border securitization and its criminalization of migrants and SAR CSOs.

In terms of the challenges faced by the researchers themselves, "counter-forensics" as FA calls its investigations (Weizman 2019), relies on the availability of material in the public domain. However, access to crime scenes and locations can be denied, which poses a significant challenge to the field.

Furthermore, FA and FO aim to challenge power structures by exposing the illegal cover-up of crimes conducted by states. Navigating this terrain can be difficult, as the agency often opposes powerful political systems with greater resources, “making enemies in high places” (Moore 2018).

Pezzani (2013) notes that FA and FO aim to challenge these hierarchical power structures. The catch is that any knowledge produced, that is, about migrants and CSOs in the Mediterranean, could inadvertently serve the interests of those who control the EU's borders (ibid. 159). Thus, Pezzani asserts:

“Rather than trying to sustain an impossible position of absolute opposition, the Forensic Oceanography Project seeks to strategically

infiltrate the cracks of the border regime to turn the means of surveillance against itself. Then the knowledge of the border can be used to account for the violence therein produced.” (ibid.)

However, the work of FA and FO has also attracted much criticism, with some claiming that the cases they choose “align with the political claims they aim to defend” (Ulrich 2021:33), raising doubts about the credibility of the research. Other concerns relate to the sources of the research material and the agendas of investors who fund the investigations. Weizman sees such criticism as an attempt to identify “contaminating factor[s]” (Weizmann 2019) that aim to invalidate the research he and his agency are conducting.

“The contaminating factor could be human or not: a person, an organization, a political affiliation, a video, or even a funder whose identity might be vulnerable to attack. Denialists then claim that by association, the entire network and the information it produces is tainted and meaningless.” (ibid.)

Further critiques extend to the display of FA research in museums, with some arguing that this puts research at risk of commodification (Ulrich 2021:34) and reduces it to “eye-catching exhibits for the entertainment of gallery-going art consumers” (Harper 2018). In my view, the question is whether FA is responsible for how museum visitors perceive their work. Because, of course, there will always be those who label these investigations as “art gone wrong” and those who recognize the mix of (technological) artistic expression and scientific evidence. The notion of commodification seems valid, though it's worth noting that compensation for such work is part of how researchers make a living. What is consistent with my perspective is always to question the intentions behind any given research endeavor.

Harper goes on to ask whether FA's investigations of criminal cases amount to little more “than a potentially traumatic spectacle” (ibid.). In response, I suggest that FA's and FO's visual reconstructions often emerge from inherently traumatic cases. Consequently, while reanalysis may cause distress, it serves as a necessary way to generate awareness and understanding of such events, even if it is uncomfortable to confront them. This resonates with my own research experience, as it hasn't always been easy to deal emotionally with the content of the thesis. However, I've seen its importance for others seeking useful insights and for my own awareness of the topic.

Pearce (2018) highlights “the fallacy of 'clear communication' when it comes to forensics,” noting that the overlapping use of multiple datasets and technologies (i.e.: video, audio, 3D imagery, etc.) can overwhelm viewers and the evidence presented can be difficult to understand. I agree with this view in that FA and FO should present their research in an accessible way if their intention is to reach those who are unfamiliar with their research.

In a sense, this thesis isn't immune to the above criticisms either. As explained in an earlier chapter, I have personal reasons for bringing up the EU's obstruction of solidarity networks in the Mediterranean. Still, my research isn't based on random assumptions and fabrications, but on research that speaks for itself. Similarly, Weizmann states that for FA, “the strength of evidence is the degree to which it is composed and [to which] its various elements support each other” (ibid.).

### ***2.3.5. Geospatial Mapping***

Geospatial mapping is the chosen visualization tool for this thesis because of the power of visual images to enhance our cognitive understanding of different situations



and contexts. A visualization of CSO ship detentions will compress a lot of information into the spatial setting of the Mediterranean Sea, with the intention of showing the extent and frequency of EU obstruction of SAR CSOs.

In addition, by clicking on the different ship detentions, more information will be displayed, including dates, authorities responsible for the detention, the detention narrative, and related court cases, if any. In this way, it will be easier for the viewer to get a more complete picture of the different cases, as the map is intended to serve as evidence of the EU's obstructionist behavior while also raising awareness.

Another potential outcome of mapping the EU's actions against search and rescue operations in the Mediterranean is that a copy of the map could later be used by SAR CSOs to continue mapping ship detentions and use the map as evidence of ongoing EU violations. In this way, it could serve as a public and counter-strategic tool for SAR CSOs.

In this thesis, the possible traps of a map (too much abstraction, selective truths, reinstating certain power relations, colonial traps of a map, etc.) will not be ignored but tended to by being aware of them and staying critical of the thesis' mapping. To quote professor of geography Mark Monmonier (2005):

“[...] consumers of statistical analyses and data graphics must be informed skeptics. This plea is equally relevant to map users, who need to appreciate the perils and limitations of cartographic simplification as well its power and utility.” (ibid. 221)

## CHAPTER 3

### DEVELOPMENT OF CIVIL SOLIDARITY IN THE MEDITERRANEAN SEA

With a solid theoretical foundation in place, this chapter delves deeper into the subject matter by exploring the emergence of civil solidarity, which since 2014 has carved a path of activism in response to the gaps left by the EU state actors. The chapter also presents the current landscape of SAR CSOs operating in the Mediterranean, with a subsequent brief detour to examine the curious prominence of German SAR initiatives in the field.

#### **3.1. The Rise of SAR CSOs**

The figures provided by the IOM (2023), confront with a stark reality: between 2014 and 2023, an estimated one and a half million<sup>8</sup> migrants embarked on the perilous Mediterranean crossing to Europe. Tragically, during the same time frame between 2014 and 2023, the Missing Migrants Project (an IOM initiative) has documented approximately 27,845 deaths and disappearances among those undertaking these journeys. In 2023 alone, the toll remains high, with the number of victims reaching 2,096 at the time of this writing, August 2023 (MMP 2023).

The migratory routes used by refugees to reach Europe are commonly known as the Western Mediterranean route, the Central Mediterranean route, and the Eastern Mediterranean route.

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<sup>8</sup> This number includes arrivals, and cases of dead and missing migrants.

For decades, the Mediterranean has been the scene of countless tragedies. One such humanitarian disaster, in which more than 360 migrants died in a shipwreck off the coast of Lampedusa in October 2013 (Wallis 2021), finally prompted the Italian government to act. In the same month, a state rescue mission called *Mare Nostrum* was launched, patrolling the Italian coast but also venturing into the high seas and even inspecting the Libyan coast (DLF 2014). The Italian navy is believed to have rescued around 400 migrants a day and 150,000 in total during its year-long mission (Handelsblatt 2015).

However, as fast as it was set up, *Mare Nostrum* was quickly replaced by *Operation Triton*, which was commissioned by the European Border and Coastguard Agency Frontex in November 2014. This agency has a dual mandate to assist in “humanitarian emergencies and rescue at sea” (EC 2014), while at the same time focusing on securing European borders by cooperating with EU Member States in forced returns of people “who have exhausted all legal avenues to legitimise their stay within the EU” (Frontex 2019:2) and by conducting “return operations and charter aircraft also at its own initiative” (ibid. 5).

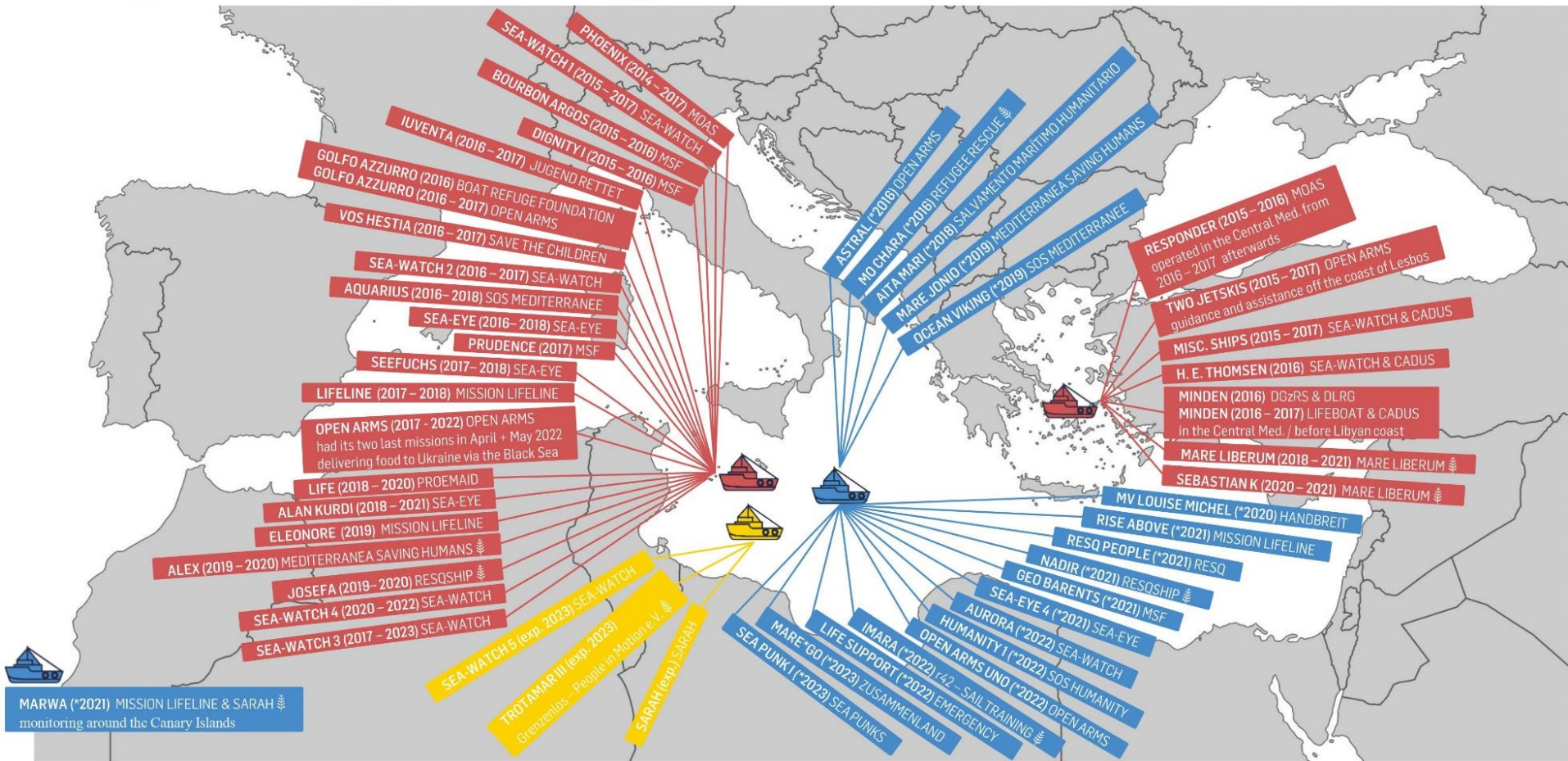
Therefore, since 2014, the growing awareness of Frontex's contradictory agenda and the deadly absence of other official EU rescue vessels led to an increasing number of civil society organizations (CSOs) operating search and rescue (SAR) missions in the Mediterranean.

Among them, MOAS pioneered by initiating SAR operations since September 2014, followed by MSF in March 2015. While MOAS and MSF conducted complete SAR missions in 2015 and 2016 already, others like Jugend Rettet, Sea-Watch and Sea-Eye and initially provided “temporar[y] assist[ance] [to] migrants in need while

awaiting the arrival of a larger vessel” (Cusumano & Villa 2020:27). By 2017, all of these CSOs had transitioned to direct disembarkation at Italian ports (ibid.).

Since there have been many more SAR CSOs operating in the Mediterranean between 2014 and today, I have created a static map that should provide an overview of all ships that have ever been, are still, or will be operating in the Mediterranean. This map shows the names of these ships, their operational times, and the names of the SAR CSOs associated with them. It also shows, albeit in a limited way due to space limitations, where these ships have operated and includes a legend for better understanding of the colors and icons used. Much research has gone into this map and due to its static nature, it is a snapshot of the time between 2014 and 2023. From early March to August 2023, this map has been updated five times, reflecting the ever-changing landscape of SAR ships operating in the Mediterranean. It was last updated on August 14, 2023.

 operational ships  
  non-operational ships  
  ships expected to operate soon  
  ships that mostly monitor the seas, call on other ships for help and rescue if necessary



The SEA-WATCH 1 was given to Mare Liberum in 2017 and continued to operate in the Aegean Sea as MARE LIBERUM until 2021.  
 Then, in 2023, Mare Liberum gave the ship to Zusammenland under which it operates as MARE\*GO.  
 The DIGNITY I (MSF) was given to Sea-Watch in 2017 and continued to operate as SEA-WATCH 3 until 2023.  
 The SEEFUCHS (Sea-Eye) was given to ProemAid in 2018 and continued to operate as LIFE until 2020.

The SEA-WATCH 2 was given to Mission Lifeline in 2017 and continued to operate as LIFELINE until 2018.  
 The SEA-WATCH 4 was given to SOS Humanity in 2022 and continues to operate as HUMANITY I.  
 The ALAN KURDI (Sea-Eye) was given to ResQ in 2021 and continues to operate as RESQ PEOPLE.

Figure 1: Ships of SAR CSOs in the Mediterranean between 2014 and 2023.

Last updated: August 14, 2023

These organizations demonstrated diverse political standpoints, with MOAS taking an apolitical stance while SAR CSOs like MSF, Jugend Rettet, Sea-Watch and Sea-Eye combined

“[...] humanitarian relief with advocacy, whistleblowing, and naming and shaming by using their presence at sea to denounce the suffering stemming from European border policies.” (ibid.)

Their collaboration with the Italian Maritime Rescue Coordination Centre (MRCC) remained effective until political restrictions and criminal investigations led to suspensions and decreased operations by the end of 2017<sup>9</sup>.

Although many CSOs had maintained good working relationships with EU agencies and rescue missions until the summer of 2016, this type of cooperation quickly faded as the few EU operations that were present began to shift their focus from rescuing people in distress at sea to deterring migrant smugglers and securing EU borders.

As a result, there is currently no European initiative dedicated exclusively to rescue operations in the Mediterranean. Moreover, the CSO fleet operating in the Mediterranean isn't particularly wanted and has been criminalized and accused of facilitating irregular immigration, collaborating with smugglers and money laundering. In recent years, the EU's repertoire of criminalization tactics has expanded to include the interdiction of and legal proceedings against CSO rescue ships and aircraft. These are discussed in more detail in Chapter 4.

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<sup>9</sup> See Chapter 4.2. for more information.

### 3.2. The Current Civil Fleet

Speaking of SAR CSOs which are currently sailing missions in the Mediterranean, I count 18 SAR CSOs which operate 17 vessels and one lifeboat. The crews of the *Nadir* and the *Imara* operate on a smaller scale, monitoring the sea, calling for other, larger rescue vessels in case of an emergency, and assisting in the rescues alongside them. The crew of the *Mo Chara* is similar, but their lifeboat is even smaller and currently operates alongside Sea-Eye.

Vessel	CSO Name	Country of Registration	currently operative in SAR
<b>Aurora</b>	Sea-Watch	GER	since 2022
<b>Ocean Viking</b>	SOS Mediteranee	GER	since 2019
<b>M.V. Louise Michel</b>	Handbreit	GER	since 2020
<b>Rise Above</b>	Mission Lifeline	GER	since 2021
<b>Nadir</b>	Resqship	GER	since 2021
<b>Sea-Eye 4</b>	Sea-Eye	GER	since 2021
<b>Humanity 1</b>	SOS Humanity	GER	since 2022
<b>Imara</b>	r42 - sailtraining	GER	since 2022
<b>Mare*Go</b>	Zusammenland	GER	since 2023
<b>Sea Punk I</b>	Sea Punks	GER	since 2023
<b>Mare Jonio</b>	Mediterranea Saving Humans	IT	since 2019
<b>Resq People</b>	Resq	IT	since 2021
<b>Life Support</b>	Emergency	IT	since 2022
<b>Astral</b>	Open Arms	ES	since 2016
<b>Open Arms Uno</b>	Open Arms	ES	since 2022
<b>Aita Mari</b>	Salvamento Marítimo Humanitario	ES	since 2019
<b>Geo Barents</b>	MSF	NL	since 2021
<b>Mo Chara (Lifeboat)</b>	Refugee Rescue	GB-NIR	since 2016 (break in 2020)

Table 1: SAR CSOs operating in the Mediterranean as of August 2023

### 3.3. The Presence of German SAR CSOs

Of the 18 SRA CSOs listed above, 10 are German CSOs, representing approximately 55% of the total. These CSOs include: Sea-Watch<sup>10</sup>, Sea-Eye<sup>11</sup>, SOS Mediteranee<sup>12</sup>, Mission Lifeline<sup>13</sup>, Resqship<sup>14</sup>, Handbreit<sup>15</sup>, SOS Humanity<sup>16</sup>, r42-sailtraining<sup>17</sup>, Zusammenland<sup>18</sup> and Sea Punks<sup>19</sup>. In addition, two more German CSOs called SARA and Grenzenlos – People in Motion e.V., are planning to join the civil fleet soon and are currently preparing their ships for sea rescue and monitoring purposes. Moreover, Sea-Watch is planning to add another vessel, the *Sea-Watch 5*, to its operational SAR vessel, the *Aurora*, later this year.

The table above also shows that currently three SAR vessels are operated by Italian CSOs (about 17%), three others by Spanish CSOs (about 17%), one vessel by a Dutch CSO (about 5.5%) and one lifeboat by a CSO based in Northern Ireland (about 5.5%).

Given that the focus of this thesis is on three specific cases involving German SAR CSOs, I would like to briefly address why they seem to be "flooding" the

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<sup>10</sup> Started SAR missions in 2015.

<sup>11</sup> Started SAR missions in 2016.

<sup>12</sup> Started SAR missions in 2016, based in Germany and France.

<sup>13</sup> Started SAR missions in 2017.

<sup>14</sup> Started monitoring in 2019. Their main aim is to “observe, document, reconnoiter – and if no other ship is available, [to] help people in distress at sea, as prescribed by international maritime law” (Resqship 2021).

<sup>15</sup> Started SAR missions in 2020 with Banksy-donated ship *M. V. Louise Michel*.

<sup>16</sup> Started SAR missions in 2022, used to be part of SOS Mediteranee, but now operating separately.

<sup>17</sup> Started monitoring in 2022, with the aim to observe and deliver first aid with their assistance vessel.

<sup>18</sup> Started SAR missions in May/June 2023.

<sup>19</sup> Started first SAR mission in May 2023, but had to cancel their first rotation due to an oil cooler leak.



Mediterranean rescue space. Although concrete answers cannot be given due to a lack of scientific research, a reasonable discussion can emerge.

What I find most plausible is that Germany has a solid history of search and rescue, which began in 1865 when the German Maritime Search and Rescue Service (DGzRS) began operations in the North and Baltic Seas. Interestingly, similar to today's Mediterranean SAR CSOs, it is a non-state charitable organization, demonstrating that nongovernmental maritime rescue has historical roots in Germany (Marquardt 2021:82 f.).

As these developments predate the Second World War, they tend to limit speculative links to a sense of historical guilt. Rather, historical responsibility may be one of the many factors driving civil society activism in Germany today. However, the idea that German civil society wants to present a certain image of Germany to counter its historical transgressions may be further from the truth. I say this because many activists in Germany may not be motivated by a national narrative, but rather by ideals that transcend nationality. In the contemporary landscape, a significant number of activists promote borderless societies and the dissolution of national sovereignty - not necessarily because they feel the need to right historical wrongs, but rather because they have learned how harmful national ideologies can be.

Another non-state organization was born in 1979, when Rupert and Christel Neudeck began conducting search and rescue missions in the South China Sea with their ship Cap Anamur. This later became the name of their organization: Cap Anamur - German Emergency Doctors. While this organization does currently not conduct SAR operations at sea, it serves as a testament to Germany's long-standing engagement in search and rescue.

In addition, there is the element of geographical proximity. Since Germany is relatively far from the Mediterranean Sea and does not border it, this may be a vantage point from which it is sometimes easier to facilitate a more detached yet effective approach to extending assistance. Meanwhile, the influence of economic prosperity adds another layer of complexity, even as it coexists with other wealthy nations.

In addition, Germany's pro-civil society environment facilitates SAR CSOs' access to vital resources, volunteers, and funding, while allowing for the cultivation of public awareness and support through a variety of media platforms. Although they face opposition in an evolving center and far-right political milieu, democratic principles still protect these organizations from being banned-although we will see that the EU seeks to undermine these organizations in a broader spectrum through other means.

Taken together, these thoughts contribute to a nuanced discussion of the dynamics that may be driving the pronounced involvement of German SAR CSOs in the Mediterranean and are certainly subject to more field-based research.

## CHAPTER 4

### KEEPING SOLIDARITIES AT BAY

This chapter will now get to the heart of this thesis by first explaining the EU's procedures for securing its borders and subsequently criminalizing SAR CSOs. It will then take a closer look at the EU's deterrence mechanisms and how they work. This will be done primarily through three compelling case studies.

#### **4.1. EU Border Securitization and Externalization**

Apart from the lethal absence of EU SAR vessels in the Mediterranean Sea, its militarized procedures have also involved practices of border externalization, migrant offshore processing, forcible returns of migrants at sea and the circumvention of international laws. In addition, the EU and Italy are cooperating with the Libyan Navy and have trained as well as financed the Libyan Coast Guard for executing pullbacks at sea (Baldwin-Edwards & Lutterbeck 2019:2253). These *modi operandi* clearly epitomize the EU's willingness to divert responsibility for migration matters in the Mediterranean. Mainwaring and DeBono (2021) affirm that the Union and its member states

“[...] avoid responsibility for deaths at sea, while framing migration flows as an ahistorical ‘crisis’ and projecting an image of Europe as a coherent, unified body with an altruistic, civilized core and a hard border.” (ibid. 1032)

A common practice the EU deploys is the making of migration deals such as the one with Turkey in 2016, where agreements were made that Turkey would intercept Syrian refugees at its land and sea borders. In exchange, Turkey was given extensive

funding and further concessions on part of the EU (Hintjens & Bilgic 2019:85). This deal did not only deprive refugees and migrants of their human right to freedom of movement; it was also criticized as refugees were forced to stay in a country known for its “state violence against minorities” (ibid.).

Likewise, EU-Libya policies since 2015 were designed to curb migration flows from Libya to EU territory. Instead of complying with UNCLOS and the 1951 Refugee Convention, the United Nations Security Council (UNSC) resolution 2240 authorized EUNAVFOR MED to intercept migrants at sea and return them to Libya (Baldwin-Edwards & Lutterbeck 2019:2250). However, it is widely known that Libyan detention centers are frequently subject to militia groups who rape, torture, and even murder detainees (ibid. 2247).

The EU military interceptions that took place after UNSC Resolution 2240 was adopted, resulted in the capture and destruction of countless smuggling vessels in the Mediterranean Sea as part of EUNAVFOR MED’s *Operation Sophia*. This further aggravated the vulnerability of migrants as smugglers resorted to having young refugee men navigate their boats to avoid detection. With many wooden vessels destroyed, smugglers also resorted to an increased use of rubber dinghies which were even more dangerous (ibid. 2253).

Since 2020, EUNAVFOR MED has been conducting *Operation Iriini*, another paradoxical mission tasked with training the Libyan coast guard to intercept migrants at sea while simultaneously enforcing the UN arms embargo on Libya (EUCO 2020).

*Frontex* on the other hand, currently operates several ships in the Mediterranean Sea that are to protect the borders of Spain, Italy, Greece and the Balkans by identifying people smugglers, seizing drugs, weapons and fraudulent documents (EUCO 2023).

Only some of these missions list “search and rescue” as one of their duties next to their main areas of responsibility. Thus, there is currently no EU-coordinated operation which solely focuses on search and rescue in the Mediterranean Sea.

Moreover, the EU is funding so-called “priority partners” (ibid. 2252) in the Sahel like Niger, Mali, Nigeria, Ethiopia, and Senegal that record a high number of migrants fleeing along the “Central Mediterranean migration route” (ibid.). The goal is to primarily prevent migration flows from even arriving in Libya, for instance through EU field offices that are set up to document and counter “illegal migration flows” (ibid. 2249). All of these actions are examples of EU border externalization and migrant offshore processing which can be seen as forms of institutional depoliticization, as the EU transfers its responsibility to rescue and protect migrants and refugees to third countries in exchange for large-scale funding.

Over the past years, a scenario that had long been feared by CSOs further worsened tensions in the Central Mediterranean. Shortly after Libya had joined the SAR convention, the IMO agreed to grant Libya its own SAR zone (Bathke 2019). This newly established zone enabled the Italian authorities to inform the Libyan Navy and Coast Guard of migrant vessels before they could reach the Italian territorial sea. As a result, Libyan authorities assumed the role of intercepting and returning refugees at sea.

These proceedings often lead to confrontations with CSOs at sea. An example is the 2016 boarding of a Sea-Watch vessel by Libyan officials “who shot in the air and claimed the CSO vessel was not allowed to be there” (Cuttitta 2018:646). Although Libya never ratified the UNCLOS, this does not entitle it to violate international law “as innocent passage, freedom of navigation, and the duty to render assistance are of longstanding customary law character” (Riemer 2017).

However, instead of confronting Libya on its visible breaches, seven EU member states<sup>20</sup> have signed to participate in the “Seahorse Mediterranean Network” (Statewatch 2021), a surveillance cooperation that passes on location data of migrant vessels at sea to the Libyan Coast Guard. In that sense, the Libyan SAR zone can be seen as a “fiction that was useful to assert EU efforts to reduce the number of arrivals by sea” (Statewatch 2020).

These practices demonstrate how EU member states employ securitization, border externalization and surveillance as a means of curbing migration flows.

#### **4.2. Criminalization of SAR CSOs in the Central Mediterranean**

By entering this contested Mediterranean space, SAR CSOs challenge the EU’s dominant power structures and shed light on the various ways in which it abuses its power. They expose the EU’s border practices, reveal the precarious situation of migrants in distress at sea and highlight “Europe’s complicity in the deaths of thousands of people at its edge” (Mainwaring & DeBono 2021:1032). Civilian non-state actors therefore pose a highly undesirable threat to the humanitarian image that the EU seeks to maintain, while its neo-colonial stance towards the Mediterranean is unmistakable. This stance involves the EU treating the Mediterranean in terms of its own exclusionary interests, while ignoring the historical repercussions of its own colonial past, as “[t]he majority of those who cross the sea to seek asylum come from countries that were until recently under colonial rule” (ibid. 1034).

Between 2014 and 2019 SAR CSOs assisted approximately 120,000 people in distress at sea (Cusumano & Villa 2020:23). At first, coastal states received their efforts

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<sup>20</sup> Notably, all seven member states are coastal states: Italy, France, Spain, Cyprus, Malta, and Portugal.

with gratitude. The “Italian authorities welcomed CSOs as an important multiplier of their SAR capabilities” (Cusumano 2019:107) as Italy had just suspended its *Mare Nostrum* rescue mission in November 2014 and the EU’s Frontex agency did not prioritize search and rescue missions in their agenda.

Moreover, Italy had spent about nine million euros on *Mare Nostrum* per month without financial support from the EU. Meanwhile, Frontex’ operation *Triton* which succeeded *Mare Nostrum* in 2014 and gave precedence to border surveillance, cost the EU about three million euros per month with the financial and technical support of 26 member states (Benedicto 2019:22). In 2018, *Triton* was then replaced by operation *Themis* which similarly lists border control and surveillance as its main objectives before search and rescue (Benedicto 2019:22). It also adheres to enhanced law enforcement and monitors a more restricted maritime area of 24 nautical miles, whereas *Triton* operated within a 30 nautical mile radius from the coast (Laux 2021). Based on these facts, it is clear that the EU was generally unwilling to support Italy's *Mare Nostrum* rescue operations in 2014 and continues to trivialize saving lives in the Mediterranean.

Apart from financial reasons, Italy’s decision to discontinue its state-owned rescue mission was also influenced by continued frustration with the EU’s lack of support in sharing the responsibility to host the growing numbers of displaced people among member states. This led to an overall shift in the Italian governmental and public sentiment towards migration and asylum related topics (Cusumano 2019:107).

Frontex capitalized on this momentum by publicly accusing SAR CSOs of acting as a pull factor for migrants towards Europe and of being involved in smuggling activities (ibid.; Cusumano & Villa 2020:29). In Italy, especially the populist right wing

politicians joined in, labeling SAR CSOs as “taxis of the sea” (ibid.). Likewise, Italy’s new Prime Minister Giorgia Meloni, known for her outspoken anti-immigration stance, recently referred to CSO vessels as “pirate ships” (Lindsay 2023).

Further still, the Italian government has implemented increasingly restrictive policies towards SAR CSOs over the past decade. These restraints have not only made the work of civilian non-state actors much more difficult but have sometimes caused their SAR activities to come to a complete halt.

The *Minniti Code of Conduct*, passed by the Italian government in 2017 with support of the European Commission (EC 2017), is one of the most far-reaching of these policies<sup>21</sup>. Even though this code of conduct is not a legally binding document, CSOs were still expected to comply with it or risk criminal investigations and port closures for disembarkation (Cusumano 2019:112).

However, four out of nine CSOs, including Jugend Rettet, MSF, Sea-Watch and LifeBoat, decided not to sign the code at the time of its enactment (Cusumano 2019:107)<sup>22</sup>. There were three provisions in particular that these CSOs disagreed with:

1. The obligation not to enter Libyan territorial waters “except in situations of grave and imminent danger” and the commitment not to interfere with so-called Libyan SAR missions.
2. The prohibition on transferring survivors to other vessels, and therefore the requirement that each CSO disembark rescued persons immediately and independently in ports assigned to them.

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<sup>21</sup> It was co-decided by the interior ministers of Germany, France and by the EU Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos (2014-2019) at the time.

<sup>22</sup> They eventually signed the Code, but on the grounds of negotiations and changes implemented to align with their operational principles.



3. A commitment to allow police personnel on board of CSO vessels for investigations “related to migrant smuggling and/or trafficking in human beings”. (Code of Conduct 2017:2-4)

All of these regulations were designed to make the work of CSOs more difficult in the long run, if not to eliminate their scope for action altogether.

The instruction not to enter Libyan territorial waters and to respect its SAR zone cannot be taken seriously by CSOs, as the Libyan coast guard facilitates pushbacks at sea and “those taken back to Libya would be subjected to inhumane treatment” (Cusumano 2017:108).

Furthermore, the requirement not to transfer rescued people to other vessels is particularly challenging for smaller CSOs that need to secure resources (i.e.: fuel and port fees). If they had to go ashore every time they rescued even a small number of people, it would lead to their demise. But by transferring migrants to other ships that are bound for the next safe port in anyway, they save time and money and ensure that they remain available for further rescues at sea.

The third point listed here, was also received with great suspicion by the four non-signatory CSOs, as the presence of police officers on board the CSO ships would violate their humanitarian principle of neutrality. Moreover, Jugend Rettet argued that if they allowed police officers on board, it would look like they were agreeing to be “seen as [...] part of the conflict” (Reuters in Rome 2017) around smuggling and human trafficking in the Mediterranean Sea. This perspective is in line with Cusumano’s argument that “[u]ltimately, the Code only reinforces the misleading belief that maritime migrations can be reduced by simply straightjacketing rescuers.” (ibid. 2017:113)

2018 marked another shift in Italy's approach to SAR operations in the Mediterranean when newly appointed far-right Interior Minister Matteo Salvini announced a closed ports policy. Cusumano & Villa (2020) emphasize that

“[d]espite the absence of formal laws to enact this warning, the government's new stance immediately had a strong impact on NGOs' activities.” (ibid. 30)

This policy gave Salvini the power to either veto disembarkations altogether or make SAR vessels wait for days outside Italian territorial waters before being allowed to dock in an Italian port, often leading to intolerable conditions on board rescue vessels. Next to discouraging CSOs from conducting SAR operations, this policy also aimed to shift the responsibility for migrant reception to other EU countries. Often, disembarkation was granted only on the condition that other EU countries agreed to accept the refugees.

Salvini's policy of closed ports was abandoned at the end of 2020 under a new government (Conte II). However, “this merely meant the use of different legislation to achieve the same ends” (Schack 2023:98) and the current Meloni cabinet appears to be continuing this course. In February 2023, a new Italian legislation was passed that is similar to one of the provisions of the 2017 Minitti Code. It prohibits SAR vessels from conducting multiple rescues at sea and obliges them to disembark the rescued persons in an assigned port immediately. Only this time, many SAR vessels will be assigned to very distant ports, “in some cases hundreds of kilometres away” (Urso & Weir 2023).

The EU's "Facilitator's Package" is another example of the challenges CSOs face in navigating legal frameworks. This package includes provisions that criminalize the facilitation of irregular entry, even if not for financial gain, and gives states discretion to

apply the humanitarian exemption (Cancellaro 2023:15), a legal loophole that was also exploited in the *Iuventa* case, as discussed in Chapter 4.5.4.

The tactics described in this subchapter have contributed to a “shrinking space” (della Porta & Steinhilper 2021) for civic solidarity in the Mediterranean and “pose a threat to civil society’s independence and impartiality from government interference” while also leading “to the politicization of the criminal justice system which undermines public faith in liberal democracy” (ibid.)

### **4.3. Decoding the EU’s Deterrence Mechanisms**

Based on the two previous chapters, it becomes evident that different EU institutions and authorities use various tactics to restrict the flow of migrants towards Europe and to criminalize people on the move as well as those who want to come to their aid.

#### ***4.3.1. Existing Conceptualizations***

Several researchers have conceptualized this approach in the EU’s governmentality of migration. Gammeltoft-Hansen and Tan (2017) call it the “deterrence paradigm” as the EU’s focus in its policymaking around migration and asylum is primarily on either preventing entry to Europe altogether or making it enormously difficult for migrants to obtain asylum. Thus, rather than labelling incoming flows of migrants passing the Mediterranean towards the EU as a “refugee crisis”, the ongoing situation should instead be viewed as “a crisis in terms of the institutionalized responses so far pursued by states” (Gammeltoft-Hansen & Tan, 2017:29).

Vandevooordt (2020) also analyzes the overarching strategy of deterrence in the apparatus of the EU and uses the term “power techniques” to refer to rules which authorities enforce to dictate the status of migrants. By enacting certain criteria, migrants must either apply to asylum or find themselves outside the European refugee regime and expect to be deported (ibid. 51). With that, people outside the protection of the refugee regime will be vulnerable to violence and techniques of suffering through state actors who won’t have to face any consequences (ibid. 58). However, it is important to add that even asylum seekers do not enjoy comprehensive protection under the EU. They too are subject to the arbitrary tactics of EU authorities. A few examples of this include lengthy waiting times in the asylum process, inadequate living conditions in asylum facilities, restricted access to essential and legal services, and the possibility of being deported by the EU to a "safe third country”.

But there is a gap in the conceptual research of the EU’s deterrence strategies. As pointed out in chapter 4.2., EU authorities not only target people on the move, but also those who have risen to the task of assisting them. A larger body of research analyzing concepts such as the "deterrence paradigm" in the context of the EU’s harassment of civil society actors in the migration context has yet to emerge<sup>23</sup>.

Therefore, to contribute to the EU’s criminalization of pro-migrant activists, the main part of this paper is specifically focusing on how the EU systematically deters European solidarity networks that conduct SAR operations in the Mediterranean and advocate for safe passages and humanitarian corridors at sea<sup>24</sup>.

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<sup>23</sup> With exceptions such as Schack’s (2022) PHD thesis, which will be introduced later on.

<sup>24</sup> In a similar vein, it can be argued that pro-migration activists, volunteers in camps and various CSOs on land, who offer essential aid to migrants and support them in different bureaucratic tasks and legal processes, also face surveillance and subversion by state actors who perceive them as unwelcome

Another noteworthy concept that will contribute to this research then, is the notion of a “politics of exhaustion” which was first introduced by Ansems de Vries and Welander in 2016. The authors developed this concept as they researched the effects of the EU’s “physical, psychological and structural violence” (ibid.) on displaced people in the “Jungle” camp of Calais, France. In one of their guest posts on Oxford University’s *Border Criminologies* blog, they define the “politics of exhaustion” as follows:

“In brief, it refers to the ways in which exhaustion is employed as a tool of governance and control and how it is endured and resisted as a lived experience by people forced to move (or forced not to move) and those working in solidarity with them. It highlights the violent nature and impacts of the management of movement – its accumulated effects over time and across spaces.” (Ansems de Vries & Welander 2021)

Regarding solidarity movements, the authors further mention a particular form of violence against civil society, stating that it involves:

“[...] the obstruction and criminalisation of humanitarian assistance, whereby those seeking to offer humanitarian, political and/or legal assistance are targeted or prosecuted for frustrating migration management procedures.” (Ansems de Vries & Welander 2016)

Hence, the “politics of exhaustion” is a very fitting notion in the context of this thesis and shall serve as an overarching framework. Exploring this concept's application to SAR CSOs in the Mediterranean Sea will provide valuable insights into the broader dynamics of the EU's criminalization measures vis-à-vis pro-migrant civil society actors<sup>25</sup>.

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intruders. But given the primary focus of this thesis on the EU’s obstruction of SAR CSOs, these cases will not be pursued further in this context.

<sup>25</sup> While Ansems de Vries and Welander acknowledge civil society as a target of the “politics of exhaustion”, they haven’t researched this phenomenon in depth. However, they briefly mention that they plan to further investigate the “politics of exhaustion” in the context of solidarity, suggesting they might conduct more research on this topic in the future.

#### 4.3.2. *The EU's Instruments of Insecurity*

Within that framework, I maintain that different forms of governmental criminalization and violence exist that work directly and indirectly against the agenda of SAR CSOs in the Mediterranean Sea. Building on Huysmans' (2006) elaborations on "politics of insecurity" and "domains of insecurity", I have derived my own notion and refer to the EU's deterrence mechanisms targeted at SAR CSOs as *instruments of insecurity*.

However, before delving deeper into that notion, I will briefly summarize Huysmans' understanding of the terms "politics of insecurity" and "domains of insecurity". The term "politics of insecurity" refers to a complex governmental process in which various methods, technologies, knowledge, and established practices are used to regulate freedom(s)<sup>26</sup> by addressing potential dangers and risks. It encompasses the construction of feelings of insecurity and fear through political and public discourse, social relations, and institutional routines. Key to understanding this concept is to recognize that it involves a messy "multidimensional process of interconnecting diverse policy issues through institutional codifications," which in turn shape what Huysmans refers to as "domains of insecurity" (Huysmans 2006:150). These domains represent the specific realms and contexts where the impacts of security measures and resulting feelings of insecurity and fear manifest themselves.

Subsequently, the notion I put forward as *instruments of insecurity*, refers to the diverse strategies and practices utilized by EU security actors to reinforce a politics of insecurity and to maintain control over domains of insecurity. Focusing specifically on pro-migrant SAR CSOs in my research, I have observed three distinct ways through

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<sup>26</sup> I.e.: freedom of movement, freedom of expression, freedom of information, etc.

which such organizations have recurrently faced deterrence and stifling actions between 2016 and 2022. These three *instruments of insecurity* encompass bureaucratic techniques, arbitrary policing measures and legal tactics orchestrated by EU authorities.

In the following part, a short elaboration on each of these instruments and their multifaceted efforts aimed at hindering pro-migrant SAR CSOs in the Mediterranean will be given.

#### 4.3.2.1. Bureaucratic Techniques

Bureaucratic techniques targeting SAR CSOs may involve complex administrative procedures, the delay of permits and flag registrations, the imposition of unreasonable fines and the introduction of restrictive regulations. Frequent inspections, burdensome reporting requirements, and audits may also hinder their operations. Additionally, SAR CSOs may face ever-changing compliance standards and other intentional bureaucratic bottlenecks that slow their work and discourage their engagement in life-saving missions. These observations are consistent with the Paris School, which asserts

“[...] that the bureaucratic routines and everyday practices of security professionals institutionalize the field of security, therefore giving the governments and bureaucracies control over the political processes.”  
(Sezal 2019:96)

#### 4.3.2.2. Arbitrary Policing Measures

Arbitrary policing measures directed at SAR CSOs may include frequent and unwarranted vessel inspections, delays in necessary permits, harassment of staff, unjustified arrests, equipment seizures, and the imposition of excessive fines. Moreover, police actors may use surveillance tactics such as the planting of bugs on SAR vessels

and the wiretapping of staff's mobile phones. Unreasonable limitations on access to the nearest ports for disembarkation can also hinder SAR CSOs from fulfilling their life-saving missions effectively. Arbitrary policing measures may also apply to maritime rescue coordination centers (MRCCs) and coast guards (such as the Italian coast guard or the European coast guard agency Frontex). Even though they may not be police forces in a traditional sense, they are often mandated and authorized by EU or state authorities to conduct maritime law enforcement and border control operations. Therefore, they may engage in policing actions at sea, including monitoring, surveillance, and regulating the activities of SAR CSOs.

#### 4.3.2.3. Legal Tactics

Legal tactics may encompass various strategies to challenge the legal status of SAR CSOs. These tactics may involve the initiation of lawsuits and legal complaints to question the organizations' modes of operation, compliance with legal requirements or registration. Protracted court procedures often serve to tie up the organizations' time and funds, and to divert their efforts and attention away from their primary mission of search and rescue. Besides, authorities may seek court injunctions or restraining orders, i.e., to hinder SAR ships from accessing certain maritime areas or to legitimize the detention of SAR ships in European harbors. Furthermore, legal tactics may involve law changes that aim to negatively impact SAR CSOs, the exploitation of legal loopholes, and collaboration with other authorities to initiate investigations and surveillance methods. In addition, impositions of high fines and threats of long jail sentences for staff members further obstruct the life-saving mission of SAR CSOs and can publicly cast them in a false light.



All of these *instruments of insecurity* share the common goal of systematically obstructing SAR CSOs, which often leads to their work being slowed down, significantly complicated, or even halted altogether. Besides, bureaucratic, policing, and legal measures are frequently implemented without prior notice and often violate the fundamental democratic rights of the respective civil organizations.

After I had already identified these three *instruments of insecurity*, I became aware of a fascinating PhD dissertation titled “The Criminalization of Pro-Migrant Civil Society in Europe” by Laura Schack (2023). Her research confirmed my observation that a typology for the ways in which SAR CSOs are obstructed by EU authorities was still missing. Schack herself identifies six categories through which she analyzes the criminalization of pro-migrant civil society in Europe: “legislative change, judicial harassment, police harassment, administrative sanctions and bureaucratic techniques, labels and stigmas, and co-optation” (Schack 2023:88).

In my own typology of the EU’s *instruments of insecurity* targeting maritime pro-migrant CSOs, I combine Schack’s categories of “legal change” and “judicial harassment” under the umbrella of “legal tactics” and her “administrative sanctions and bureaucratic techniques” into “bureaucratic techniques”. Furthermore, I include “police harassment” under “arbitrary policing measures”. While Schack also lists “labels and stigmas” and “co-optation” in her typology, I will not analyze them as distinct categories in this thesis due to its scope, but I may mention them where relevant.

In the following chapter, three SAR CSOs will be examined as case studies, highlighting how EU authorities hindered their SAR missions and political activities between 2016 to 2022. The aim is to shed light on the criminalization of SAR CSOs and

to expose underlying mechanisms by using the concept of *instruments of insecurity*. In doing so, it will also become apparent that processes of politicization, securitization and criminalization are often interconnected in the context of deterrence practices.

#### **4.4. Civil Fleet under Threat**

The three SAR CSOs chosen as fall cases for this thesis are Jugend Rettet, Sea-Watch and Sea-Eye. In the following sub-chapters, some of the greatest obstacles and challenges imposed on them by different EU authorities will be analyzed to provide concrete examples of how their SAR missions have been obstructed. I have chosen these three SAR CSOs because they were among the first organizations to initiate SAR operations in the Mediterranean during the so-called "refugee crisis" and I have been following their work via the news, social media, their newsletters and updates ever since. As they have been around for some time now, their repertoire of encounters with EU deterrence mechanisms deployed against them is (unfortunately) quite vast. Even though this is a disheartening reality, Jugend Rettet, Sea-Watch and Sea-Eye are ideal subjects for research as their experiences provide rich insights into how SAR CSOs are being criminalized by EU state actors and institutions.

One additional reason for selecting these SAR CSOs can be attributed to their headquarters being in Germany. As a native German-speaker, deeply interested in the subject of migration and sea rescue in the Mediterranean Sea, German-language content about these organizations was easily accessible to me in newspapers, journals, updates and press releases. Therefore, my own knowledge of these CSOs has grown over the years, as I kept informing myself about their rescue missions, awareness campaigns and efforts against EU criminalization. Therefore, the natural closeness I developed to these

SAR CSOs as a result of my native German-speaking background played a central role in choosing them as the central case studies of this thesis.

Last but not least, throughout my research, I have been struck by the notable prevalence of German SAR CSOs in the Mediterranean Sea, as they surpass the numbers of SAR CSOs from other European countries by far. This phenomenon, which I have already addressed in chapter 3.3., also captured my attention and motivated me to explore German CSOs more.

Having delved into the reasons behind selecting Jugend Rettet, Sea-Watch and Sea-Eye, I now transition to briefly introduce the different fall cases that will be analyzed in-depth in the following sub-chapters.

Among the CSOs chosen, Jugend Rettet stands out as the one which has experienced the lengthiest detention of a SAR vessel by EU authorities, as well as the longest and most unnerving court case experienced by any European SAR CSO to date. Although the organization does not currently operate a vessel, the case of its rescue vessel *Iuventa* serves as a negative precedent. This case will be analyzed first.

The second CSO to be examined is Sea-Watch. The organization has been involved in search and rescue operations in the Mediterranean since 2015, using several vessels and reconnaissance aircraft. In this case, special emphasis is placed on the numerous detentions Sea-Watch has experienced with its SAR vessel *Sea-Watch 3*, which has been detained for a total of approximately 30 months over the course of numerous detentions.

The third fall case is Sea-Eye, which has been carrying out rescue operations with several vessels since 2016. Here, the focus is on some key detentions related to the

hijacking of a speedboat by Libyan authorities<sup>27</sup>, the withdrawal of ship flags under Salvini, and the imposition of new Italian legislation under the Meloni cabinet.

Despite facing repressions and the impact of frequently imposed legal changes that significantly hinder their operations, Sea-Watch and Sea-Eye persist in their solidarity efforts and remain actively engaged in conducting rescue missions. Jugend Rettet, on the other hand, is still “fighting against the criminalization of [their] crew” (Jugend Rettet, n.d.-a). Next to being vocal about their *Iuventa* court trial in Italy, they also continue to raise awareness of the EU’s deterrence mechanisms and stand in solidarity with people on the move and other SAR CSOs (Jugend Rettet 2023).

Using the knowledge of the previous chapters on politicization, securitization, criminalization, the politics of exhaustion and the *instruments of insecurity*, the three CSOs and their different cases will now be analyzed.

## **4.5. Jugend Rettet – The Iuventa Case**

### ***4.5.1. Political Positioning***

Jugend Rettet<sup>28</sup> is “a network of young Europeans” (Jugend Rettet, n.d.-b) with a mission to do “what governments fail to do: rescuing people in maritime distress” (ibid.). Their political positioning emphasizes a strong stance against the status quo of European migration policies. They demand an end to suffering at the EU's external borders and advocate for practical assistance through a state-led search and rescue program. Through a network of ambassadors, Jugend Rettet has created a platform for “young Europeans to engage in political work” and “to put pressure on state actors to enforce the fundamental

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<sup>27</sup> The found connection with EU state actors is explained in the respective chapter.

<sup>28</sup> English: “Youth (that) Rescues”

right [to] life” (ibid.) in the Mediterranean Sea. The CSO strongly campaigns for the decriminalization of refugees and asylum seekers and challenges the EU to take collective responsibility for the protection and humane treatment of migrants along its external borders and in the Mediterranean region. It is solely funded by private donations.

From July 2016 until August 2017, the CSO realized its vision by sailing rescue missions in the Central Mediterranean with their ship *Iuventa*. Throughout 15 missions they “rescued more than 14,000 people from risk of death” (ibid.).

#### **4.5.2. *The Iuventa’s Path to Seizure***

On the 2<sup>nd</sup> of August 2017, the *Iuventa* got seized by Italian authorities. This marked the first time an EU state-authority captured a SAR ship. The following paragraphs will delve into the events that led to the seizure of the *Iuventa*.

Jugend Rettet itself claims that their organization had been

“[...] at the center of extensive undercover investigations that drew in multiple law enforcement agencies overseen by a particular specialized branch of the Italian judiciary: the Sicilian anti-Mafia.”<sup>29</sup> (Haralambous n.d.)

Without knowing, they had been spied on since September 2016 by three government agents who had come on board of the *Vos Hestia* operated by Save the Children. In several cases, this CSO was cooperating with Jugend Rettet in joint rescue operations. These spies had entered the *Vos Hestia* under the guise of being members of

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<sup>29</sup> Starting in the 1950ies, the Sicilian anti-Mafia became institutionalized to fight against organized crime. Nowadays it is involved in the detection of border criminality as well as the capture of people smugglers in the Mediterranean, while also holding “jurisdiction over the gateways of Europe, at the intersection of national and European borders and of the transnational apparatuses of migration management, border enforcement and humanitarianism. In the wake of the Arab Spring and increased migration across the Mediterranean, anti-Mafia judges and investigative units began to repurpose the skills they had developed to police the Sicilian Mafia” (Haralambous n.d.).

a maritime ship security group (IMI) that Save the Children had employed on board. Throughout one year, they collected alleged evidence of Jugend Rettet's ostensible collusion in people smuggling at sea.

Moreover, in May 2017, the *Iuventa* received a call to sail to Lampedusa. Having rescued and trans-shipped hundreds of people that day, the Italian Maritime Rescue Coordination Center (MRCC) commanded them to keep five of the rescued individuals on board and transport them to the port of Lampedusa – a journey that would take a day to complete.

“[...] the MRCC threatened retaliation if we did not comply. It is likely that hundreds of lives were lost as a result of the MRCC's strange demand that we remove our ship from the rescue zone on one of the busiest days at sea.” (ibid.)

As irrational as the command was, the *Iuventa* crew complied and sailed to Lampedusa, where they underwent interrogation while Italian police officials inspected the ship. Later, the crew found out that the entire intervention had been a pretext for the police to secretly bug their ship.

“The recordings from that bug, together with the wiretaps of crewmembers' phones, make up a large portion of the police dossier against us.” (ibid.)

Finally, in August 2017, the MRCC ordered the *Iuventa* crew to rescue people off the coast of Libya. But once they arrived at the site, an Italian coast guard ship had already completed the rescue of two people. Despite this, Jugend Rettet received orders to take the two individuals on board and sail them to Lampedusa. Their hope was to transfer the two rescued men onto another ship heading in that direction, allowing them to resume further rescue operations.

“And yet every vessel we asked for assistance along the way offered some unlikely justification for refusing the trans-shipment. After four days of waiting for a transfer, the *Iuventa* was sent on another search, this time of a boat in distress south of Lampedusa.” (ibid.)

This rescue call turned out to be a last trap. As soon as the *Iuventa* reached territorial waters, Italian state vessels surrounded the ship and forced it to enter the port. At this occasion, the *Iuventa* got seized and its crew accused of several illegal actions linked to collaborating with smugglers and the facilitation of illegal immigration.

The next morning, the authorities searched our ship for weapons (they found none) and issued us with a warrant for the seizure of the *Iuventa* together with a 150-page indictment for collusion with smugglers (ibid.).

Interestingly, the capture of the *Iuventa* took place exactly one day after the passing of the Italian ultimatum to sign the Minitti Code of Conduct<sup>30</sup>, which Jugend Rettet had decided not to sign and comply with (Heller 2021:34). This non-compliance gave the Italian authorities another incentive to sabotage their operations.

#### ***4.5.3. Accusations against Jugend Rettet***

The main accusation made against their search and rescue crew on the 2<sup>nd</sup> of August 2017, was that in three rescue missions they had conspired with human smugglers in the Mediterranean Sea and facilitated “illegal immigration” into Europe. Several civil actors as well as the research agency Forensic Oceanography<sup>31</sup> have proven that the EU’s allegations against the *Iuventa* crew are false and merely resemble a plot to disable the

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<sup>30</sup> The Minitti Code of Conduct (2017) is explained in more detail in chapter 4.2.

<sup>31</sup> This agency is explained in more depth in chapter 2.4.5.

CSO from sailing its rescue missions. Nevertheless, the legal process against Jugend Rettet continued and was stirred up by the Italian authorities. As a result, in March 2021, Trapani's public prosecutor, Ambrosio Cartosio, brought charges for “aiding and abetting unauthorized entry“ (Iuventa Crew 2022b) against four crew members of the *Iuventa*, along with 16 others from Save the Children, MSF, and one person from one of the shipping companies, all of whom had been involved in the spied-on rescue missions. They now face up to 20 years in prison (ibid.).

The following will provide a comprehensive account of how the Italian authorities portrayed the three incidents they used to accuse the *Iuventa* crew and all other rescuers involved<sup>32</sup>. Additionally, the events will be examined from Jugend Rettet's perspective, with a particular focus on evidence from Forensic Oceanography, which visualized all three cases in great detail.

#### 4.5.3.1. First case, 10<sup>th</sup> of September 2016

##### 4.5.3.1.1. Accusation:

The Italian authorities accuse the *Iuventa* crew of having directly worked with smugglers. They conclude this from their spying eyewitnesses. After rescuing about 140 people, the *Iuventa* crew is accused of having sent one of the migrants' boats back to the Libyan coast with two men still on board, suggesting the organization's association with smugglers. Through decision n. 56138/2018, the Italian Supreme Court (Corte di Cassazione) maintained:

“[...] from the summary information provided by Pietro Gallo and Lucio Montanini, who were then employees of IMI Security Service and boarded on Vos Hestia, as well as from the phonetapping records

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<sup>32</sup> These can also be found in the “Preventive Seizure Decree” of the Court of Trapani from the 2<sup>nd</sup> of August 2023 – an original document written in Italian language. (Tribunale di Trapani 2017)



that have been obtained from the devices used by the latter [...], it has been found that the transshipment of 140 migrants from the *Iuventa* to the *Vos Hestia* had been preceded by the recovery by *Iuventa* of those migrants from an inflatable boat driven by two smugglers, who then left for the Libyan coast with their own boat after the transshipment. From these elements it was inferred that in that occasion what had occurred was not a rescue operation, but rather an agreed delivery of migrants.” (Carrer & Trevisan 2018:4)<sup>33</sup>

#### 4.5.3.1.2. Counter Evidence:

Images reveal that the boat referred to by Italian authorities was set ablaze after the rescue operation the same day. According to the *Iuventa* crew, “the boat was destroyed following standard procedure”<sup>34</sup> (Haralambous n.d.). Evidence of the crew moving the dinghy away from the *Iuventa* and then burning it can be seen in the video compiled by Forensic Oceanography (FO 2018, video minutes 4:50-6:20).

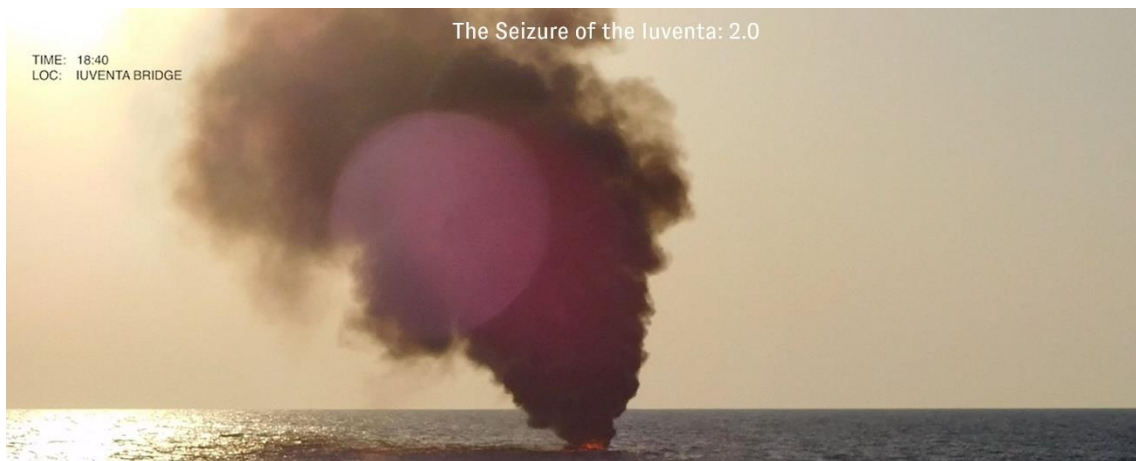


Figure 2: After the rescue operation is concluded, the migrant vessel is set on fire. Source: Forensic Oceanography reconstruction video, minute 5:58.

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<sup>33</sup> This statement is a translation of the Italian Supreme Court's decision n. 56138/2018, translated from Italian to English by Stefania Carrer and Stefano Trevisan.

<sup>34</sup> Burning and destroying migrant boats after rescue operations has become standard procedure since the EU deployed military vessels in the Mediterranean in 2015. The logic behind this practice is to prevent wooden boats or dinghies from being returned to Libya and reused by smugglers. Even though this procedure has been criticized for encouraging migrants to embark on even more dangerous vessels, it appears that CSOs must adhere to this protocol due to EU regulations.

#### 4.5.3.2. Second case, 18<sup>th</sup> of June 2017

##### 4.5.3.2.1. Accusation:

The Italian authorities accuse Jugend Rettet of having returned three boats to Libyan smugglers post-rescue. These accusations also rely on the fact that one of the ships with the inscription “KK” was seen again on the 26<sup>th</sup> of June with other migrants aboard. The Italian Supreme Court states:

“[...] the crew of the *Iuventa* retrieved, instead of destroying them, 3 boats that had been used by migrants immediately after their transshipment, and returned them to the smugglers. This conduct revealed the existence of a link between them and the Libyan smugglers.” (Carrer & Trevisan 2018:3)

##### 4.5.3.2.2. Counter Evidence:

As per Forensic Oceanography's video, about 500 people were rescued from five vessels that day (including vessels A, B, and C in the video). The reconstruction video shows how a Libyan coast guard ship interferes during the rescues by taking out the motor engines of migrant vessels A and B, which were still packed with people. While monetizing on the engines, this is also a common tactic used to keep migrant vessels from moving in order to facilitate pushbacks to Libya. But after the Libyan coast guard took the engines, the *Iuventa* and *Vos Hestia* crews rescued the people from vessels A and B, preventing any pushbacks.

Additional video evidence suggests that vessel C with the inscription “KK” was never returned to Libyan waters. Instead, Jugend Rettet's lifeboat *Lilly* moved it in the opposite direction after all the people on board had been rescued. Vessels C and B were relocated approximately 190 meters from the *Iuventa* to not obstruct further rescues, while vessel A was left even further behind. The *Lilly* then abandoned these vessels and

returned to the *Iuventa*, which marked the "last contact the *Iuventa* crew had with any of these vessels" (FO 2018, video minute 21:17). Due to another rescue operation, the *Iuventa* and *Vos Hestia* crews had no time to destroy vessels A, B and C but proceeded to rescue the people in distress on vessel D.

The video also shows an unidentified vessel in close proximity to the abandoned boats (ibid. video minute 21:24). While it's purely speculative, this unidentified vessel could potentially explain the reappearance of vessel C later that month, as it was in a position to potentially retrieve the abandoned boats and return them to Libya.

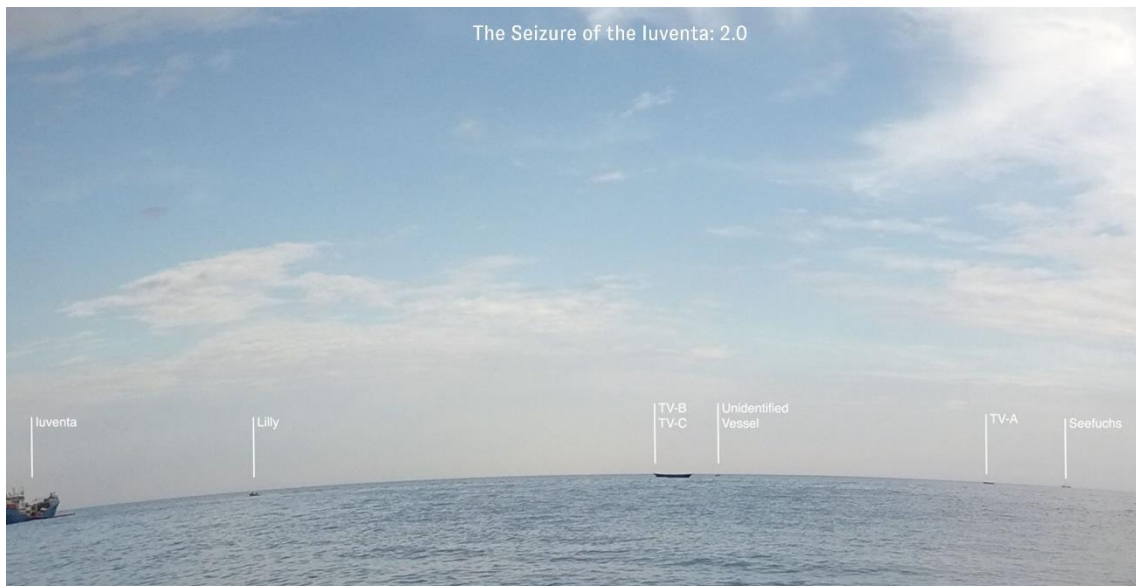


Figure 3: Picture showing vessels A, B and C abandoned by the *Lilly* and the *Iuventa* while an unidentified vessel appears at the horizon. Source: Forensic Oceanography reconstruction video, minute 21:30.

#### 4.5.3.3. Third case, 18<sup>th</sup> of June 2017

##### 4.5.3.3.1. Accusation:

Following the rescue of people from vessel D, the *Iuventa* crew came to the aid of another boat, vessel E. The Italian judiciary alleges that the *Iuventa* crew made hand

gestures to another group, referred to as engine fishers, who appeared behind vessel E. According to the judiciary, these waving gestures suggest that coordination between the *Iuventa* crew and the engine fishers/human smugglers had been established beforehand. As the Italian Court of Cassation puts it:

“This second episode also clearly shows the connection between Libyan smugglers and the crew members of the *Iuventa*, given the fact that the smugglers have also recovered the engine of the inflatable boat during the transshipment operations of migrants and had a final dialogue with the members of the *Iuventa* crew present on the inflatable boat, with a final greeting at the moment of leaving for the Libyan coasts. These factual circumstances constitute the implementation of an actual and agreed delivery of the migrants from the smugglers to the crew of the *Iuventa*.” (Carrer & Trevisan 2018:3)

#### 4.5.3.3.2. Counter Evidence:

As analyzed by Forensic Oceanography in their video (FO 2018, video minutes 23:03-31:00), the *Iuventa*'s rescue dinghy approached vessel E solely to distribute life jackets and communicate essential safety instructions to the migrants on board. There is no indication of interaction with the engine fishers. Subsequently, the *Seefuchs* RHIB, a rescue boat from the Sea-Eye, assisted in the rescue. As soon as the transshipment of people from vessel E began, engine fishers appeared to remove the boat motor, as captured by the *Iuventa*'s bridge camera. In the media, pictures widely circulated suggesting that the engine fishers waved toward the rescue crew. But the photos and videos clearly show that they waved towards the remaining migrants on vessel E, with some of the migrants waving back. The *Iuventa* crew remained detached from this interaction.



Figure 4: Engine fishers wave at migrants on vessel E. Some migrants wave back. On a small rescue boat, *Iuventa* personnel wait for the engine fishers to leave until they continue the transshipment operation. Source: Forensic Oceanography reconstruction video, minute 30:30.

As illustrated, Forensic Oceanography ruled out any CSO complicity with smugglers through their analysis. Jugend Rettet characterizes the Italian accusations as “a political declaration of intent to criminalize solidarity” (Germanos 2021) and as a calculated strategy through which Italian authorities aim to deter other CSOs from carrying out rescue missions in the Mediterranean Sea (Haralambous n.d.).

#### ***4.5.4. The Trapani Preliminary Hearings***

After a full 3.5 years of investigations, the Prosecutor of Trapani formally charged the 21 sea rescuers from Jugend Rettet, Save the Children, and MSF in March 2021, marking the beginning of the trial.

Ironically, at the time of the official indictment, Pietro Gallo, one of the main Italian spies who had been on board the *Vos Hestia*, had already “publicly revoked his testimony” (Iuventa Crew 2017), saying he had “never witnessed the CSOs collaborating

with traffickers” (Trilling 2020). By collecting so-called “evidence” against the SAR CSOs and sharing it with far-right politician and head of the Lega Nord party Matteo Salvini, the IMI security officer had hoped “to recover his police job – he had previously been expelled for misconduct – or even get a position as an undercover agent” (Campbell & D’Agostino 2022). In hindsight, Gallo never received such a position and has repeatedly expressed his regret for playing right into Salvini's hands.

However, despite Gallo's revocation, the first preliminary hearing took place on May 21, 2022, at the Court of Trapani, Sicily. During the hearing, the prosecution reiterated the potential penalty of up to 20 years in prison for the accused, along with fines "of up to €15,000 per person that was rescued if found guilty" (Carbonaro 2022).

#### 4.5.4.1. Legal Complexities of the *Iuventa* Case

The prosecution bases its charges on the alleged violation of Art. 81 and Art. 110 of the Italian Criminal Code, and Art. 12, paragraph 3, letters (a), (d) and (3-bis), of the Italian Immigration Act (Carrer & Trevisan 2018:2).

In simple terms, Art. 81 of the Italian Criminal Code stipulates that a person will be punished if they commit multiple violations of the law as part of the same crime. On the other hand, Art. 110 of the Italian Criminal Code states that if multiple people are involved in the same offense, each of them will face the penalty assigned to that offense and share responsibility for the crime, also known as joint enterprise law (Codice Penale 2022). So, in the case of the *Iuventa* crew and the 17 other defendants, they are accused of aiding and abetting illegal immigration on multiple occasions (Art. 81) and each of them should face the same penalties for this alleged crime (Art. 110).

As for Art. 12 of the Italian Immigration Act<sup>35</sup>, it generally deals with provisions against illegal immigration. It states that those who assist in the illegal entry of foreigners into Italian territory or commit multiple violations of immigration law may face imprisonment up to 15 years and a €15,000 fine per each person embarked on Italian soil if they meet one or more conditions mentioned in paragraph 3. In the case of the *Iuventa* crew and co-defendants, they are accused of two specific violations:

- Art. 12, paragraph 3, letter (a): Bringing five or more people illegally into Italy.
- Art. 12, paragraph 3, letter (d): Involving three or more facilitators in the act.

Art. 12, paragraph 3, letter (3-bis) then provides that if multiple conditions in paragraph 3 are met together, the sentence may be increased, which may explain the threatened 20 years of imprisonment in the *Iuventa* case.

In light of these accusations, it is important to note that Art. 12, paragraph 2, of the Italian Immigration Act actually includes a humanitarian exemption. Concerning the *Iuventa* crew and co-defendants, this paragraph would hold the potential to nullify the accusations. But the catch is that paragraph 2 is limited to actions carried out within Italian territory:

“Withstanding what provided for by article 54 of the code of criminal procedure, aid and humanitarian assistance carried out in Italy toward aliens in state of need, however present on the State’s territory, do not constitute crime.” (Italian Immigration Act 2004, Art. 12, §2)

Therefore, “the exemption is not applicable to the facilitation of irregular entry into Italy from abroad” (Cancellaro 2023:5).

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<sup>35</sup> Legislative Decree n. 286, dated 25<sup>th</sup> of July 1998.

#### 4.5.4.2. Iuventa Crew Files Constitutional Complaint

In a recent hearing on May 12, 2023, Francesca Cancellaro, one of the defense lawyers for the *Iuventa* crew, raised objections to the charges against them, written out in a constitutional complaint. She argued that Article 12 of the Italian Immigration Act breaches two fundamental principles: the principle of equality and reasonableness and the principle of proportionality.

Relating to Art. 12, paragraph 1, the constitutional complaint presented by Cancellaro, establishes that the penalties for assisting irregular migration are much harsher than those for a similar crime under the same law (Article 10, Section 2) without any reasonable justification. This disparity becomes even more pronounced when the assistance provided is driven by humanitarian or altruistic motives. Accordingly, Art. 12, paragraph 1 indicates a violation of the principle of equality and reasonableness (Cancellaro 2023:7-9). Besides, the severe punishment, including imprisonment and fines, is disproportionate and inhibits the re-educational purpose of penalties mandated by the Italian Constitution. It even punishes those who act without profit motives and who do not harm national borders. Therefore, the constitutional complaint suggests replacing the penalty with a more reasonable one to adhere to the principle of proportionality and ensure fair treatment for similar offenses (ibid. 10-12).

With regards to Art. 12, paragraph 3 (a) and (d), the complaint further challenges the constitutional legitimacy of the aggravating factors, which relate to the number of people involved in the crime and the number of migrants transported. Here, the principle of equality and reasonableness isn't met, as disproportionate punishments automatically include situations of search and rescue at sea or cases where family members assist relatives (ibid. 9-10). No distinction is made between humanitarian



rescue/assistance and actual smuggling activities. Thus, in terms of the violation of the principle of proportionality,

“[...] the penalty established for people charged with aggravating circumstances – detention up to 15 years – results absolutely disproportionate in relation to the many situations that do not contain intrinsic negative impact beyond those described in the basic facts of facilitation according to Article 12, paragraph 1.” (ibid. 12 f.)

Moreover, the complaint presented by Cancellaro highlights the constitutional illegitimacy of the humanitarian exemption under Article 12, paragraph 2, of the Italian Immigration Act. The exemption applies to humanitarian rescue and assistance provided to foreign citizens in need – *but only within Italian territory*. Consequently, it excludes any conduct that facilitates irregular entry into Italy from abroad, including actions taken from the high seas outside territorial waters. As such, the complaint contends that Art. 12, paragraph 2, lacks reasonable grounds as the actions excluded are comparable to those exempted by the paragraph. Not to forget:

“Those who conduct rescue activities and humanitarian assistance in favor of a foreign citizen are defending that person’s fundamental rights, such as their human dignity and their right to asylum, safeguarding the best interest of the child, and their right to private and family life – regardless of whether this act facilitates this person’s irregular stay or transit, be it from Italy to another state or from abroad into Italy.” (ibid. 14)

Frankly, the primary concern of Art. 12, paragraph 2 of the Italian Immigration Act is not to protect fundamental and human rights but to maintain and protect state borders from undesired individuals.

Finally, the complaint discusses the incompatibility of the European Facilitators' Package with the EU Charter of Fundamental Rights (CFR). It challenges two main pillars of the package's legal framework: the obligation to criminalize the facilitation of irregular

entry, even without financial gain for those who assist, and two, the choice given to countries to decide whether or not to apply a humanitarian exemption. Cancellaro argues that these regulations

“[...] evidently produce[s] a deterrent effect on efforts to assist and rescue migrant people at the border. The latter’s fundamental rights are therefore inevitably limited, such as the right to life and to the integrity of the person (Articles 2 and 3 of the CFR), the right to asylum (Article 18 CFR) and the right to private and family life (Article 7 CFR).” (ibid. 15)

In the May 12, 2023 hearing, Cancellaro closed by asking the Court of Trapani to refer the constitutional complaint to the Court of Justice of the European Union (CJEU). She emphasized the importance of the CJEU's assessment regarding the addressed incompatibility of the Facilitator's Package with the CFR. Furthermore, Cancellaro requested that the CJEU determine the legitimacy of Art. 12 of the Italian Criminal Code as it corresponds to the adoption of the Facilitator’s Package into Italy’s law (ibid. 16). Through this appeal, Cancellaro sought to secure a broader and more authoritative evaluation of the matter.

#### 4.5.4.3. Trapani Judge Rejects Constitutional Complaint

Nevertheless, in the June 23, 2023 hearing, the judge rejected all of the challenges expressed through Jugend Rettet’s constitutional complaint. He found the penalties of Art. 12 of the Italian Immigration Act and the EU Facilitator’s Package to be proportionate and justified, even when applied to cases involving humanitarian aid and acts of solidarity. He also emphasized that it is within the authority of the legislative body to decide on criminal policy (ECCHR 2023). In a press release, the *Iuventa* crew states:

“Although the judge declared the complaint to be ‘unfounded’, his decision did not address the arguments submitted, but left them largely unconsidered.” (Iuventa Crew 2023b)

Not only that, but the judge fully “misunderstood his role within the framework of a constitutional challenge” (ibid.) by stating that the complaints’ objections about the humanitarian exemption of Art. 12, paragraph 2, were “irrelevant” (ECCHR 2023). He supported his statement by claiming that the humanitarian intention of the defendants was not evident from the formulation of the indictment and bluntly reiterated the accusations of “complicity with the Libyan traffickers” (ibid.). Further, he declared that it had not been obvious that the transported people had really been in distress.

On top of all that, the judge also dismissed the defendants’ request to refer their constitutional complaint to the Court of Justice of the European Union. He ruled that the criminalization of facilitating irregular crossings into Italy and the EU did not infringe upon the fundamental rights protected by the EU Charter (ibid.).

“Hence, the court blocked the possibility to bring serious contradictions between fundamental rights’ protection and Italian legislation as well as EU directives before the competent higher courts.” (Iuventa Crew 2023b)

#### 4.5.4.4. Constitutional Complaint Referred to CJEU at Last

Despite facing dismissal in the Trapani trial, lawyer Cancellaro persisted and refiled the complaint one month later, during a different trial on irregular immigration in Bologna. This time, the judge agreed to refer the constitutional complaint to the Court of Justice of the European Union (CJEU), marking a significant shift in the *Iuventa* case. If given priority status, “respective proceedings could be expected already within the next 6 months”, the *Iuventa* crew (2023a) stated in a recent update. If the CJEU’s

ruling would effectively invalidate or challenge the criminalization of facilitating irregular immigration into the EU, this could lead to reevaluations and revisions of the laws in question.

“This is the first time that the European court has to assess the legitimacy of EU legislation criminalising the facilitation of migration. If successful, the effects of the decision would impact on similar past and future cases in Europe.” (ibid. 2023a)

#### 4.5.4.5. Translation, Politicization and the Right to Fair Trial

Another critical aspect in the Trapani preliminary hearings was the issue of Italian-German and German-Italian interpretation. The hearings were repeatedly interrupted and postponed due to missing or inadequate interpretation, which hindered the defendants' to fully comprehend the trial proceedings and exercise their right to defend themselves properly. It wasn't until the 6<sup>th</sup> hearing in December 2022, that adequate interpretation was finally provided by the court (ECCHR 2023).

Furthermore, the bilingual issues also presented in the translation of the written prosecution against the *Iuventa* crew and all other defendants. The Italian indictment consists of a 29-page police report and 446 annexes, including wiretapped audio material, video and photo material, totaling approximately 28,000 pages. Of this indictment, only the 29-page police report has been translated from Italian into German, which is why the defendants requested a translation of the most “essential documents” (ibid.). But once again, the judge rejected the request, arguing that oral translation was sufficient for the trial. Of course, such an argument is unreasonable, as relying solely on oral translation will almost inevitably result in misunderstandings and inadequate comprehension of the extensive case materials. Thus, the defendants may not be able to defend themselves adequately. As Canestrini, another *Iuventa* lawyer puts it:

Not surprisingly the Court missed again a chance to uphold fundamental rights: moreover, in denying translation of 95% of the prosecution evidence, Court didn't take defendants' point of view into consideration in assessing which documents should be translated. But we will go forward despite obstacles." (Iuventa Crew 2023b)

Moreover, the Trapani judge rejected another request to refer the case to the Court of Justice of the European Union, this time concerning

"[...] a request for a preliminary ruling by the CJEU on the question of what qualifies as so-called "essential documents" under Article 3 of the Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings." (ECCHR 2023)

In response to common issues of inadequate translation and interpretation in trials against SAR CSOs and people on the move, the *Iuventa* crew initiated the #NoTranslationNoJustice campaign in the fall of 2022. Under this hashtag, people who had experienced similar language limitations in European courts, were encouraged to share their experiences on social media to raise awareness on the subject. These challenges add yet another layer to the broader issue of the EU's approach to migration policies: "another facet of [the] EU's lawfare [...] and another wall of Fortress Europe against which people are supposed to fail" (Iuventa Crew 2022a).

Moving on to a different matter, in December 2022 the Italian government requested to participate in the *Iuventa* court proceedings as joint plaintiffs. Their stated intention behind this move was to seek compensation for the alleged material and reputational damage they claimed to have suffered as a result of the defendants' search and rescue operations (ECCHR 2023). However, looking beyond this fabricated allegation, it becomes clear that they are acting from a deeper underlying motivation: to

exert control and to further politicize the *Iuventa* case, especially at a time when it is already facing an “escalation [of] negative public discourse” (ibid.) in Italy.

Two months later, in February 2023, the judge decided to partially admit the Italian government to the *Iuventa* trial. While he rejected the request of the Presidency of the Council of Ministers, finding it “manifestly ill-founded” and “eccentric” (ibid.) in its accusations against the defendants, he granted admission to the Ministry of the Interior (MoI). The judge justified his decision to accept the MoI as a civil plaintiff on the grounds that so-called migration management, security and public order fall within its jurisdiction. As a result, the MoI has since participated in the preliminary hearings and will continue to do so in future proceedings. The involvement of an Italian governmental authority as a civil plaintiff raises concerns about further criminalization (i.e.: defendants having to pay for alleged damages) through politicization.

#### 4.5.4.6. End of the Preliminary Hearings

The preliminary hearings in the *Iuventa* case can be described as lawfare between those who do their utmost to protect European borders through a politics of deterrence and exhaustion and those who stand for fundamental human and civil society rights and the principle of non-refoulement.

Despite facing numerous challenges and setbacks, the *Iuventa* crew and their co-defendants have experienced some positive developments. One significant milestone is the admission of the constitutional complaint to the Court of Justice of the European Union, achieved not in the Trapani trial but through another case in Bologna. This represents a very crucial step in examining the compatibility and legitimacy of EU and state laws with international law.

Remarkably, these preliminary hearings represent the first instance in modern Italian court history where independent external observers were allowed to monitor the proceedings. As *Iuventa* lawyer Cancellaro emphasized:

“As far as we know, this is the first time that a court in Italy has allowed the presence of trial observers in a chamber hearing in order to give civil society the opportunity to be directly informed about what is happening in court. The publicity can contribute to a fair trial, which is a fundamental principle of democratic society that must be guaranteed.” (ECCHR 2023.)

However, obtaining such achievements required considerable time and effort on the part of the defense. With that in mind, let’s delve into the factor of time more. For the preliminary hearings to finally start, about five years of investigations passed. Subsequently, the hearings spanned from May 2022 until the present day, with the final preliminary hearing scheduled for September 2023, “before addressing the merits of the case” (ibid.). As such, these procedures not only criminalize the work of SAR CSOs in the most unnerving ways, but also serve to extend the time during which these civil actors are unable to be out at sea, monitoring the human rights situation and saving lives.

Now, the “cherry on top” is that next to all the groundless accusations and protracted court proceedings, the *Iuventa* vessel never sailed out again. Once an instrument of human rescue, the ship found its fate in the standing waters of Trapani's port where it’s been rusting away for the past six years. In the meantime, it has also “been plundered”, is “currently unseaworthy and in danger of sinking” (The Civil Fleet 2022).



Figure 5: The rusty *Iuventa* in the port of Trapani, Sicily (Iuventa Crew 2023c).

#### ***4.5.5. Instruments of Insecurity in the Iuventa Case***

After examining the various ways in which Jugend Rettet has been obstructed at the hands of EU authorities, this section now delves into classifying these deterrence actions under the *instruments of insecurity*. As explained in Chapter 4.3.2., these measures encompass bureaucratic techniques, arbitrary policing measures, and legal tactics. The goal here is not to pigeonhole these deterrence strategies but to make them more visible by placing them in one of those three categories. Since the EU's foreclosure mechanisms often remain obscure and abstract due to their subtle and complex nature, this will serve to expose them.



#### 4.5.5.1. Arbitrary Policing Measures

First, in May 2017, the crew of the *Iuventa* was sent to the port of Lampedusa under false pretenses, with only five refugees on board. There, the police used the inspection of the ship as an opportunity to wiretap it. Similarly, in August 2017, the *Iuventa* was ordered back to Lampedusa with only two rescued men on board, so that the Italian authorities could detain the ship. Thus, all these actions are clearly arbitrary and also constitute violations of the law (i.e. the right to privacy) committed either by the police themselves or by those authorized to carry out border control operations.

In addition, arbitrary policing action was taken when Italian spies, claiming to be from the IMI security service, boarded the *Vos Hestia*. These spies illegally collected photo and video material to later use as "evidence" of the rescuers' alleged collaboration with traffickers and shared their observations with far-right politician Matteo Salvini.

All of these actions were aimed at criminalizing the humanitarian work of the rescuers without solid grounds, using the evidence to support politically motivated accusations of complicity with traffickers. Such arbitrary measures also led to a negative public image of Jugend Rettet, especially through the sensationalist spreading of untruths in the media.

#### 4.5.5.2. Bureaucratic Techniques

Bureaucratic techniques are then evident in the prolonged investigations, which lasted 3.5 years before formal charges were even brought against the rescuers. Such lengthy investigations create uncertainty and put strain on the defendants, affecting their ability to carry out in search and rescue operations, as their ship has been detained since August 2017.

Moreover, the massive 28,000-page indictment document, spanning 446 annexes, reveals how the sheer volume of information is being used to paralyze the defense – even more so when the Trapani judge denied the translation of key documents. Creating this kind of bureaucratic red tape of so-called “evidence” and then deciding to only give the defense access to only about 5% of the case material shows that inaccessibility and lack of transparency are deliberate. They prevent the 21 accused from building a solid defense.

As for the oral interpretation of the legal proceedings, it was granted and adequately provided only after the first preliminary hearings, which meant that the defendants' ability to understand the proceedings and defend themselves accordingly was severely hampered at first.

Overall, the bureaucratic techniques surrounding the *Iuventa* case were designed to leave the defendants without the necessary resources and understanding to navigate the legal process and adequately defend their rights. However, the defendants are fortunate to have competent Italian lawyers who continue to fight for their rights to a fair trial.

#### 4.5.5.3. Legal Tactics

Regarding the legal tactics, they are particularly evident through the use of fabricated evidence against the defendants, leading to accusations of aiding and abetting illegal immigration under articles 81 and 110 of the Italian Criminal Code, and article 3, paragraph 2 of the Italian Immigration Act. The prosecution threatens the defendants with up to 20 years in prison and heavy fines for each person rescued. The reliance on fabricated evidence in the charges against the defendants raises serious doubts about the

legal integrity of the Trapani court and calls into question the credibility of the entire judicial process.

One notable legal breach that ensued was the leaking of legal documents to the media during the time of investigation, including the full names of the accused.

“This resulted in a heavy media smear campaign, surveillance by Italian authorities, as well as threats by far-right movements against those named in the documents.” (ECCHR 2023)

Thus, the legal presumption of innocence was undermined, the right to privacy was violated, and the defendants’ ability to prepare for the hearings was disrupted by surveillance and threats.

Furthermore, the conduct of the judge in his decision-making process raises concerns about his independence as he seems to side with the main plaintiffs. What contributes to this observation is that the judge rejected two requests of the defense for referral to the Court of Justice of the European Union. The first referral aimed to examine the compatibility of article 3 and the EU Facilitation Package with the EU's Fundamental Human Rights Charter, while the second sought to determine which documents qualified as "most essential" in the case. The judge's rejection of these referrals indicates a potential abuse of power and raises questions about the fairness of the proceedings.

Another significant legal tactic employed was the granting of access to the hearings for the Italian Ministry of the Interior as a joint plaintiff seeking compensation for alleged material and reputational damage. This move could be seen as an attempt to exert control over the case and politicize it further.

In summary, the legal tactics employed in the *Iuventa* case have jeopardized the defense's rights to a fair trial and raise broader concerns about the integrity and independence of the Trapani court. As Gammeltoft-Hansen & Tan (2017) point out,

“[d]eterrence policies may in that sense be seen as examples of ‘creative legal thinking’ (Gammeltoft-Hansen 2014a), as states seek to exploit interpretative uncertainties, competing legal regimes or new modes of governance in order to limit, shift, or circumvent legal obligations otherwise owed.” (ibid. 32)

## **4.6. Sea-Watch – Unwelcome in European Ports**

### ***4.6.1. Political Positioning***

Like Jugend Rettet, Sea-Watch's political attitude is straightforward and confrontational towards the EU. They clearly state that they see themselves as a humanitarian CSO that is filling the institutional gap which the EU has left in the Mediterranean “by means of border security installations worth billions or [...] [through] readmission agreements with third countries such as Turkey, which are questionable and controversial under international law” (Sea-Watch 2023a). Moreover, they describe it as their “humanitarian duty” (ibid.) to continue SAR missions until the EU employs a rescue mission with a clear and comprehensive mandate to rescue persons in distress at sea. They also underline that “the fact that private organisations take over sea rescue in the Mediterranean instead of states cannot and should not become a permanent state” (ibid.). Therefore, Sea-Watch continuously calls on EU politicians to invoke a change in their migration and asylum policies, conducts public information and advocacy campaigns and presses for “legal and secure entry routes” (ibid.) towards Europe. In addition, Sea-Watch derives its legitimacy through showing independence from state authorities and is solely financed through public donations.

#### 4.6.2. *The Sea-Watch Fleet*

From the start of its SAR missions in 2015<sup>36</sup>, Sea-Watch has deployed several vessels in the Mediterranean Sea<sup>37</sup>. Past missions were conducted with the *Sea-Watch 1* (2015 - 2017), *Sea-Watch 2* (2016 - 2017), *Sea-Watch 3* (2017 - 2023) and *Sea-Watch 4* (2020 - 2022). While the *Sea-Watch 1*, 2, and 4 were transferred to continue SAR missions under other CSOs, the *Sea-Watch 3*, after nearly six years of service, had to be scrapped and recycled in Ghent, Belgium, in May 2023.

Currently, Sea-Watch's active vessel is the *Aurora*, which has been operational since May 2022. In addition, the CSO has recently acquired a new vessel, the *Sea-Watch 5*, which underwent a successful sea trial in August 2023 and is expected to sail its first mission soon.

Aside from their ships, Sea-Watch also employs two reconnaissance aircraft, namely the *Seabird 1* (since 2020) and *Seabird 2* (since 2022), to “document human rights violations and report distress cases” (Sea-Watch 2023b). Previously, they also operated another aircraft named *Moonbird* (2017 - 2022) which retired after five years of service. The new aircraft have increased capacity for personnel on board and can cover twice the area compared to the *Moonbird*, amounting to approximately 27,000 km<sup>2</sup> (ibid.). Sea-Watch is carrying out its reconnaissance missions in cooperation with a Swiss non-governmental organization called the Humanitarian Pilots Initiative.

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<sup>36</sup> The organization itself was founded at the end of 2014.

<sup>37</sup> From 2015 to 2017, they also operated several vessels in the Aegean Sea to conduct rescue missions and monitor the human rights situation.

### **4.6.3. The Sea-Watch 3: A Chronicle of Detentions**

As can be seen in the “SAR Ship Detention Map” which I created for this thesis, Sea-Watch has experienced 11 detentions in five years, involving their vessels *Sea-Watch 3*, *Sea-Watch 4*, and *Aurora*. [The map can be viewed here](#) and is discussed in more detail in Chapter 5.

This subchapter will focus on the *Sea-Watch 3* because the frequency and length of detentions of this vessel between 2018 and 2023 was immense. Out of five and a half years of service, it can be calculated that the ship was in detention for a total of more than 29 months. Thus, the ship's active non-detained years add up to only around three years.

Now, while some of the detentions were related to unfounded claims about the ship's flag, and the usual suspicion of aiding and abetting illegal immigration, as in the well-known Rackete 2019 case, the majority of *Sea-Watch 3*'s detentions were of a bureaucratic-police nature. Often, of course, with an attempt to legally justify these state measures. Given that these detentions are not as well-known as those that have received widespread media coverage, some of them will be examined in more detail below.

#### **4.6.3.1. First Detention, July – October 2018**

The first time the *Sea-Watch 3* was detained, was on July 2, 2018, when the Maltese authorities, namely Transport Malta, prevented it from leaving the Grand Harbor of Malta, Valletta. The ship had been there for several days following a disembarkation to carry out maintenance and renew its certifications, including a DNV-GL Class Declaration, which confirms that the vessel's conditions meet its class status. *The Sea-Watch 3* had then received a valid 5-year certificate on June 28, 2018 (ILENT 2018), a few days before its detention. Nevertheless, the Maltese authorities made unjustified allegations about the ship's Dutch flag registration and questioned its SAR activities in

light of its classification as a non-commercial motor yacht. As a result, the Dutch flag state sent an investigative team to inspect the *Sea-Watch 3* on July 6, 2018. Based on its report (ibid.), “the Dutch government confirm[ed] the correct registration of the civilian search and rescue vessel Sea-Watch 3” (Sea-Watch 2018). However, the vessel remained in arbitrary detention by the Maltese authorities without further explanation until December 20, 2023. The total period of detention therefore amounted to more than four months.

#### 4.6.3.2. Second Detention, January – February 2019

The second and third detentions of the *Sea-Watch 3* are interesting in the sense that they were issued by the Netherlands itself. While the Dutch government intervened positively during the first detention of the *Sea-Watch 3* in the summer of 2018, it took a different course in early 2019. In part, a shift in Dutch foreign policy may have contributed to this situation when Stef Blok became foreign minister in 2018. As a member of the VVD party, he aligned himself with the right-wing liberal political spectrum and had been criticized for his discriminatory comments on migration and multiculturalism in July 2018 (Galindo 2018).

Speaking of *Sea-Watch 3*'s second detention, it was preceded by a 12-day standoff in January 2019 as the crew waited to be assigned a safe harbor for 47 rescued people on board. However, the ship “remain[ed] stranded some 1.4 miles from the port of Syracuse as Italian authorities continue[d] to refuse to allow disembarkation of the ship's passengers” (EU Correspondent 2019). Italy claimed that Sea-Watch should have disembarked the rescued people in Tunisia, calling it a “safe haven” (TAZ 2019), despite the country's high rate of human rights violations. In addition, Italian authorities argued

that the responsibility to receive the migrants fell to the Netherlands due to the *Sea-Watch 3* flying under the Dutch flag. In response, Dutch foreign minister Blok stated: “Not our responsibility” (EU Correspondent 2019).

It was only after Sea-Watch filed an urgent appeal to the European Court of Human Rights (ECHR) that the ECHR ordered medical assistance and food supplies for those on board, prompting Italy to allow the migrants to disembark at the port of Catania, Sicily. Subsequently, eight different EU states agreed to take in the 47 rescued people (Jakob 2019).

But the story didn’t end there for Sea-Watch. The assignment to the port of Catania seemed odd to the crew, given that the nearest port was Syracuse, Sicily. They anticipated that the Italian authorities would want to detain their ship. Especially since Catania's public prosecutor, Zuccaro, was known to oppose SAR CSOs. And so it came to pass: Upon arrival at the port of Catania on January 31, 2019, the *Sea-Watch 3* was escorted into the port by Italian coast guard vessels, and “police squad cars were waiting for the ship at the pier” (ibid.).

Unusual for him, in this case prosecutor Zuccaro issued a statement after the ship’s disembarkation, “clarifying that the crew and ship, in conducting the rescue, acted in full accordance with the law” (Sea-Watch 2019a). But the fact that the rescue was legal didn’t prevent the Italian and Dutch authorities from carrying out extensive and arbitrary inspections of the *Sea-Watch 3*, with the Dutch government eventually detaining it and refusing the crew “to sail to a shipyard of their choice” (ibid.). First officer Friedhold Ulonska reported:

“Five different inspections by Italian and Dutch authorities put the ship through its paces for about 80 hours and listed every supposed technical irregularity they could possibly find. [...] However, the crew was able



to swiftly and adequately address all points, leaving the authorities with no valid reason to keep us in port. This actually speaks to the great shape of our 43-year-old ship, that they cannot find any irregularities even when trying so hard.” (ibid.)

Thus, Sea-Watch decided to warn the Dutch government that it would take legal action if the *Sea-Watch 3* remained in unlawful detention. Consequently, the Dutch government responded just before the deadline set by the CSO and issued the ship’s release on February 20, 2023. In doing so, they implicitly revealed that they recognized the absence of any legal evidence for their actions (ibid.). This detention lasted around 20 days, excluding the 12-day standoff that had occurred earlier, causing further delay for the CSO and risking the safety of the rescued people on board.

#### 4.6.3.3. Third Detention, April – May 2019

The third detention of the *Sea-Watch 3*, also initiated by Dutch authorities, centered on a new ship code in the Netherlands. While other vessels were given a transition period to adjust to the new standards, the *Sea-Watch 3* was promptly detained in the port of Licata, Italy. This detention was carried out under the authority of the Dutch minister for infrastructure and water management at the time.

In a bold move, Sea-Watch didn’t settle for mere warnings to the Dutch government this time, but swiftly opted to take legal action to confront the arbitrary detention. Remarkably, Sea-Watch won the case within just one month. The legal ruling came from a Dutch district court based in The Hague which concluded that “the principle of legal certainty had not been sufficiently observed” and that “a violation of property rights was established” (Sea-Watch 2019b). This turnaround of events shows the

capability and agency of SAR CSOs like Sea-Watch to challenge the deterrence measures of EU states by taking them to court. This detention lasted around one month.

Frustrated by such arbitrary actions by the Dutch flag state, the CSO decided to change the flag of *Sea-Watch 3*. As of December 2019, the ship became registered under the German flag until it was taken out of service in 2023.

#### 4.6.3.4. Further Detentions between 2019 and 2023

For reasons of scope, explanations relating to detentions four to eight of the *Sea-Watch 3* will be limited to the most important facts. Importantly, some of these detentions mark the *Sea-Watch 3*'s lengthiest periods of confinement, highlighting a trend toward extended detentions over time. This development was undoubtedly influenced by a new Italian decree issued on June 15, 2019, by then Interior Minister Salvini. The “Decreto Sicurezza Bis” (Ministero dell’Interno 2019) was aimed at closing Italian ports to migrant arrivals. It empowered the Italian government to prevent rescue ships from entering Italian territorial waters, citing reasons of order and security. Furthermore, in case of a breach, hefty fines could be imposed, and boats seized (Gazetta Ufficiale 2019). This decree highlighted the authority of Salvini as a far-right interior minister because the Italian government didn’t interfere in the making of this new legal provision.

While the fourth arbitrary detention issued by Italy lasted about 10 days in May 2019, the fifth unlawful detention of the *Sea-Watch 3* lasted six months from June to December 2019. This case drew widespread attention when captain Carola Rackete, defied the new decree by entering Italian territorial waters and was accused of aiding and facilitating illegal immigration. During a 14-day standoff outside Italian waters,

Italy didn't assign a safe port to the captain. This is why, in accordance with non-refoulement principles, Rackete decided to dock in Lampedusa rather than comply with Italy's requests to disembark the rescued people in Libya. As a result, the *Sea-Watch 3* was ordered to sail to Licata, Sicily, where it was detained until December 2019. Rackete's trial lasted much longer, however, ending only in May 2021, when she was acquitted of the charges brought against her<sup>38</sup>. Throughout the trial period, Salvini called Rackete's decision to take the rescued people on board to safety in Lampedusa an "act of war" (D'Alessio 2021:2). Ironically, Salvini has now assumed the role of Transport Minister and is actively opposing Rackete's nomination as the German Left's top candidate for the 2024 EU elections (Walter 2023)<sup>39</sup>.

Regarding the sixth to eighth detentions of the *Sea-Watch 3*, they were again issued by Italy for unfounded reasons. Those included baseless allegations of technical difficulties on board the *Sea-Watch 3*, "missing an imaginary certification" (Sea-Watch 2022), and the claim that the crew had rescued too many people. These detentions were often preceded by Italian Port State Controls (PSCs), which, however, took place outside of the scheduled PSCs.

Therefore, in 2020, Sea-Watch had taken legal action against these irregular inspections and the matter was later brought before the Court of Justice of the European Union. In August 2022, the CJEU then ruled that these unscheduled inspections were unlawful if not based on "detailed legal and factual evidence" (InfoCuria 2022). The

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<sup>38</sup> For a more comprehensive understanding of this case, D'Alessio (2021) offers a thorough exploration of its complexities.

<sup>39</sup> An effort supported by Italian right-wing prime minister Georgia Meloni, who has been in office since October 2022.

court further emphasized that measures by the relevant authorities were only to be taken if:

“[...] justified by the presence of deficiencies which are clearly hazardous to safety, health or the environment and which make it impossible for a ship to sail under conditions capable of ensuring safety at sea.” (ibid.)

Furthermore, the CJEU’s ruling stated that the use of cargo ships for the sake of rescuing people in distress at sea could not be a legitimate factor justifying additional inspections solely based on the number of persons transported, even if that number was “out of all proportion to their capacity” (ibid.). Moreover, it was ruled that the port state is not allowed to demand proof of additional certificates beyond those provided by the flag state.

Despite this ruling, only a month later, in September 2022, the *Sea-Watch 3* faced its eighth detention, which turned out to be its final one, in the Italian port of Reggio Calabria. Even though the ship had just been inspected in August 2022, Italian authorities subjected the ship and its crew to another lengthy inspection which lasted 13.5 hours. Absurdly, the same reasons that had been dismissed by the CJEU were cited for this detention: concerns that the number of persons on board would compromise the ship's safety. But Sea-Watch pointed out that the crew continually assessed the ship’s safety during each rescue operation, ensuring safe practices (Sea-Watch 2022).

In a press release from September 2022, Sea-Watch succinctly captures the controversies surrounding such detentions:

“The farcical argumentation of having rescued too many people suggests that people should rather be left to drown, ignoring the fact that it is every captain’s duty to render assistance at sea. Additionally, the Italian authorities are contradicting themselves: by making the Sea-

Watch 3 crew wait for over a week to be assigned a Port of Safety as well as actively ignoring their own rescue duty in the Central Mediterranean, it is the authorities who actively put rescued people and crews of search and rescue vessels in danger – and not the other way around.” (ibid.)

The last time the *Sea-Watch 3* was allowed to move, was in May 2023, when the crew received permission from the Italian authorities for a single trip to the scrap press. The ship was then brought to Ghent, Belgium, where it was decommissioned and recycled. The decision to scrap the *Sea-Watch 3* was influenced by the ship's age, its soon expiring certificates, high fees for maintenance, and progressively more stringent regulations imposed by the Italian authorities (Sea-Watch 2023c). In a last goodbye, Sea-Watch stated in an Instagram post of May 26, 2023:

“Farewell Sea-Watch 3! We say goodbye to a ship that has saved over 6,000 lives in five years of operation. Many more could have been saved if European states had not unlawfully and politically motivated detained the ship for 29 months. We continue to fight against these politically calculated deaths and for human rights with our search planes Seabird 1 and 2, the rescue ship Aurora and soon with the Sea-Watch 5!” (Sea-Watch Crew 2023)

Beyond the series of ship detentions that Sea-Watch has encountered, their reconnaissance aircraft have also faced repeated blockages and groundings, and in particular flight bans over the so-called Libyan SAR zone. Just recently, they have also been banned from landing in Malta, complicating their missions and lengthening their flight paths.

It's quite astonishing to contemplate the extent to which the EU systematically tries to obstruct SAR CSOs like Sea-Watch from shedding light on its frequent violations of human rights in the Mediterranean and its collaboration with the so-called

Libyan coast guard – an entity that should be more accurately referred to as Libyan militias.

#### ***4.6.4. Instruments of Insecurity in the Sea-Watch 3 Case***

Based on the findings of chapter 4.6.3., the deterrence tactics used by the EU authorities to obstruct the *Sea-Watch 3* will now be analyzed and summarized by categorizing them within the framework of *instruments of insecurity*.

##### 4.6.4.1. Bureaucratic Techniques and Arbitrary Policing Measures

The chronicle of the *Sea-Watch 3*'s detentions highlights a convergence of bureaucratic techniques and arbitrary policing actions that were strategically aimed at obstructing the CSO's search and rescue operations.

Instances such as the detainment of the *Sea-Watch 3* on questionable charges, such as flag registration issues, reveal the use of bureaucratic hurdles to immobilize the crew's ability to rescue people in distress at sea. This pattern became even more apparent when the ship was arbitrarily detained by the Dutch authorities on the grounds that *Sea-Watch* did not comply with the latest ship regulations mandated by the Netherlands. The catch was that while other vessels were given a transition period to implement the new standards, the *Sea-Watch 3* was not. These actions demonstrate a calculated use of bureaucratic techniques to disrupt the operational continuity of the *Sea-Watch 3*.

At the same time, arbitrary policing action was taken when the *Sea-Watch 3* was detained in ports for extended periods of time, even after its legal compliance had been confirmed by state actors or legal entities. Moreover, the irregular and extensive

inspections reveal the authoritarian behavior of state actors, especially considering that the ship had often renewed its certificates or undergone scheduled inspections shortly before.

The mix of bureaucratic complexity and arbitrary policing measures reveals a concerted effort to impede Sea-Watch's humanitarian assistance and acts of solidarity. In this context, Sea-Watch's move to change the registry of its flag state for the *Sea-Watch 3* wasn't just an administrative action. It also represented the agency of the CSO and carried a symbolic message for the Netherlands.

#### 4.6.4.2. Legal Tactics

Regarding the legal tactics aimed at Sea-Watch, the sudden implementation of the “Decreto Sicurezza Bis” by the Italian government is particularly noteworthy. This decree was a legislative maneuver that allowed the Italian government to restrict the entry of SAR ships into Italian territorial waters. Because of this rapid policy change, heavy fines could be imposed and ships could be seized from those who did not comply. In effect, this legal measure was designed to legitimize any further detentions of SAR vessels that would enter Italian waters without permission in order to bring the rescued people on board to safety.

Furthermore, the deliberate extension of legal proceedings, as seen in the case of captain Carola Rackete, illustrates another facet of these legal tactics. Although the *Sea-Watch 3* was released from detention in December 2019, the investigation and court trial against Rackete continued for more than a year afterwards. This indicates the use of legal practices as a tactic in itself, as such trials serve as a deterrent to other captains and organizations. They send a message that opposing state policies will inevitably lead to

ship detentions and complex legal proceedings, even if the captain has acted in accordance with international refugee, maritime and human rights law. In addition, such legal battles effectively divert the attention of SAR CSOs away from their primary mission.

Sea-Watch's legal actions to contest these measures and its victory in some of these cases, such as the CJEU rulings on the implementation of port state controls and long ship inspections, demonstrate the organization's proactive approach in confronting these legal tactics.

Given the number of inspections that Sea-Watch vessels have undergone, including the *Sea-Watch 4* and the *Aurora*, coupled with the crew's consistent commitment to maintaining ship safety standards, it could be argued that these vessels might well be some of the safest in the entire Mediterranean Sea.

## **4.7. Sea-Eye – Navigating Stormy Legal Waters**

### ***4.7.1. Political Positioning***

Similar to Jugend Rettet and Sea-Watch, Sea-Eye is a non-profit civil organization with a commitment to close the lethal gap left by the EU in the Mediterranean. On their website, they state:

“Our activity is an answer to the failed migration policies of the European Union, which is denying its responsibility for the thousands of deaths in its immediate proximity.” (Sea-Eye, n.d.)

Sea-Eye further emphasizes that human rights should not be confined to geographical borders, particularly the external borders of Europe. They highlight that despite the legal frameworks in place, thousands of people have lost their lives at sea due to a lack of EU rescue efforts and responsibility (Sea-Eye 2021:7 f.). Sea-Eye also engages in



human rights advocacy and the building of solidarity networks throughout Germany, which inform the public about the situation in the Central Mediterranean and organize peaceful demonstrations. As of today, there are 29 local city groups that make up Sea-Eye's land crew to "draw attention, inform, collect donations and win volunteers" by using "a wide range of skills and talents, so that everyone can help in some way" (Sea-Eye 2023).

What is special about Sea-Eye's funding is that, in addition to public funds, the organization receives a large portion of its donations from Protestant and Catholic churches and church-related organizations. The CSO does not explicitly state that it is a faith-based organization, but the chairwoman and chairman, as well as crew members, frequently give interviews in faith-based magazines. In 2019, a captain stated:

"As Christians, we should ask ourselves: What would Jesus do? Would he let people drown? I think many Christians are very reluctant to ask these questions. It would be good for us to get closer to the subject for a change." (Ullmann 2019)

Therefore, it seems that personal Christian faith is one of the things that motivates at least some of the Sea-Eye members in their work.

This is even more evident through Sea-Eye's cooperation with United4Rescue. The association was founded by the Evangelical Church in Germany (EKD) in November 2019. It then formed alliances with partners who are committed to civil sea rescue. Today, United4Rescue counts 892 alliance partners. "The alliance decides which projects and rescue missions United4Rescue supports," (United4Rescue 2023) the website states. To date, the alliance has funded entire rescue vessels, such as the *Sea-Eye 4*, the *Humanity 1*, and most recently the *Sea-Watch 5*, as well as individual rescue missions and maintenance work on several vessels in the Mediterranean. This alliance

shows how much can be achieved when associations and civil society actors join forces.

As for the Christian background of the alliance, it states:

"United4Rescue is an independent association and does not belong to any church. However, the association was initiated and founded by people from the Protestant Church. Accordingly, there are many supporters from the church sector." (United4Rescue 2021)

#### **4.7.2. The Sea-Eye Fleet**

Since the start of its rescue operations in early 2016, Sea-Eye has deployed four different rescue vessels in the Mediterranean<sup>40</sup>. Past missions have been carried out with the *Sea-Eye* (2016 - 2018), the *Seefuchs* (2017 - 2018), the *Alan Kurdi* (2018 - 2021) and the speedboat *Speedy* (2016).

Sea-Eye's active vessel is the *Sea-Eye 4*, which has been operational since May 2021.

#### **4.7.3. Ship Detentions**

##### **4.7.3.1. The Hijacked Speedboat**

This section begins with the story of the hijacking of the Sea-Eye speedboat *Speedy* by the so-called Libyan coast guard in 2016. The vessel was seized by Libya on the grounds that the two Sea-Eye crew members on board had entered Libyan territorial waters without permission, an allegation later denied by the two crew members themselves as well as by other ships in sight of the *Speedy*. Nevertheless, the two men were forced to enter the Libyan port of az-Zāwiya and were detained for several days. They were eventually released with the help of the German embassy in Libya and the German navy, but the *Speedy*, which Sea Eye had just purchased in 2016 for about

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<sup>40</sup> The organization itself was founded in 2015.

€100,000, was kept by Libya and has not been seen since (Feuerer 2016). Even though this event is related to a Libyan detention, I dare to say that the EU, by funding the so-called Libyan coast guard, is partly to blame for this incident - especially since there were no repercussions for the Libyan authorities and the EU's funding and training of the so-called Libyan coast guard continues to this today.

#### 4.7.3.2. Withdrawal of Ship Flags under Salvini

The *Sea-Eye* and the *Seefuchs* were to share the same fate in the summer of 2018. Under pressure from then interior minister Salvini, both ships were stripped of their Dutch flag, rendering them inoperable.

“This political move aimed at preventing *Sea-Eye*'s life-saving, humanitarian operations, as both ships had previously been duly registered in the Royal Netherlands Register of Shipping.” (Sea-Eye 2019)

Unsurprisingly, the flags were removed from the two ships just as Salvini was appointed interior minister following the Italian national elections in March 2018. This came after his right-wing party, the Lega Nord, and the new governing party, the populist Five Star Movement, had formed a coalition. Immediately after his appointment, Salvini announced that Italian ports would be off-limits to foreign-flagged sea rescue vessels, leading to huge restrictions on SAR CSOs or even a complete shutdown of their operations (Cusumano & Villa 2020:30).

Subsequently, the *Sea-Eye* was shipped to Hamburg in June 2019, where it now serves as a documentary ship under the name *Thinkboat*. The *Seefuchs*, in turn, was given to the Spanish CSO ProemAid in March 2019.

#### 4.7.3.3. Breaking the Law?

One of the most recent detentions concerns the *Sea-Eye 4*, which was detained after rescuing 49 people in two consecutive missions. It was held in the port of Ortona, Italy, from June to August 2023.

The Italian authorities justified the detention on the basis of a new law that was introduced in January and came into force in March 2023. Law 15/2023 “restricts search and rescue vessels from carrying out more than one rescue operation at a time” (MSF 2023) and to sail to an assigned port of safety right away.

However, for many SAR CSOs, it is common protocol to sail on to other missions, provided a distress call has been made and there is still capacity on the vessel. This is what happened to the *Sea-Eye 4* on June 2, 2023. After rescuing 17 people in one operation, the vessel was on its way to the port of Ortona, but turned back following another distress call, through which they rescued an additional 32 people. However, this now seems to be officially against the new Italian law, which, obviously, is incompatible with several international laws at the same time.

This recent Italian legislation constitutes another direct effort to limit the entry of more refugees into Europe. It also further criminalizes the sea rescuers, given that the restriction to only perform one single rescue missions at a time and then promptly disembarking the rescued individuals would become increasingly burdening due to the financial challenges posed by this law. This includes the fact that SAR vessels often have to travel long distances:

“The practice of assigning distant ports increases the fuel costs for NGOs and depletes their limited budgets, which impacts their capacity to save lives in the future.” (ibid.)

All other Sea-Eye ship detentions may be viewed on the [SAR Ship Detention Map](#), including short explanations as to why the ships were detained and links to further information.

#### ***4.7.4. Instruments of Insecurity in the Sea-Eye Cases***

##### **4.7.4.1. Bureaucratic Techniques and Arbitrary Policing Measures**

The withdrawal of the ship flags of the *Sea-Eye* and the *Seefuchs* in 2018, under the pressure of Italy's interior minister Salvini, highlights a bureaucratic and political maneuver to hinder these vessels' life-saving operations. Since there was no specific law or regulation that would have justified such an action, it was innately illegitimate. In a way, this incident is intertwined with arbitrary policing, as Salvini's political positioning led to law enforcement action.

Further bureaucratic techniques were revealed when the *Sea-Eye 4*, in violation of the new Italian law 15/2023, was not only subjected to a substantial penalty fine, but also forced to pay port fees for the entire duration of its 20-day detention, amounting to a total of €20,000. In essence, Sea-Eye was required to pay port fees that would not have been incurred had the vessel not been detained in the port of Ortona, Italy.

##### **4.7.4.2. Legal Tactics:**

Sea-Eye's ship detentions showcase the use of legal tactics to impede their humanitarian efforts. The detention of the *Sea-Eye 4*, based on a new Italian law, exemplifies how legal changes can be employed to create obstacles for rescue operations. Italy's introduction of Law 15/2023, restricting SAR vessels from conducting more than one rescue operation at a time, serves as a legislative tactic to

limit the entry of refugees into Europe and further burden SAR CSOs financially. In the case of the *Sea-Eye 4*, a high fine for non-compliance needed to be paid. This legal maneuver not only undermines international laws but also criminalizes sea rescuers and seeks to restrict their capacity to save lives.

Although the new regulation holds legal status as an enacted Italian law, it is inherently arbitrary in the sense that it violates the obligation to render immediate assistance to persons in distress at sea. This principle is enshrined in international maritime law. Furthermore, this new law restricts the freedom of movement of SAR CSOs. It is therefore an example of the confluence of legality and arbitrariness in Italian state law.

#### **4.8. Interim Findings**

In conclusion, Chapter 4 on “Keeping Solidarities at Bay” delved into the multifaceted landscape of SAR CSOs operating in the Mediterranean, where their actions intertwine with the concepts of politicization, securitization, and criminalization. Even though some of the three CSOs presented may not overtly label themselves as “political,” their very existence and actions constitute a response to EU deterrence policies, rendering them inherently political. This aligns with the notion that assisting migrants without regard to their legal status is, in itself, a political act that challenges and expands the boundaries of the social order.

“Politics then not only includes an institutionalized repertoire of actions such as elections, lobbying, manifestations or letter-writing campaigns, but also encompasses minor, everyday acts of assistance.”  
(Vandevoordt 2021:51)

The progression from politicization to securitization and eventual criminalization is evident in this context. Initially, the migration issue is politicized as debates revolve around the rescue of migrants at sea and their subsequent placement, often influenced by factors such as political events, including elections, which play a significant role in determining whether politicians choose to politicize migration. In the EU, this was followed by securitization, characterized by the externalization of borders, forging deals with Turkey and Libya, and collaboration with the Libyan coastguard – all of which manifest as strategies of de-politicization aimed at effectively “managing” migration flows. This series of developments only further accentuates the vital role of SAR CSOs in saving lives at sea amidst a lack of EU rescue efforts.

But since SAR CSOs actively challenge the fortress-like approach of Europe, they are perceived as threats and consequently, their actions are being securitized as well. This becomes apparent as bureaucratic obstacles, fines, new legislation and lengthy ship inspections are employed to hinder SAR CSOs' work. Nevertheless, when their commitment persists, EU state actors move on to criminalize the sea rescuers by accusing them of facilitating illegal migration into Europe and allegedly breaking national laws. The chapter further highlights how the SAR CSOs then navigate complex legal landscapes of criminalization by enduring prolonged legal procedures, often aiming to depict them in a negative light within public discourse.

All of these measures which have been described as the EU's *instruments of insecurity*, showcase what Gammeltoft-Hansen & Tan (2017) have described as “creative legal thinking”. In case of EU states' policy and decision-making concerning migration and the assistance of migrants in distress in the Central Mediterranean,

“[...] the tension between [...] normative commitments and differing political interests, leads states to develop policies that work at the fringes or in the interstices of international law in order to recoup sovereign maneuverability.” (ibid. 32)

The dynamic interplay of these concepts sheds light on the challenges faced by SAR CSOs operating in the Central Mediterranean, as they find themselves entangled within the ever-shifting political and legal frameworks of the EU. However, it is important to note that these challenges often extend beyond the legal realm when EU state actors employ unlawful measures such as arbitrary surveillance operations measures and unscheduled ship inspections.

Many SAR CSOs have taken legal action against these arbitrary EU measures; however, in the context of the broader politics of exhaustion, the *instruments of insecurity* have induced fear and apprehension among many CSOs in the Central Mediterranean, leading some to cease their operations altogether.



## CHAPTER 5

### MAPPING

#### 5.1. Mapping with Google My Maps

To visualize the ship detentions which have resulted from the EU's bureaucratic techniques, arbitrary policing measures and legal tactics between 2016 and 2023, Google My Maps has been chosen as an adequate platform to do so. [The SAR Ship Detention Map](#) shows the different ship detentions which Jugend Rettet, Sea-Watch and Sea-Eye have been subjected to in the past years. By clicking on a ship icon, the viewer can see the relevant ship's detention period, the detention location, which authority detained the ship, what kind of flag it was flying and during what time the ship was generally operational. Moreover, further information is given regarding the justifications for the ships' detentions as well as further links provided.

The goal was to gather accurate and detailed data for the map, while also ensuring it remained concise. Gathering this data proved time-consuming in certain instances, as some CSOs only documented detentions on their website archives days later or in an incomplete manner. Therefore, information was also extracted from their Instagram feeds, which often offer more detailed accounts than their websites. Additionally, Sea-Watch was able to verify some of the entries concerning their ships, through direct communication via Instagram.

The Google My Maps platform stands out because it is a free, ad-free web application that makes it easy to create and share maps. In addition, the application is very practical because it allows multiple parties to work on a shared map. These features are also advantageous in that a duplicate of this map will be made available to

SAR CSOs for their use beyond the completion of the thesis. This approach preserves the integrity of the original map for future reference and ensures that any changes made by the CSOs do not affect the thesis map. The duplicate will then serve as a tool for SAR CSOs to continue to visualize future arbitrary detentions of their vessels in the Mediterranean region. To protect the content and purpose of the duplicate map from intentional or accidental misuse, only those with whom the map is shared via Google Drive will be able to add to it.

The ship icons are the property of the thesis author and have been uploaded to Google My Maps. Each CSO is represented by a different color: red was chosen for Jugend Rettet, blue for Sea-Watch and yellow for Sea-Eye.

## **5.2. Analysis of the Map**

Looking at the map, it becomes apparent that Sea-Watch has experienced the most detentions by EU state authorities between 2016 and 2023, with 13 ship detentions. Sea-Eye follows with eight ship detentions and one hijacked boat that was never returned. Jugend Rettet appears with one ship detention since 2017, marking the longest detention.

What becomes evident is that detentions in 2016 and 2017 were comparatively modest, setting the stage for an upsurge of four times more detentions during 2018, 2019 and 2020. Detentions become less again in 2021, while 2022 and 2023 saw detentions more than twice as frequent as those observed in 2016 and 2017.

While there are notable correlations between some detentions and pivotal political occurrences, such as the implementation of the Minitti Code in 2017 and the influence of far-right politician Salvini's anti-migration stance, it's important to

recognize that detentions' relationships with political events may entail complexities that should not be subject to oversimplification. Moreover, the imposition of stringent COVID-19 restrictions significantly curtailed the operational latitude of CSOs, which could be another reason for the decrease in detentions that have been recorded for 2021 and 2022. While Italy emerges as the primary initiator of most detentions on the map, a subset can be attributed to the Netherlands, the UK and Spain.

Although a connection between certain detentions and concurrent political climates can be identified, a nuanced analysis is required to avoid reductionism. However, in order to offer a more comprehensive and genuine analysis of ship detentions between 2016 and 2023, the map's scope should expand to encompass the entirety of all detentions experienced by numerous other SAR CSOs in the Central Mediterranean.

Therefore, it's vital not to be misled by mere figures. Detentions may seem infrequent in recent years, but some, such as the two cases in 2022<sup>41</sup>, lasted six months at a time. Moreover, the current year, 2023, is still ongoing, and Sea-Watch and Sea-Eye have faced detentions<sup>42</sup> that seem to be in line with a new strategy of legal crackdown by Italy. While these detentions lasted only 20 days, they were accompanied by significant fines of 3,333€ each, due to Italy's new law 15/2023. Looking ahead, if this law remains in place, it means there could be more short-term detentions coupled with higher fines<sup>43</sup>.

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<sup>41</sup> Relating to the 8th detention of the *Sea-Watch 3* and the 1<sup>st</sup> detention of the *Aurora*

<sup>42</sup> Relating to the 2<sup>nd</sup> detention of the *Aurora* and the 2<sup>nd</sup> detention of the *Sea-Eye 4*

<sup>43</sup> And so it came to pass: The *Aurora* was detained a 3<sup>rd</sup> time on August 21, 2023 in the port of Lampedusa and the *Sea-Eye 4* was also detained a 3<sup>rd</sup> time on August 22, 2023 in the port of Salerno. Both cases have been added to the map on September 7, 2023.

What can be said of this map, however, is that it makes the pattern of SAR ship detentions over the years more visible. By providing adequate information on each case, it reveals the motivations behind each detention and the consequences that followed. Viewers can easily navigate by clicking on one ship at a time and gain more insight into the complexities of each case explained in simple terms. Additionally, links to detention cases offer a pathway for deeper exploration. If applied to every SAR CSO that has been operating in the Mediterranean between 2016 and 2023, this approach would provide an even more comprehensive view and understanding of the EU's efforts to criminalize SAR CSOs.

From this point of view, the map serves as a promising foundation for further research and investigation, emerging as a practical tool to decode the EU's foreclosure policies in the context of SAR CSOs.

It's important to reiterate that this map, while comprehensive for this thesis, is not all-encompassing, as it only focuses on the detentions experienced by Jugend Rettet, Sea-Watch, and Sea-Eye between 2016 and 2023.

## CHAPTER 6

### CONCLUSION

“NGOs face a new wave of criminalization. Ships are being detained, airplanes grounded, and activists intimidated. The European authorities are doing everything in their power to prevent organizations from saving human lives and documenting human rights violations.” (Philipp, Sea-Watch 2020)

The gravity of Philipp’s words, a staff member of Sea-Watch at the time, aptly reverberate the subject of this thesis. The previous chapters have navigated a maze of concepts, theories, and empirical analyses, tracing the contours of the EU deterrence regime and its active and systematic obstruction of civil society organizations engaged in search and rescue in the Mediterranean. Through this journey, this thesis ventured to understand the mechanisms that shape, in particular, said EU obstruction of SAR CSOs.

#### **6.1. Answering the Research Questions**

The knowledge gained will now be used to help answer the research questions posed in Chapter 1.2., which have guided this exploration.

##### ***6.1.1. Answering the Main Question***

To address the most central question of this thesis, I will now examine the dynamics of *how* the EU has obstructed civil society search and rescue organizations in the Mediterranean between 2016 and 2023.

- Main Question:

What are the strategies used by authorities and state actors of the European Union to obstruct search and rescue civil society organizations and to detain their vessels in the Central Mediterranean?

EU authorities use a variety of strategies to obstruct SAR CSOs and detain their vessels in the Central Mediterranean. Between 2016 and 2023, these included bureaucratic techniques, arbitrary policing measures and legal tactics, which this thesis refers to as *instruments of insecurity*. By creating hierarchical power structures, they restricted the operational freedom of SAR CSOs such as Jugend Rettet, Sea-Watch and Sea-Eye, which served as case studies in this thesis. EU state actors effectively undermined the rights of these civil society actors and disrupted the humanitarian assistance and solidarity they sought to provide to people on the move at sea. These strategies served the EU's broader interests of "managing" migration and deterring individuals from entering European territory irregularly.

In the case of **Jugend Rettet**, arbitrary police actions included twice diverting the *Iuventa* to the port of Lampedusa under false pretenses for wiretapping and detention. Spies posing as security personnel infiltrated their operations and collected evidence to support unfounded accusations of collusion with traffickers. When alleged evidence resulted from these arbitrary actions, it negatively affected the organization's reputation and its portrayal in the media.

Bureaucratic techniques involved lengthy investigations and an overwhelming amount of case material, creating uncertainty and complexity. The deliberate refusal to translate key indictment documents from Italian into German, inadequate translation of

court hearings, and a general lack of transparency further hampered the defense's ability to navigate the legal process.

Legal tactics included fabricated evidence, resulting in unfounded charges, heavy fines, and intimidation. Leaks of legal documents to the media fueled a smear campaign and threats, undermining the defendants' presumption of innocence. Concerns about the independence of the Trapani judge arose from his rejection of the defendants' appeals to the Court of Justice of the European Union. Moreover, he granted the Italian Ministry of the Interior access to court hearings as a co-plaintiff, further politicizing the *Iuventa* case.

Regarding **Sea-Watch**, the numerous detentions of the *Sea-Watch 3* were chosen to represent the EU's obstruction of this organization. In total, the detentions of the ship resulted in approximately 30 months of immobility.

The bureaucratic techniques used against the *Sea-Watch 3* included repeated detentions of the ship on dubious charges, as well as allegations of flag registration problems, and questioning of the ship's technical certificates, even after it had met all legal and technical standards in a timely manner. In addition, the *Sea-Watch 3* was detained while still flying the Dutch flag, just after the Dutch had issued a new ship code. They were immediately accused of non-compliance, even though they had not been informed of the new code and had not been given the time to adapt to it. Sea-Watch's subsequent decision to change its flag state registration was symbolic, as it represented the agency of CSOs in overcoming these obstacles.

Arbitrary policing measures mostly involved further prolonged detentions of the vessel in European ports due to various unscheduled and extensive ship inspections.

Legal obstruction tactics included the Italian government's sudden implementation of the "Decreto Sicurezza Bis", which restricted SAR vessels from entering Italian waters and justified detentions and fines for non-compliance. Lengthy legal proceedings, as in the case of Captain Carola Rackete, served as a tactic to deter SAR organizations from opposing controversial state laws. Sea-Watch's proactive legal actions, including a referral to the European Court of Justice which ruled in favor of the organization, demonstrated the it's willingness and commitment to challenging detrence tactics.

As for **Sea-Eye**, the strategies used by EU state actors to obstruct this search and rescue organization included the withdrawal of the ship flags from the *Sea-Eye* and the *Seefuchs*. While this action was carried out through bureaucratic means, it was largely an act of arbitrary policing, as key figures in the right-wing Italian government had ordered the withdrawal of these ship flags based solely on their own nationalist preferences, not on any laws. Besides, these ships were properly registered under the Dutch flag at the time.

Then, the detention of *Sea-Eye 4* under Italy's new Law 15/2023, also referred to as the Piantedosi Decree, illustrates how legal tactics have been used against the SAR CSO. This new law introduced a requirement for SAR CSOs not to conduct successive rescues, but to conduct only one rescue at a time and to disembark the rescued persons at a port designated by the Italian authorities. So when the crew of *Sea-Eye 4* decided to respond to a second distress call and rescue 32 more people after initially rescuing 17, the vessel was detained under this new Italian law. As a result, *Sea-Eye* faced substantial fines (€3,333) and was forced to pay port fees for its 20-day detention in Ortona, Italy.



These legal tactics imposed a heavy financial burden on the organization and demonstrated how through the making of new state law international maritime law was circumvented. SAR vessels such as the *Sea-Eye 4* are then detained either because they performed more than one rescue during a sea rescue operation, or because they decided to take the rescued persons on board to the nearest safe port rather than to an assigned distant port. In both cases, they are detained even though they acted in accordance with international law and refused to comply with arbitrary national law.

The strategies used by EU authorities to obstruct the work of civil society organizations involved in search and rescue operations in the Central Mediterranean were analyzed in detail on the basis of significant incidents experienced by Jugend Rettet, Sea-Watch and Sea-Eye. These strategies include bureaucratic, policing and legal measures, which gave a deeper insight into *how* the EU obstructs solidarity in the Mediterranean. Overall, they confirm the urgent need for a rights-based, decolonized and inclusive policy in the EU that prioritizes the safety and well-being of people in distress at sea, while holding state actors accountable to international law.

### ***6.1.2. Answering the Sub-Questions***

With an understanding of the strategies used by EU authorities and state actors to obstruct SAR CSOs, I will now delve into answering the sub-questions of this research.

- Sub-Question 1:

How did the EU's initial support for solidarity aid from civilian search and rescue organizations in the Mediterranean in 2015 change to their criminalization in subsequent years?

Reflecting on this question after having written this thesis, it is more accurate to say that individual EU member states showed solidarity with search and rescue civil society organizations. One of those states was Italy, which conducted its state-led rescue operation *Mare Nostrum* between October 2013 and October 2014. This operation focused solely on rescuing migrants in distress at sea. It was not financially supported by any European Union member state (Marquardt 2021:89), but it received considerable media attention, as well as public and political approval. In retrospect, it seems more plausible that Italy's initial rescue efforts contributed to a perceived humanitarian image of the European Union, which may have basked in the glow of Italy's success with *Mare Nostrum*, while in fact it was watching from afar. The EU as a collective entity only intervened with its controversial Frontex and naval military operations when the political atmosphere shifted to a more anti-migration stance – obviously, not eager to continue a rescue mission like *Mare Nostrum* at the European level (ibid.).

In 2015, the EU, including Italy, began taking action against SAR civil society organizations, leading to their subsequent criminalization due to changing political sentiments. As the so-called "refugee crisis" continued, the EU's focus shifted to more restrictive migration policies. This process was accompanied by concerns about security, control and public opinion, which led the EU to focus its policies on deterrence and containment. Political debates were influenced by a growing far-right political

spectrum in the EU and were directed toward securing the EU's borders, disrupting smuggling networks, and deterring migrants.

This development also illustrates the sequencing and interlocking of securitization and criminalization, often accompanied by alternating or simultaneous politicization and depoliticization, depending on the political agenda.

Politicization occurred when migration and solidarity with migrants became matters of political contention and debate. This, in turn, fueled the securitization of migration and SAR CSOs, which were perceived as threats, allowing EU authorities and states to implement extraordinary securitization measures, often leading to the circumvention of democratic norms. These groups then became subject to criminalization when they were perceived to be interfering with the EU's closed borders regime and deterrence agenda. SAR CSOs have been accused of being a pull factor by assisting people in distress at sea. Depoliticization is now visible in the dynamics of 'migration management', a task where direct political power is deliberately outsourced to state and non-state groups and institutions, rather than being addressed through direct political engagement. This allows EU authorities to shift responsibility to other actors while retaining indirect control.

Suddenly, migrants and SAR CSOs were labeled as the producers of the so-called "migration crisis," thus driving the need for crisis "management" through technomoral strategies that hold power over who should and should not be perceived as a "strong sovereign" (Kosmatopoulos 2021:267) to make powerful decisions and who is expected to act. This transformation also echoes the notion of a "binary geographical imagination" (Kosmatopoulos 2014:612), in which the world is divided into crisis and decision-making spaces, revealing the often hidden mechanisms of elite governance.

While the EU, interested in closing its borders to migration flows, presents itself as a sovereign decision-maker, it actively contributes to the construction and fueling of crises. In doing so, EU states present the migrant and the civil society actor as an alien or “Other” who is “depicted not only as isolated from the whole, but often as radically different and dissimilar – and thus as dangerous to the rest” (Kosmatopoulos 2021:272).

These developments also underscore the legacy of colonial power structures, as the historical continuity of power dynamics becomes evident when analyzing the blame shifting in the EU's response. By criminalizing migrants and SAR CSOs, the EU effectively deflects responsibility for the crises and violence it contributed to as a colonial power. This is reflected in the following observation:

“European nationhood is shaped by the continent’s imperial histories, which saw European states colonize and subjugate, before retreating and restricting the movement of people from those former colonies.” (Mainwaring & DeBono 2021:1034)

Instead of acknowledging the consequences of its past actions, the EU scapegoats those seeking refuge and those assisting them, perpetuating historical power imbalances, and evading accountability.

- Sub-Question 2:

What were the consequences of EU state actors’ bureaucratic, legal and policing measures on search and rescue civil society organizations and on humanitarian conditions in the Mediterranean between 2016 and 2023?

The EU's *instruments of insecurity* effectively hampered SAR operations and disrupted the continuity of assistance efforts, sometimes even leading to periods in the

Mediterranean when almost no civilian SAR vessel was operational, as in 2018 when Salvini imposed his closed ports policy. Some of these measures aimed at questioning the legitimacy of ship registrations, flags and certificates, which in all cases turned out to be unjustified. However, it has never been the EU's aim to justify such accusations, as the main objective of such procedures is to delay SAR operations and thus prevent CSOs from going out and saving lives at sea.

Other tactics such as fabricating false allegations, imposing heavy fines and prolonging legal proceedings also deterred SAR CSOs and diverted their focus from their core mission. In addition, legal proceedings, as in the case of Jugend Rettet, tend to be unfair in that they prevent the accused SAR CSO from having access to all necessary information, such as translation of key indictment documents and initial lack of adequate translation in court hearings.

Taken together, these tactics have strained the operational capacity of SAR CSOs and negatively impacted the lives of migrants in distress at sea, certainly leading to more unnecessary deaths during ship detentions. They are direct results of the EU's politics of exhaustion, and it is certainly not an exaggeration to refer to such measures as necropolitics, where those at the top of the panopticon, or banopticon as Bigo calls it, seem to have the audacity and unfortunately “the capacity to define who matters and who does not, who is *disposable* and who is not” (Mbembe 2003:27).

- Sub-Question 3:

How did these search and rescue organizations respond to and resist the challenges of EU state actors' efforts to impede their solidarity work?

SAR CSOs have adopted various counter-strategies to respond to the EU's obstructionist efforts. These include legal action to challenge detentions, proactive engagement in advocacy, maintaining high operational standards, building alliances with other SAR CSOs and civil society groups, and leveraging public support through social media and public demonstrations. The *Iuventa* trials in Italy are a good example, as some of them were “accompanied by solidarity rallies outside the courthouse in Trapani, attended by more than hundred supporters from all over Europe” (Iuventa Crew 2022c).

In terms of legal action, as the case studies in this thesis show, SAR CSOs will often challenge ship detentions by filing complaints with the relevant courts and requesting that their complaints be reviewed by the Court of Justice of the European Union (CJEU). In particular, rulings by the CJEU and other courts on detentions related to bureaucratic issues of registration and ship certification are most often successful, resulting in ships being released more quickly.

Another legal counteraction worth mentioning occurred in 2022, when Jugend Rettet filed a lawsuit against the Italian authorities for letting their rescue ship rot in the port of Trapani since the summer of 2017. As a result, an Italian judge ruled that Italy should “pay for repairs to the *Iuventa* rescue ship” (The Civil Fleet 2022). Although it is unclear whether such maintenance is realistic due to the very poor condition of the ship, Kathrin Schmidt, one of the defendants in the *Iuventa* case, stated that “it holds an important message in light of the arbitrary treatment and measures against civil search and rescue operations” (ibid.).

Furthermore, an interesting counter-strategy developed by some prosecutors is to order the legal seizure of SAR vessels with a twofold purpose: to allow these rescue

vessels to quickly disembark the rescued persons without having to face long standoffs in front of territorial waters, and to be able to release these vessels soon after (Cusumano & Villa 2020:32).

Moreover, by flying reconnaissance missions over the Mediterranean, some SAR CSOs like Sea-Watch use their agency to hold EU border authorities such as Frontex and the EU military operation EUNAVFOR MED accountable if they violate international law. They have done this extensively by publishing footage of EU violations in the Mediterranean on their website and through their social media platforms, which has also brought more public attention and awareness to these cases.

In addition, the ability of some civil society organizations to negotiate with the Italian authorities before signing the Minitti Code of Conduct in 2017 proved successful, as they signed only after their demands were recognized in a further addendum.

Currently, many SAR CSOs also engage in frequent civil disobedience when deciding to reject long travels to distant assigned ports for the sake of the well-being of their passengers. They will sail to the ports closest to them in order to disembark the rescued persons earlier and also to save fuel. Although this kind of civil disobedience often leads to the detention of their vessels, it is still effective in that it upholds international law and human rights in a sea of arbitrariness and injustice. A further step for SAR CSOs would be to file a constitutional complaint against Italy's new Piantedosi Decree (Law 15/2023), as it clearly violates several internationally established rules, such as the right to life, freedom of movement, and the principle of non-refoulement.

Finally, the counter-strategies of the SAR CSOs mentioned here, which relate to the scope and research of this thesis, aim to challenge the status quo of the EU

deterrence regime, contribute to the protection of human lives, and maintain the organizations' own operational effectiveness.

- Sub-Question 4:

What is the purpose of visualizing the EU's criminalization of search and rescue civil society organizations in the Mediterranean? Can such visualization be a useful tool for these organizations prospectively?

The purpose of visualizing the criminalization of SAR CSOs by EU state actors in the Mediterranean is to show how the practice of detention and seizure of SAR vessels has become a common practice in the repertoire of EU deterrence measures over the past six to seven years. It also provides a concise overview of the frequency of EU detentions and the strategies employed by state actors. This visualization serves as an analytical tool to uncover patterns, trends and impacts of criminalization efforts. In addition, it allows the viewer to understand how and when detentions take place in relation to their place, time, and political context.

What's more, the continued use of a copy of this map will serve as another empowering tool for SAR CSOs to raise awareness and expose arbitrary EU state action against pro-migrant civilian actors. Sea-Watch has already shown interest in the [SAR Ship Detention Map](#) and I look forward to introducing it to other SAR CSOs as well.



## 6.2. Further Research and Final Thoughts

In conclusion, this thesis has elucidated on the various means used by EU state actors and authorities to obstruct search and rescue operations of civil society organizations in the Central Mediterranean between 2016 and 2023. While the research presented here is not exhaustive and much more could be said, it has provided some more detailed puzzle pieces of a larger picture and offered insights into the mechanisms of EU deterrence vis-à-vis search and rescue organizations, categorizing them as bureaucratic techniques, arbitrary policing measures, and legal tactics.

Beyond the specific cases of Jugend Rettet, Sea-Watch and Sea-Eye, this research provides a framework for examining similar cases of EU deterrence in the future. It also underscores the urgent need for more research to critically assess the impact of these containment measures on pro-migrant solidarity efforts, and to examine how these EU repressions have led civil society groups to develop more creative counter-strategies. A critical analysis of the effectiveness of these strategies, their adaptability and their impact on the shaping of EU migration policies could provide valuable insights for both academics and activists.

It would also be of paramount importance to reflect on the agency of refugees themselves in challenging the prevailing Fortress Europe, even “with thousands arriving ‘autonomously’ without the need for rescue.” (Mainwaring & DeBono 2021:1043). It would be good to ask: Have they formed alliances to counter the EU’s deterrence mechanisms? Are there any local communities, such as fishermen, with whom they have forged links? Do SAR CSOs provide a platform for migrants to be an active part of their rescue and advocacy efforts? How do the lines between “rescuer” and “refugee” become blurred when they start working together? And: How could this avoid

perpetuating colonial images of “European saviors” coming to the aid of “poor foreigners”?

This leads us to the fact that it would also be very interesting to study the EU's understanding of (in)security in the context of migration and pro-migrant solidarity not only from the perspective of European security schools, but also, for example, from the perspective of the Beirut School of Critical Security Studies. This could provide further insight into the extent to which Eurocentrism and Western perspectives still distort research on these issues. It could then propose decolonized approaches and offer valuable perspectives from the Global East and South.

Another important avenue of research that also disrupts dominant Eurocentric views of the Mediterranean is to look more closely at the pivotal role of the "Ships to Gaza" initiative, which Kosmatopoulos (2023) describes as a historical forerunner of maritime solidarity activism. In September 2007, activists began their missions after “Israel had declared Gaza a ‘hostile entity’” (ibid. 8) and imposed a land, air, and sea embargo, severely restricting the movement of people and goods.

In August 2008, two fishing boats boldly challenged the embargo imposed on Gaza by reaching its shores via the sea. These vessels were crewed by activists associated with the Free Gaza Movement, marking a significant milestone in breaking the naval blockade. This event marked a turning point, as activists moved from symbolic actions to establishing regular links between Cyprus (Limassol) and Gaza.

Later, in 2010, the *Gaza Freedom Flotilla* emerged as an international coalition formed by several civil society organizations and activists “to raise global awareness, actively challenge the embargo, and deliver humanitarian aid to the people of Gaza via the sea” (ibid. 5). Although this mission was disrupted by the Israeli military and

tragically ended in death for several of the activists, the goal “to establish a permanent maritime connection and a de facto international port [...] remains intact although the route is blocked” (ibid. 9).

What then is the significance of the “Ships to Gaza” as an important movement to include in further research on pro-migrant civil solidarity in the Mediterranean?

The Ships to Gaza demonstrate that the sea is a vital space for political activism and resistance. Their actions disrupted established orders, challenged state-imposed embargoes at sea, and highlighted the potential of the sea to serve as a site of popular politics. Importantly, their influence extended beyond the Palestinian context, also inspiring pro-refugee activists in the Mediterranean. When Italian ports were closed to refugee rescue ships in 2019, activists took inspiration from the legacy of the Ships to Gaza, and launched their own missions to challenge restrictive laws and policies on maritime migration (ibid. 14). Therefore, Kosmatopoulos states:

“The Ships to Gaza transcend both the physical space of the Mediterranean Sea and the moral–conceptual space that is Europe by invoking notions of indigenous resistance and internationalist solidarity that complicate and challenge colonial concepts of the sea as either *mare nostrum* or *mare nullius*.” (Kosmatopoulos 2023:7)

Thus, Kosmatopoulos’ research on the Ships to Gaza and its historicization in pioneering maritime activism fills an important research gap and further research can be done on how the Ships to Gaza influence contemporary maritime activism and solidarity. It also invites for further inquiries into the sea as a realm of resistance, an “insurgent terrain” (ibid. 14), that encompasses a wide range of actors, from solidarity activists to those seeking to secure national boundaries.

In a legal context, existing obligations could be further explored and tested against cases of obstruction of pro-migrant solidarity by state actors, such as the Responsibility to Protect (R2P). Moreover, perspectives of the Third World Approaches to International Law (TWAIL) could provide a further and more nuanced understanding of how power dynamics and historical legacies influence the interactions between EU state actors, international law enforcers, refugees and civil society organizations in the Mediterranean, adding depth to future research in this field.

I am closing this thesis with the words of Erik Marquardt, who has taken part in former rescue operations by Sea-Eye and Sea-Watch (Marquardt 2021:92 ff.) and has been one of the loudest voices for civilian sea rescue in the Mediterranean in the European Parliament in recent years:

“And if there are laws that punish saving lives more than letting people die, then let's change those laws. And if there are boats that can save, then for God's sake, let's send them out! It would be a sign of strength to say: human dignity is inviolable, even in the Mediterranean.”  
(EP 2019)

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