

Anchoring Human Rights and Maritime Responsibilities: Understanding the Impact of Search
and Rescue NGOs on Migration Across the Central Mediterranean Sea

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Abstract

Since 2015 more than 1.7 million people have attempted to cross the world's deadliest migration route: the Central Mediterranean Sea. Though the number of crossings continues to rise, the engagement of governmental and commercial actors has dwindled, with new legal, political, and financial pressures discouraging seafarers from responding to calls for assistance. In this stretch of ocean between Libya and Southern Europe, the rescue of people in distress has been transformed from a universal norm into a political act. Responding to a gap in rescue resources, non-governmental organizations, comprised of seafarers, humanitarians, and medical professionals have taken to the sea to uphold the maritime duty to render assistance and protect the lives of vulnerable people on the water. Drawing on interviews with crew members of civil search and rescue organizations, first-hand experience, and document analysis, this thesis examines the immediate and long-term impact that non-governmental rescue vessels have had on migration across the Mediterranean Sea. This research moves beyond viewing SAR NGOs as simply Good Samaritans, doing what they can, and explores how their exacting work has reshaped the maritime and human rights landscape for sea-based migrants. The first chapter of this thesis studies how NGOs' actions during a mission - specifically responding to all calls for aid, providing survivor care, and disembarking all rescued people in a safe place - provide immediate protections to migrants, that would not otherwise exist. The second chapter of this thesis discusses how SAR NGOs have shared evidence gathered during missions in legal cases to hold violators of maritime laws accountable and to engage and educate civil society. This research concludes that SAR NGOs provide life-saving aid during operations, and have reinvigorated the enforcement of maritime laws to increase protections for sea-based migrants.

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Introduction

It is just before 22:00 on October 22, 2021, when the NAVTEX safety broadcasting system onboard *Geo Barents* begins to alarm. A message glows on a small display screen, informing the crew of the 77m search and rescue vessel of an “empty” rubber boat located approximately 25 miles north of the Libyan coast. Knowing that an “empty” boat is likely one carrying migrants, *Geo Barents* alters course and sails towards the rubber boat’s last known position. After two hours of searching under a moonless sky, the crew spots a small light held by a passenger onboard the rubber boat. The rescue crew, composed of seafarers and medical staff from Médecins Sans Frontières (MSF), moves quickly to launch two rigid hull inflatable rescue boats (RHIBs) and sets off towards the target. The danger of the situation is immediately apparent, there are no lifejackets onboard and the overcrowded rubber boat is rapidly taking on water. Howling winds drown out any radio communications and ten-foot seas batter the rubber boat as the rescue crew moves to distribute lifejackets. Then, one-by-one survivors are pulled from the sinking boat onto the RHIBs. It takes several hours, but by 02:00 all 64 survivors, 26 of whom are children, find safety onboard the *Geo Barents*. Once the rescue is complete cheers erupt from the 100 other survivors who were rescued only hours earlier as they welcome the new arrivals and help distribute food, blankets, and hot tea. It is an emotional moment filled with joy, relief, and hope for everyone who has safely made it across the world’s deadliest migration route. The need for rescue, however, is not over; the next day MSF’s team will conduct three more rescues, bringing the total number of survivors onboard to 367, and only a few miles away another search and rescue NGO, Sea-Eye, will rescue 810 people in 48 hours.

The 1,177 people rescued by MSF and Sea-Eye in late October represent a fraction of the 1.7 million migrants who have attempted to cross the Mediterranean Sea since 2013. Described as the most dangerous migration route in the world, it is estimated that 23,550 people have died or gone missing while trying to make the journey from North Africa to Europe.¹ Many migrants are fleeing violence, persecution, and poverty, and travel across Africa and Western Asia in search of security and freedom at Europe's southern border. While numerous maritime and human rights laws exist to protect migrants at sea, coastal states and individual actors have routinely failed to respect these obligations. In the absence of a European Union-led search and rescue effort, civil actors have taken up the responsibility of conducting rescues, documenting violations of maritime laws, and advocating for political change by carrying out independent search and rescue (SAR) operations. This research aims to offer a comprehensive analysis of the impact these SAR NGOs have had on migration in the Central Mediterranean by examining the immediate and long-term impact of their work from 2014 to 2021.

To achieve this goal, the introduction of this thesis will survey the history of migration across the Mediterranean Sea since 2014 and the existing literature on this topic. The background section will examine relevant European migration policies, the responsibilities of seafarers and coastal states as described in maritime and human rights laws, and discuss the emergence of non-governmental search and rescue organizations. The first chapter will then discuss the short term impact that SAR NGOs have had on migration across the Mediterranean; short-term impact is defined as the outcomes that occur during a mission - from rescue to disembarkation - and are

¹ IOM, "Missing Migrants Project: Migration within the Central Mediterranean," last updated February 28, 2022, <https://missingmigrants.iom.int/region/mediterranean>.

the result of conducting life saving rescues, providing survivor care, and delivering survivors to a port of safety. The second chapter will examine the long-term impact that SAR NGOs have had; long-term impact is defined as outcomes that are the result of SAR NGOs presence at sea - from the disembarkation of survivors to the present day - and include creating accountability for actors who violate international laws and engaging with civil society to advocate for safer migration routes to Europe. Ultimately, this thesis concludes that SAR NGOs provide life-saving aid during operations, and have reinvigorated the enforcement of maritime laws to increase protections for sea-based migrants.

A Brief Discussion of the Existing Literature

Recent publications on migration across the Central Mediterranean have focused largely on migrants' experiences while traveling, Europe's response to the influx of arrivals, and the criminalization of civil rescue efforts. These works include reports from international institutions such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), as well as journal articles from researchers in maritime and human rights fields. The existing literature offers important context for and analysis of the social and political climate in which SAR NGOs are operating and is discussed in depth in the background and literature review section of this paper. However, there is still limited research into the effect of civil rescue ships, and given that they are presently responsible for more rescues of migrants than Europe's border patrol agency (Frontex) and the Italian Coast Guard combined, their impact is worth studying.

The shortage of scholarly work on this topic can in part be attributed to the relatively small amount of time between SAR NGOs' emergence in 2014 and the present day, as well as the absence of a single source for data reporting and sharing. For this reason, this paper uses semi-structured interviews with crew members who served onboard non-governmental rescue vessels, first-hand experience, news reports, and document analysis to create a thorough study of the impact of civil search and rescue efforts. Testimony from crew members who have been at sea during the last seven years is particularly useful in understanding the mission and operational logistics of civil rescue organizations. Throughout this thesis, stories from rescue sailors are included to explain and elaborate on events at sea. In cases where these events have not yet been discussed in the existing literature, news coverage from international and local media outlets is cited to provide supporting evidence. Similarly, this thesis includes anecdotes from first-hand experience as a member of the search and rescue team with MSF. When possible, additional sources are cited to support these accounts. The lack of previous research into civil search and rescue operations required that this thesis employ a myriad of sources. Consequentially, this thesis presents a rich and novel discussion of the immediate and long-term impact of SAR NGOs, contributing to the literature on maritime affairs and migration across the Mediterranean Sea in a way that has not been done before.

Background & Literature Review

“It is a crisis. A crisis of human rights, of human decency, a crisis of empathy.”
 - Sophie Weidenhiller, rescue crew for Sea-Eye

The development of a migration crisis in the Mediterranean

In the late 1970s, a trend in migration across the Mediterranean emerged. People fleeing violence, natural disasters, poverty, environmental deterioration, and religious persecution in North Africa and Western Asia crossed the sea in search of freedom and security in Europe. For several decades the annual number of people making the crossing was estimated to be a few thousand. In 2010, this figure rose significantly as conflict and unrest in the Middle East and North Africa displaced more than 3.5 million people.² By 2013 more than 60,000 migrants, many escaping civil war in Syria, attempted to reach Europe by sea.³ The increase in crossings gained international attention in October 2013 when 400 people were lost in two deadly shipwrecks off the coasts of Italy and Malta.⁴ News of the shipwrecks led Europeans - civilians and elected leaders alike - to ask how such a tragedy could occur so close to their shores and what could be done to prevent it from happening again.

Italy responded on October 18, 2013 with the introduction of a national search and rescue operation named *Mare Nostrum*, the Latin name for the Mediterranean meaning “Our Sea.” The

² Phillippe Fargues, “Mass Migration and Uprisings in Arab Countries: An Analytical Framework,” *The Graduate Institute Geneva*, (2017), <https://doi.org/10.4000/poldev.2275>.

³ The Sea Route to Europe: The Mediterranean Passage in the Age of Refugees,” The United Nations High Commissioner for Refugees, July 1, 2015, <https://www.unhcr.org/5592bd059.html>.

⁴ Jim Yardley and Elizabetta Povoledo, “Migrants Die as Burning Boat Capsizes Off Italy,” *The New York Times*, published October 3, 2013, <https://www.nytimes.com/2013/10/04/world/europe/scores-die-in-shipwreck-off-sicily.html>.

Italian Ministry of Defenses described *Mare Nostrum* as a military and humanitarian effort aimed at “safeguarding human life at sea and bringing justice to human traffickers and migrant smugglers.”⁵ With strong public support and a monthly budget of \$12 million, Operation *Mare Nostrum* rescued more than 130,000 migrants in one year.⁶ Despite this success, political and public opinion towards migration began to shift: no longer were refugees and asylum seekers seen as people fleeing war and poverty, instead they were now presented by politicians as a social and economic burden Europe was being forced to carry. On August 16 2015, for example, Angela Merkel described irregular migration as, “the next major European project. . . one that would preoccupy Europe much, much more than the issue of Greece and the stability of the euro.”⁷

In an effort to decrease the influx of migrants and externalize border security, the European Union has entered into several agreements with neighboring non-EU states since 2015. In March 2016, the EU signed an agreement with Turkey, the departing country for hundreds of thousands of Syrian refugees attempting to reach Greece since 2014.⁸ In exchange for allowing

⁵ “Mare Nostrum Operation,” Marina Militare, accessed November 15, 2021, <https://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>.

⁶ Ainhoa Ruiz Benedicto, “Guarding the Fortress: The Role of Frontex in the Militarization and Securitisation of Migration Flows in the European Union,” *Centre Delas d'Estudis per la Pau*, (November 2019), https://www.tni.org/files/publication-downloads/informe40_eng_ok.pdf.

⁷ Mike Berry, Inaki Garcia-Blanco, and Kerry Moore, “Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries,” *Cardiff School of Journalism, Media, and Cultural Studies*, (December 2015), <https://www.unhcr.org/56bb369c9.pdf>.

⁸ “Agreement Between the European Union and the Republic of Turkey on the Readmission of Persons Residing Without Authorization,” Official Journal of the European Union, Published March 2016, [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:22014A0507\(01\)](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:22014A0507(01)).

refugees arriving in Greece to be returned to Turkey, the EU would provide 6 billion euros in financial support to Turkey and scale back visa restrictions for Turkish citizens.⁹ The “EU-Turkey” deal was widely criticized for failing to respond to migrants’ needs for protection and many worried that by “closing” the Eastern door to Europe, migrants would be forced to undertake longer, more dangerous journeys. This fear came true and as fewer migrants were able to cross the Aegean Sea, many ventured South and attempted to depart from Libya in hopes of reaching Italy or Malta. The stretch of sea between Libya and southern Europe is colloquially known as the “Central Mediterranean” and is the route that currently sees the most migrants annually. It is also the longest and most dangerous crossing both because of the number of nautical miles that need to be covered before reaching Europe and because of widespread human rights abuses in Libya, to which migrants are especially vulnerable.¹⁰

⁹ "EU Signs Final Contracts Under the 6 Billion Euro Budget of the Facility for Refugees in Turkey," The European Commission, published December 17, 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2487.

¹⁰ “No Way Out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity.” International Federation for Human Rights (FIDH), published November 23, 2021. <https://reliefweb.int/report/libya/no-way-out-migrants-and-refugees-trapped-libya-face-crimes-against-humanity>.

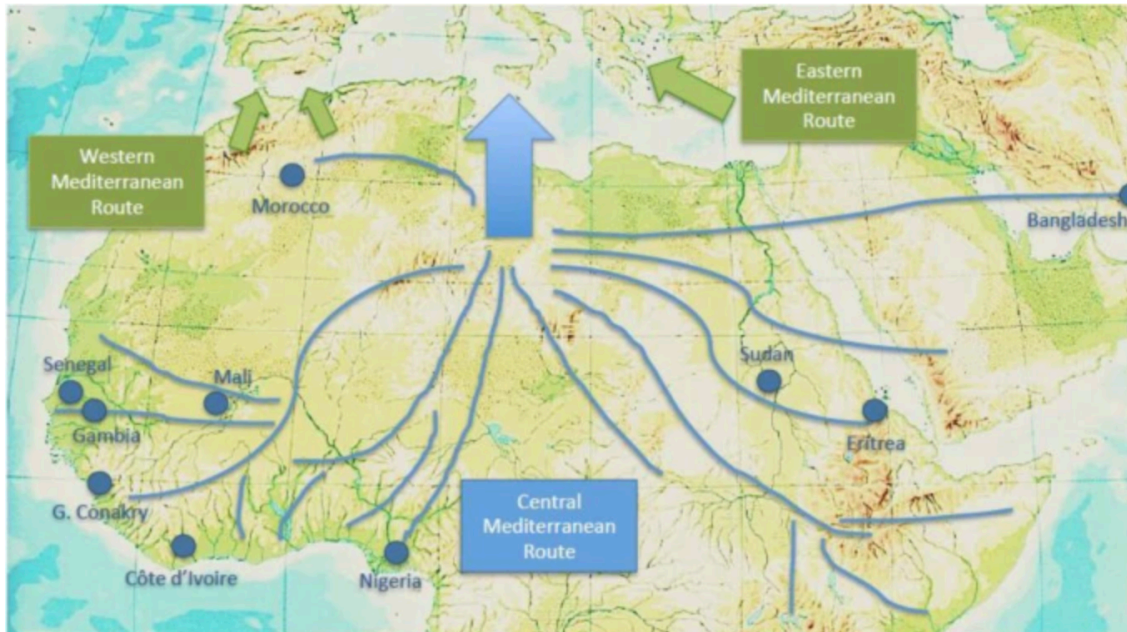


Figure 1: Map of the three migration routes across the Mediterranean Sea.

Since the 2011 Libyan revolution and overthrow of long-time leader Colonel Muammar Gaddafi, power in Libya has shifted unsteadily between the UN-backed transitional governments in Tripoli and the Libyan National Army led by Khalifa Haftar in Tobruk.¹¹ Caught in the middle of this power struggle are thousands of Libyan refugees, and hundreds of thousands of migrants arriving from across Africa and Western Asia. Without a centralized government or a commitment to some of the most important humanitarian treaties, such as the 1951 Refugee Convention, migrants in Libya are vulnerable to a host of human rights violations from torture, human trafficking, extortion, slavery, sex and gender-based violence, to indefinite captivity in crowded detention centers.¹² Unable to stay in Libya without fearing for their life and safety, many migrants see the sea-crossing as the only avenue to freedom despite the dangers and

¹¹ “United Nations Support Mission in Libya: Report of the Secretary-General,” The United Nations Security Council, published January 17, 2022, https://reliefweb.int/sites/reliefweb.int/files/resources/S_2022_31_E.pdf.

¹² FIDH, “No Way Out.”

frequent shipwrecks. As British-Somali poet Warsan Shire writes, “no one leaves home unless home is the mouth of a shark. . . no one puts their children in a boat unless the water is safer than the land.”¹³

Despite full awareness of the plight of migrants embarking on sea crossings and of the need for search and rescue assets, Europe reinforced its prioritization of borders over lives. On October 31, 2014, Italy announced the termination of Operation *Mare Nostrum* and introduced Operation *Triton*, a new mission under the European Union’s border security agency Frontex. Italy’s Interior Minister Angelino Alfano explained that the cost of operating *Mare Nostrum* was too great and that it was “closing down because it was an emergency operation.”¹⁴ In reality, the urgent need for marine search and rescue was only beginning. From 2014 to 2015 the annual number of people crossing the Mediterranean Sea jumped from an estimated 209,660 to 1,017,294.¹⁵ Unlike its predecessor, Operation *Triton* was first and foremost dedicated to combating people smuggling, the illegal fuel trade, and securing Europe’s southern border. The abandonment of a rescue mandate was the result of both the anti-immigration rhetoric circulating through European politics, and the unsubstantiated, yet popular, claim that search and rescue vessels were ‘pull factors’ for migrants and incentivized crossings. European leaders were quick

¹³ Warsan Shire, “Home,” published January 30, 2017, <https://www.amnesty.ie/wp-content/uploads/2016/06/home-by-warsan-shire.pdf>.

¹⁴ Steve Scherer and Massimiliano Di Giorgio, “Italy to end sea rescue mission that saved 100,000 migrants,” Reuters, October 31, 2014, <https://www.reuters.com/article/us-italy-migrants-eu/italy-to-end-sea-rescue-mission-that-saved-100000-migrants-idUSKBN0IK22220141031>.

¹⁵ Philippe Fargues, “Four Decades of Cross-Mediterranean Undocumented Migration to Europe,” International Organization for Migration (IOM), 2017, https://publications.iom.int/system/files/pdf/four_decades_of_cross_mediterranean.pdf.

to use the ‘pull factor’ notion to dismiss their States’ responsibility. For example, when asked what resources the United Kingdom would provide to prevent refugees and migrants drowning in the Mediterranean, the UK Minister of State Baroness Anelay stated, “We do not support planned search and rescue operations in the Mediterranean. We believe that they create an unintended ‘pull factor’, encouraging more migrants to attempt the dangerous sea crossing and thereby leading to more tragic and unnecessary deaths.”¹⁶ Instead of supporting search and rescue at sea, the United Kingdom believed funding projects to deter migration in “countries of origin and transit”, as well as fighting people smuggling would decrease crossing attempts¹⁷. Political leaders in Italy, Malta, Greece, and Spain, the four coastal states receiving the greatest number of migrants arriving by sea, echoed this sentiment.

Since 2014, several studies have sought to determine whether or not search and rescue vessels function as “pull factors.” In 2017 the humanitarian NGO Médecins Sans Frontières released a report that assessed trends in overall attempted sea crossings between 2014 and 2016.¹⁸ Using data from the International Organization for Migration (IOM), the total number of attempted sea crossings (the sum of those who died, went missing, arrived, or were rescued by the Libyan coast guard) per month was graphed against time, and portions of the graph were marked to indicate the different actors who were at sea each month. The graph demonstrated that there was no statistically significant correlation between the presence of search and rescue

¹⁶ Baroness Anelay of St Johns, “Mediterranean Sea Question,” asked by Lord Hylton, *United Kingdom Parliament*, October 15, 2014, <https://publications.parliament.uk/pa/ld201415/ldhansrd/text/141015w0001.htm>.

¹⁷ Baroness Anelay, “Mediterranean Sea Question.”

¹⁸ Jovana Arsenijevic, “Defending Humanity At Sea,” *Médecins Sans Frontières*, (2017): 11.

vessels. Rather, seasonal conditions played the biggest role in determining the number of attempted crossings.¹⁹ Additionally, the data suggested that the type of ship in the search and rescue area - governmental or civil - made little difference in the number of attempted crossings. In other words, migration flows were heavily influenced by weather conditions and sea state, but not the presence of SAR ships.²⁰

Similarly, in the 2020 journal article “From ‘Angles’ to ‘Vice Smugglers’: the Criminalization of Sea Rescue NGOs in Italy” authors Eugenio Cusumano and Matteo Villa provided an overview of the “legal proceedings and policy measures initiated against” SAR NGOs, and looked at quantitative and qualitative data to see if accusations against SAR NGOs - that they are ‘pull factors’ for example - are supported.²¹ To determine whether or not there is any merit to this accusation, the authors created a dataset for daily irregular crossings from Libya and tracked every SAR mission conducted by non-governmental actors.²² If the SAR vessels are a ‘pull factor,’ there should be a strong correlation between the number of daily departures from Libya and the number of SAR vessels in the Libyan SAR zone. When “weather conditions, political conditions in Libya (using daily oil production as a proxy), the change in government in Italy, and the day of the week when the crossing occurred” were added to the model the only variables with a statistically significant effect on the number of migrants departing in a day were

¹⁹ Jovana Arsenijevic et al., “Defending Humanity At Sea,” 10.

²⁰ Jovana Arsenijevic et al., “Defending Humanity At Sea,” 3.

²¹ Eugenio Cusumano and Matteo Villa, “Emptying the Sea with a Spoon? Non-Governmental Providers of Migrants Search and Rescue in the Mediterranean,” *Marine Policy* 75, (2017): 91, <https://doi.org/10.1016/j.marpol.2016.10.008>.

²² Ibid. 94.

weather conditions and the level of political stability in Libya.²³ “In fact,” they wrote, “not only is the recovered effect of NGOs’ presence insignificant, but the sign of the effect is itself negative.”²⁴ This conclusion has been supported by seafarers who report witnessing a decrease in crossing attempts during periods of bad weather, when northerly winds prevent small boats from departing, and an increase in departures when either the weather is favorable or when acute events in Libya, such as violent crackdowns on migrants and shootings in detention centers, force more people to flee.²⁵ “If you watch a weather report and you see that on the Libyan Coast there is no Northern wind and the waves are low, you can be sure that boats are leaving. Everyday of good weather on the coast, boats are leaving.”²⁶ Further academic research on the daily and seasonal drivers of migration would be useful, but given the existing data it is apparent that the number of departures per day is determined by meteorological conditions and political stability, not the presence of rescue ships.

A 2015 report from the European Parliament supported Cusumano and Villa’s findings and explained that “pull factors” to Europe are most frequently described by migrants as economic opportunities, individual freedom, and family, not the presence of search and rescue ships. Furthermore, “push” factors, the events and environments that compel migrants to leave their home countries, are a much stronger driver of migration than pull factors as demonstrated

²³ Ibid. 94.

²⁴ Ibid. 91.

²⁵ Sophie Weidenhiller, interviewed July 8, 2021.

²⁶ Jean-Marc Joseph, interview with author, July 16, 2021.

by many migrants attempting to settle in neighboring countries before crossing the Mediterranean.²⁷

Nevertheless, suspicion towards SAR missions grew and despite evidence disproving the claim, search and rescue vessels began to be criticized more openly in the media and in political discourse for incentivizing crossings. With a growing need for organized rescue operations, but a lack of support and initiative from States, Europe faced a complicated question: who is responsible for rescuing and receiving migrants from the sea? Issues of responsibilities at sea - where borders are difficult to see or police - permeate nearly every maritime industry from fishing to waste management to pollution and immigration. For this reason, numerous international laws and treaties exist to explain the duties of seafarers, flag states, and coastal countries. The following section aims to examine the obligations described in maritime and human rights laws and the literature that has analyzed their application to irregular migration.

Understanding the laws that govern the high seas is essential for discussing the significance of actions taken by states, commercial ships, and SAR NGOs. Though imperatives such as the duty to render assistance to all people in distress are well-established humanitarian norms, anchored in legal conventions, they have been disregarded with impunity by state and commercial actors when called upon to rescue migrants. The selective application of these laws has demonstrated European leaders' perception of migrants' lives unworthy of saving, and as researcher Tugba Basaran explains, "people left to die at sea demonstrate new fissures in longstanding codes of humanity, leading to the fundamental question of who falls within the

²⁷ Samuel Cogolati, "Migrants in the Mediterranean: Protecting Human Rights," *Directorate-General for External Policies*, (2015): 43, doi: 10.2861/112726.

scope of the norm, and hence, ultimately who belongs to humanity.”²⁸ By examining the existing maritime conventions and human rights agreements that apply to all coastal states and seafarers, we can see how recent legislation stands in opposition to fundamental maritime practices, as well as how the rescues carried out by NGOs are mandated by long-standing moral and legal obligations.

Laws on the High Seas

On December 10, 1982, the United Nations convened in Montego Bay, Jamaica, and presented The United Nations Convention on the Law of the Sea (UNCLOS 1982), a comprehensive treaty that outlined the rights and responsibilities of signatory states and seafarers sailing under their flags.²⁹ A key provision in UNCLOS is Article 98, *The Duty to Save Life at Sea*. According to Article 98, it is the responsibility of every ship to respond to distress calls and of every coastal state to communicate, coordinate, and support rescue efforts. It states:

- 1.) Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
 - (a) to render assistance to any person found at sea in danger of being lost;
 - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him; . . .

- 2.) Every coastal State shall 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 cooperate with neighboring States for this purpose.³⁰

²⁸ Tugba Basaran, “The Saved and the Drowned: Governing Indifference in the Name of Security.” *Security Dialogue* 46, no. 3 (2015): 216. <https://doi.org/10.1177/0967010614557512>.

²⁹ Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

³⁰ Convention on the Law of the Sea, 1982.

Since 1982, 167 countries and the European Union have ratified UNCLOS, and the duty to rescue has become one of the most fundamental laws of the sea. The universality of UNCLOS and the understanding that all seafarers must render assistance to any person in distress at sea can be seen in Article 98's incorporation into all forms of maritime credentialing - from a recreational boater's certificate to a 5000 gross ton international captain's license. For example, the California boater's exam material states, "If you see an accident or a distress signal, you need to render assistance any way you can, as long as you can do so without endangering yourself, your passengers or your vessel."³¹ Similarly, the Marine and Coastguard Agency (MCA), the British institution responsible for issuing many international commercial maritime licenses, lists UNCLOS as one of the eight international conventions that all professional seafarers must comply with.³² Whether sailing near shore or hundreds of miles from land, it is understood that if a mariner receives a distress call they are legally obligated to render assistance. Two other long-standing international agreements that preceded UNCLOS and further discuss the duties of states during emergencies at sea are the 1979 International Convention on Maritime Search and Rescue (SAR Convention 1979) and Resolution 167(78) of the International Maritime Organization's (IMO) Rescue Guidelines.

The SAR Convention of 1979 states:

2.1.9 "On receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue

³¹ "Rendering Assistance," Boater Exam, accessed March 3, 2022, <https://www.boaterexam.com/boating-resources/rendering-assistance.aspx>.

³² The Marine and Coastguard Agency, "Master of Yachts 200 Gross Tons Limited," International Yacht Training, (March 2014): 224.

operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available.”

2.1.10 “Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.”³³

Resolution 167(78) of the IMO Rescue Guidelines states:

6.2 “A ship should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable.

6.5 “Each [Rescue Coordination Center (RCC)] should have effective plans of operation and arrangements. . . in place for responding to all types of SAR situations. These plans and arrangements should cover how the RCC could coordinate 1. A recovery operation; 2. Disembarkation of survivors from a ship; 3. Delivery of survivors to a place of safety. . .”

6.12 “A place of safety. . . is a location where rescue operations are considered to terminate. It is also a place where survivors’ safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. . .”³⁴

In summary, the above treaties require that coastal signatory states maintain a designated search and rescue zone (SAR zone) wherein they are responsible for promptly responding to distress calls and coordinating rescues. During rescue operations responding vessels must assist all people in distress, regardless of nationality, and once the rescue is complete survivors must be brought to a place of safety (POS) where their life is not endangered.

³³ International Maritime Organization, “International Convention on Maritime Search and Rescue,” April 27, 1979, 1403 UNTS: <https://www.refworld.org/docid/469224c82.html>.

³⁴ International Maritime Organization, “Resolution MSC.167(78), Guidelines on the Treatment of Persons Rescued At Sea,” May 20, 2004. <https://www.refworld.org/docid/432acb464.htm>.

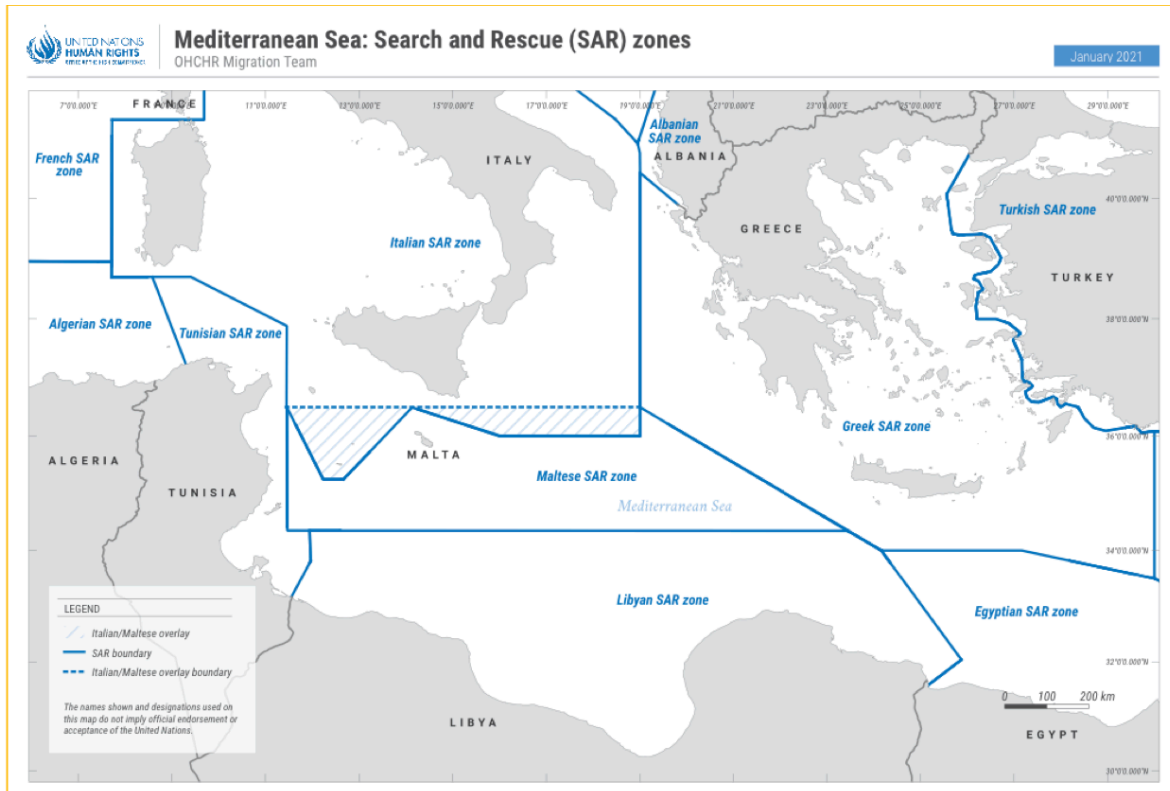


Figure 2: Map of the SAR Zones in the Central Mediterranean and which states are responsible for rescues occurring throughout the sea.³⁵

The responsibility to bring survivors to a POS is closely tied to the principle of *non-refoulement*, or non-return, which, per Article 33 of the 1951 Geneva Convention on Refugees protects migrants and asylum seekers from being brought back to a place where their life and security is threatened “on account of [their] race, religion, nationality, membership of a particular social group or political opinion”.³⁶ In other words, following a rescue at sea, the captain, crew,

³⁵ Office of the High Commissioner of Human Rights (OHCHR) Migration Team, “Lethal Disregard: Search and Rescue and the Protection of Migrants in the Central Mediterranean Sea,” The OHCHR, published January 19, 2021, <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>.

³⁶ Seline Trevisanut, “The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection,” *Yearbook of the United Nations Law* 12, (2008): 207.

or vessel's flag state cannot return, or "refoul", survivors to any place where the survivors' safety is at risk.

The application of these laws to migration by sea has been studied in "The Duty to Rescue at Sea, in Peacetime and in War: A General Overview."³⁷ Here, Irini Papanicolopulu examines existing maritime laws and their intersection with international human rights treaties. Migrants and vulnerable populations should, at least in theory, be afforded maximum protection through provisions in these laws. Since, violations of rights at sea often occur far from the eyes of the public or the government, however, many of these violations go unreported. Consequently, states and captains have routinely been slow to respond to, or outright ignored, distress calls from migrants.³⁸ This reluctance to rescue migrants stems largely from the concern that conducting rescues and disembarking survivors could cause delays in shipping or result in criminal charges for appearing to aid irregular migration (this will be discussed further in Chapter 2). In the Central Mediterranean, there has also never been a case in which a commercial or pleasure boat crew was prosecuted for failing to rescue migrants. This lack of precedent has contributed to feelings of impunity among seafarers who ignore migrants' distress calls and has allowed captains to prioritize profits and convenience over human lives.³⁹ Additionally, as the author points out, the only avenue for litigating violations of international maritime law is

³⁷ Irini Papanicolopulu, "The Duty to Rescue at Sea, in Peacetime and in War: A General Overview," *International Review of the Red Cross* 98, no. 2 (2016): 496, doi: 10.1017/S1816383117000406.

³⁸ *Ibid*, 503.

³⁹ *Ibid*, 503.

national tribunals.⁴⁰ Enacting and enforcing regulations at sea is difficult not only because actions at sea often occur far from any witnesses, but because there are few systems in place to penalize bad actors.

The legal basis for migrants' protection at sea has also been studied in "The Principle of *Non-Refoulement* at Sea and the Effectiveness of Asylum Protection."⁴¹ In this article, Seline Trevisanut closely examines how the law of non-refoulement has been interpreted and challenged by coastal states following the rescue of irregular migrants at sea. Trevisanut uses the *MV Tampa* and *Cap Anamur* cases, two of the most well-known rescues of refugees in Australian and Italian waters respectively, to explore what legal grounds, if any, coastal states have for refusing entry to migrants. While states have the right to refuse entry to a vessel into their territorial waters if there is evidence that the passengers are a threat to the state's security, the state still cannot return any passengers to their country of origin if it is believed that they would be in danger, nor can they deny passengers the right to apply for asylum.⁴² Furthermore, Trevisanut highlights that the obligation of non-refoulement is one of the most important protections against migrants being subjected to cycles of violence. She writes, "non-refoulement is the core of asylum seekers protection because it is the only guarantee that refugees will not be submitted again to the persecution which has caused the departure and responds to the refugee's need to enter the asylum country."⁴³ While not all migrants who cross the Mediterranean Sea will be granted

⁴⁰ Ibid, 514.

⁴¹ Seline Trevisanut, "The Principle of Non-Refoulement at Sea," 208.

⁴² Ibid, 207.

⁴³ Ibid, 210.

asylum, it is undeniable that anyone who has attempted the treacherous crossing maintains their right to life and must not be denied entry into a place of safety. Given the ever-changing landscape of the Central Mediterranean and the proliferation of the Libyan Coast Guard, an institution that routinely pulls back migrants to unsafe conditions, further research into the application of Article 33 to irregular migrants crossing the sea from Libya would be immensely useful.

Although the aforementioned maritime laws, in addition to rights enshrined in the Geneva Convention and United Nations Declaration of Human Rights, should ensure the prompt rescue and timely transport of migrations to a place of safety, financial and political disincentives to respond to migrants' distress calls and minimal precedent set for punishment when ships or states do not respond to calls for rescue has resulted in migrants being afforded little protection while at sea.⁴⁴

But migration from North Africa to Europe does not happen in the middle of a vast ocean seldom trafficked by cruisers or merchant vessels - it occurs in a major corridor for international shipping and pleasure boating. Chapter 2 of this paper will examine cases during which non-SAR vessels failed to uphold their responsibilities listed in the aforementioned treaties, and how sea-based non-governmental organizations have supported trials against vessels and individuals who abandoned their duty to rescue or the law of non-refoulment through evidence collection and testimony.

⁴⁴ "Universal Declaration of Human Rights," The United Nations, Published 1948, <https://www.un.org/sites/un2.un.org/files/udhr.pdf>.

The Emergence of Non-Governmental Search and Rescue Actors

Despite the political disregard for the responsibility of states to uphold maritime and humanitarian law in 2014, the need for search and rescue assets in the Mediterranean continued to grow. In response, seafarers and humanitarian actors came together to establish independent, non-governmental search and rescue efforts. The first formal initiative came in 2014 when Christopher and Regina Catrambone, a wealthy Italian-American couple, formed the Migrant Offshore Aid Station (MOAS), an NGO dedicated to conducting civil search and rescue in the Central Mediterranean.⁴⁵ Through MOAS the Catrambones purchased and refitted a 40m Canadian fishing boat, *Phoenix*. With a crew of 11, *Phoenix* launched its first operation on August 25th, 2014, and rescued 3,104 men, women, and children within 60 days.⁴⁶ Not only did this mission demonstrate the immense need for SAR, but it also served as a “proof of concept,” demonstrating that civil search and rescue was technically and financially feasible.

In the 2015 paper “Emptying the Sea with a Spoon? Non-Governmental Providers of Migrants Search and Rescue in the Mediterranean” Eugenio Cusumano studied the rise in private providers of search and rescue and the forces that drove their proliferation. Cusumano attributed the rise in civil SAR vessels to the visibility and feasibility of their work. In 2015, news coverage of the migration crisis was an incredibly powerful advocacy tool: images of deceased migrants on European shores gained international attention and highlighted states’ failure to manage the humanitarian crisis.⁴⁷ Consequently, civil search and rescue was presented as a heroic and

⁴⁵ Cusumano and Villa, “Emptying the Sea with a Spoon?” 91.

⁴⁶ “MOAS in the Central Mediterranean,” MOAS, accessed January 3, 2022, <https://www.moas.eu/central-mediterranean>.

⁴⁷ Cusumano and Villa, “Emptying the Sea with a Spoon?” 97.

necessary endeavor. Similarly, the logistical and financial feasibility of operating a rescue vessel, as demonstrated through the growing number of SAR NGOs operating in the Central Mediterranean in 2014-15, empowered smaller organizations (like Sea-Watch and Sea-Eye) to begin off-shore activities.⁴⁸

In the 12 months following the inception of MOAS, five additional search and rescue NGOs were established. These NGOs included: Sea-Watch, Sea-Eye, a SAR branch of Médecins Sans Frontières, Pro-Activa Open Arms, and SOS Mediterranee. Though each NGO varied slightly in scope and philosophy, they all shared a commitment to the duty to rescue and a desire to protect human life through operations at sea. The following paragraphs will briefly discuss the SAR NGOs that have operated in the Central Mediterranean since 2015.

Médecins Sans Frontières (MSF)

Following successful missions in 2014, MOAS returned to the Central Mediterranean in the spring of 2015, this time in partnership with the international medical humanitarian organization Médecins Sans Frontières (MSF).⁴⁹ Onboard, MOAS provided a maritime crew and a search and rescue team responsible for operating *Phoenix* and conducting rescues using two rigid hull inflatable boats (RHIBs). The MSF team, made up of two physicians and a nurse, operated a small hospital onboard *Phoenix* and was responsible for providing emergency medical care to survivors. In the same month that *Phoenix* set sail, MSF also independently chartered a

⁴⁸ Ibid.

⁴⁹ Cusumano and Villa, “Emptying the Sea with a Spoon?” 92.

68m offshore supply vessel, *Bourbon Argos*, to further support civil SAR.⁵⁰ In the seven years since MSF's first initiative with MOAS, the operational branches of MSF have conducted independent operations through the charter or purchase of refitted ships as well as missions in continued partnership with other NGOs including MOAS and SOS Mediterranee. Today, MSF operates aboard the 77m Norwegian research ship, *Geo Barents*.

SOS Mediterranee (SOS Med)

In the same month that MSF and MOAS embarked on their first mission, seafarer Klaus Vogel and humanitarian Sophie Beau formed SOS Mediterranee (abbreviated to "SOS Med" in this paper).⁵¹ In February 2016 SOS Med partnered with the international medical aid organization Medicines du Monde (MdM) and launched its inaugural mission onboard a chartered 77m vessel, *Aquarius*. Operating under a partnership similar to that of MOAS and MSF, SOS Med provided a marine crew employed by the ship-owner as well as a SAR team of sailors for SOS Med, and MdM brought medical staff onboard to manage survivor care. Since 2016, SOS Med has also partnered with MSF (May 2016-April 2020) and The International Federation of Red Cross and Red Crescent Societies (IFRC) (September 2021 - present).⁵² From February 2016 to December 2018, SOS Med's crew onboard *Aquarius* assisted 29,523 people in

⁵⁰ "MSF/MOAS RESCUE BOAT MY Phoenix - Search and rescue operation in the Mediterranean," Médecins Sans Frontières, accessed January 1, 2022, <https://msf-seasia.org/16366>.

⁵¹ Cusumano and Villa, "Emptying the Sea with a Spoon?" 93.

⁵² "Onboard SOS Mediterranee: Activities and Observations of Our Rescue Ship in the Central Mediterranean," SOS Mediterranee, accessed December 6, 2021, <https://onboard.sosmediterranee.org/our-mission/>.

distress. In August 2019, *Aquarius* was replaced by the 69m Emergency Response Rescue Vessel (ERRV) *Ocean Viking* which SOS Med continues to operate today.⁵³

Pro-Activa Open Arms

In 2015 Oscar Camps, the founder of the private Spanish lifeguard group, Pro-Activa Serveis Aquatics, founded the NGO Pro-Activa Open Arms (abbreviated to “Open Arms” in this paper).⁵⁴ Having witnessed the need for near-shore support in Lesvos, Greece, Camps launched Open Arms with the goal of using volunteer lifeguards and rescue swimmers to assist in the rescue and safe disembarkation of Syrian refugees arriving in Greece from Turkey. The NGO grew quickly and in June 2016 received the sailing yacht *Astral* as a generous donation from Livio Lo Monaco, the owner of a Spanish mattress company.⁵⁵ With the arrival of *Astral* and a growing need for assets in the Central Mediterranean, Open Arms was able to broaden its scope to conducting offshore rescues. In the first 4 months of operations, the crew onboard *Astral* successfully rescued 15,000 migrants.⁵⁶ Since then, Open Arm’s presence in the Mediterranean has grown and the NGO now operates three vessels: the sailing yacht *Astral*, a converted fishing boat *Golfo Azzurro*, and most recently the 66m tugboat *Open Arms Uno*.

⁵³ Ibid.

⁵⁴ “Pro-Activa,” Pro-Activa Lifesaving Professionals, accessed December 6, 2021, <https://www.pro-activa.es>.

⁵⁵ Raphael Minder, “Saving Refugees on the Mediterranean: a Luxury Yacht With a New Purpose,” last modified November 7, 2016, <https://www.nytimes.com/2016/11/08/world/europe/mediterranean-refugees-astral-yacht.html>.

⁵⁶ “Who are we?” Open Arms, accessed December 6, 2021, <https://www.openarms.es/en/who-are-we>.

Sea-Watch

Sea-Watch is a German civil society initiative that launched in April 2015 with the purchase of a 21m Dutch Trawler named *Sea-Watch 1*. Unlike other NGOs operating in 2015-16 Sea-Watch's initial goal was to serve as a monitoring asset in the Central Mediterranean.⁵⁷ In this capacity, the Sea-Watch crew located vessels in distress and served as a "watchdog," providing lifejackets, water, and emergency medical care, until larger vessels arrived and were able to bring survivors onboard.⁵⁸ Sea-Watch's mission and capacity have grown since then with the purchase of larger vessels (*Sea-Watch 2*, *Sea-Watch 3*, and *Sea-Watch 4*) enabling them to independently conduct rescues. In addition to its marine fleet, Sea-Watch operates two small civil monitoring air crafts, the Moonbird and the Seabird, that provide aerial reconnaissance. During flights, the crew onboard Moonbird and Seabird supports on-the-water operations by looking for vessels in distress and documenting human rights abuses such as pullbacks and cases of non-assistance.⁵⁹ Between 2017-2020 Sea-Watch's aircrafts conducted 290 missions and spotted more than 20,000 migrants, many of whom were subsequently rescued by Sea-Watch and other SAR NGOs.

⁵⁷ "Previous Missions: Sea-Watch 1," Sea-Watch, accessed December 30, 2021, <https://sea-watch.org/en/mission/sea-watch-1/>.

⁵⁸ Cusumano and Villa, "Emptying the Sea with a Spoon?" 95.

⁵⁹ "Moonbird & Seabird," Sea-Watch, accessed December 6, 2021, <https://sea-watch.org/en/mission/moonbird-seabird/>.



Image 1: *M/S Sea-Watch on her 5th monitoring mission in the Central Mediterranean. Photographed July 5, 2015, surrounded by migrants in rubber boats and life rafts awaiting assistance.*⁶⁰

Sea-Eye

Shortly after Sea-Watch began operations, another German NGO, Sea-Eye started under a similar, though independent, name and model. Sea-Eye launched its first rescue mission in February of 2016 onboard a 26.5m fishing cutter, the *Sea-Eye*.⁶¹ Like Sea-Watch, Sea-Eye's early missions focused on locating vessels in distress and relaying mayday calls, but this quickly evolved with the NGO's purchase of larger vessels (*Seefuchs*, *Alan Kurdi*, and *Sea-Eye 4*) that

⁶⁰ Sea-Watch, "Sea-Watch," *Wikipedia Photos*, accessed January 10, 2022. <https://en.wikipedia.org/wiki/Sea-Watch>.

⁶¹ Cusumano and Villa, "Emptying the Sea with a Spoon?" 95.

enabled the NGO to conduct full-scale rescues.⁶² Currently, the Sea-Eye crew operates in the Central Mediterranean aboard the 53m *Sea-Eye 4*, and since its launch in 2016, Sea-Eye has completed more than 70 missions and rescued over 16,000 people from the sea.⁶³

Today, MSF, Open Arms, SOS Med, Sea-Watch, and Sea-Eye continue to provide lifesaving aid in the Central Mediterranean.⁶⁴ Smaller rescue and monitoring NGOs have also been established since 2015. These include: Louise Michel, Resqship, Mission Lifeline, Salvamento Maritimo Humanitario (SMH), Jugend Rette, Proem-Aid, Mediterranea Saving Humans, Mare Liberum, Lifeboat Project, Refugee Rescue, and ResQ. Many active crew members have served aboard several NGO ships and contributed to the sharing of knowledge among organizations. In doing so, NGOs have been able to establish semi-standardized rescue practices that make operations safer for both crew and survivors.⁶⁵

Collectively, the civil rescue fleet has upheld the maritime duty to render assistance and rescued hundreds of thousands of migrants from the sea in the past seven years.⁶⁶ Today, SAR NGOs continue to conduct life-saving missions, despite politically-motivated restrictions on their

⁶² “Inform,” Sea-Eye, accessed December 7, 2021, <https://sea-eye.org/en/inform/>.

⁶³ Ibid.

⁶⁴ In September 2017, following the implementation of a ‘Code of Conduct’ for NGOs, MOAS ceased operations in the Central Mediterranean and repurposed *M/V Phoenix* to deliver medical supplies and food rations to Myanmar and Bangladesh. MOAS, “MOAS in the Central Mediterranean.”

⁶⁵ Arnaud Banos, interview with author, August 4, 2021.

⁶⁶ Frank Laczko, Julia Black and Ann Singleton, “Fatal Journeys: Missing Migrant Children,” *International Organization for Migration Publications Platforms 4*, (June 2019), file:///C:/Users/ESchlageter/Downloads/fatal_journeys_4.pdf.

activities. This thesis does not spend much time discussing the criminalization of SAR NGOs as none of the 40 charges brought against SAR NGOs or their crew members have resulted in convictions.⁶⁷ These illegitimate attempts at criminalizing rescue NGOs, however, are important to acknowledge as they are a defining part of the current context in which the civil rescue fleet is operating.

As previously discussed, in the early years of the crisis, The European Union "had discouraged private vessels from fulfilling their international obligations to rescue people in distress but did not prosecute them for it."⁶⁸ This changed in 2017 when coastal states, seeking to reduce the number of irregular migrants arriving in their ports, began accusing SAR NGOs of crimes such as "facilitation of irregular immigration, human smuggling, membership in a criminal organization, and money laundering."⁶⁹ The baseless accusations were a part of a new strategy wherein Europe would curtail the number of migrants arriving at its shores by limiting the capacity of the ships that would rescue them. This unethical deterrence strategy was expanded upon in 2019 when Italy and Malta attempted to further constrain rescue activities by disproportionately subjecting civil rescue ships to lengthy Port State Controls (inspections of ships typically conducted annually to ensure proper documentation and safety compliance). Of the 16 Port State Controls conducted since 2019, 13 resulted in administrative detention for

⁶⁷ Isabella Lloyd-Damnjanovic, "Criminalization of Search-and-Rescue Operations in the Mediterranean Has Been Accompanied by Rising Migrant Death Rate," *Migration Policy Institute*, (October 2020), <https://reliefweb.int/report/world/criminalization-search-and-rescue-operations-mediterranean-has-been-accompanied-rising>.

⁶⁸ Ibid.

⁶⁹ Ibid.

deficiencies including “carrying too many lifejackets.”⁷⁰ Port State Controls are commonplace in the maritime industry, but in this context, they have been weaponized by Mediterranean states to justify impounding rescue ships.

Port State Controls, port closures, the imposition of fines for rescuing, and the criminalization of crew members have severely handicapped NGOs’ rescue capacity. As of July 2021, five search and rescue NGOs (Geo Barents, Sea-Watch 4, Sea-Watch 3, Louise Michele, and Sea-Eye 4) were under administrative detention by the Italian authorities.⁷¹ While detaining rescue ships may reduce the number of migrants disembarked in Europe, it has neither decreased the number of attempted crossings nor made the sea any safer for migrants. Given the consensus among researchers that rescue vessels are not pull-factors for migration, preventing them from operating only decreases the amount of support available to people in distress at sea. This is evidenced by the rise in mortality per arrival in Europe from 1 in 261 in 2016 to 1 in 51 in 2018.⁷² Still, despite these constraints and the looming threat of criminalization or impoundment, SAR NGOs have continued to operate, upholding their duty to rescue and promoting the protection of sea-based migrants.

As aforementioned, the goal of this thesis is not to discuss the criminalization of SAR NGOs. Distinguished scholars such as Isabella Lloyd-Damnjanovic, Eugenio Cusumano, and

⁷⁰ Sophie Weidenhiller, interviewed July 8, 2021.

⁷¹ The Maritime Executive, “Italian Officials Detain NGO Rescue Vessel After Port Inspection,” published July 5, 2021, <https://www.maritime-executive.com/article/italians-detain-ngo-vessel-doing-sar-ops-after-port-inspection#:~:text=Five%20NGO%20search%20and%20rescue,all%20currently%20under%20administrative%20detention>.

⁷² “Desperate Journeys: Refugees and Migrants Arriving in Europe and at Europe’s Borders,” The United Nations High Commissioner for Refugees, published January 2019, <https://www.unhcr.org/desperatejourneys/#>.

Matteo Villa have already published extensively on the topic.⁷³ Instead, this thesis demonstrates that the work of the civil rescue fleet promotes the immediate and lasting protection of vulnerable people at sea, and in doing so challenges the presentation of rescue ships as criminal actors aiding irregular migration. Ultimately, this thesis aims to fill the demonstrated void in the existing literature on the intersection of migration, human rights, maritime norms, and civil society by offering a comprehensive analysis of the ways in which SAR NGOs' activities have promoted the protection of all lives on the water, held governments to account for inhumane policies, and upheld the universal duty to render assistance.

⁷³ Works by Isabella Lloyd-Damnjanovic and Eugenio Cusumano and Matteo Villa on the criminalization of search and rescue in the Central Mediterranean include: "Criminalization of Search-and-Rescue Operations in the Mediterranean Has Been Accompanied by Rising Migrant Death Rate" (2019) by Lloyd-Damnjanovic; and "From "Angels" to "Vice Smugglers": the Criminalization of Sea Rescue NGOs in Italy" (2021) by Cusumano and Villa.

Chapter 1

The Immediate Impact of SAR NGOs

"I have never made one rescue that has been similar to the last one. You always think you have seen the worst, or you have seen all the possibilities, but no. You are always taken by surprise."
-Anne Kamel, medical doctor for SOS Med

The deck is silent as Salah Dasuki, the cultural mediator onboard *Geo Barents*, walks towards a microphone. First in English, he thanks everyone for their patience during the wait for a port of safety. He repeats himself in French and then again in Arabic to make sure that everyone onboard understands. Then he pauses, crouching low to meet the eyes of the 290 men sitting attentively, and says, "I am going to say one word, and you guys tell me what you think it means. . . . 'Italiano!'" A chorus of cheers, clapping, singing, dancing, hugging, and crying erupts from the survivors who have just learned that they will be disembarking in Italy the next day. After months, or even years, of searching for stability and security, hearing that they will reach Europe is a profoundly emotional moment.

Two and a half weeks before this moment, the MSF SAR team set sail from Augusta, Sicily, and headed south towards the Libyan SAR zone. They stayed at sea for four days through rough weather before conducting their first rescue. Over the next 48 hours, the rescue crew responded to 4 more distress calls and brought a total of 367 survivors safely onboard. In the days that followed, the team cared for survivors by administering emergency medical and psychological care, gathering testimonies from victims of torture and sex and gender-based violence, and providing clean clothes, blankets, and warm meals. Simultaneously, the ship's captain and the head of mission repeatedly contacted the Maltese and Italian RCCs until they

received a safe port of disembarkation. This brief summary captures the three most important aspects of a civil rescue operation: search and rescue, survivor care, and safe disembarkation.



Image 2: Photo taken as Salah Dasuki announces to survivors onboard *Geo Barents* that they will be disembarking in Palermo, Italy. The image was first shared on Twitter by @MSF-Sea with the caption, "#GeoBarents has a port for disembarkation. There are no words to express the joy and relief onboard. We're heading to Palermo (Italy) now to bring the 367 survivors to safety ashore."⁷⁴

The context of civil search and rescue is characterized by risk and unpredictability, but despite unforgiving seas and punitive European policies, SAR NGOs have continued to operate with an unwavering commitment to the protection of all lives at sea. The impartiality with which

⁷⁴ Médecins Sans Frontières (@MSF-Sea), "GeoBarents has a port for disembarkation," Twitter photo by Filippo Taddei, October 27, 2021, https://mobile.twitter.com/msf_sea/status/1453301235696771076.

they operate has enabled SAR NGOs to locate and assist otherwise abandoned boats in distress, care for the unique medical and psychological needs of sea-based migrants, and support survivors' long-term protection by exclusively disembarking them in safe ports. By upholding the duty to render assistance, and providing aid to all people in need, irrespective of nationality or condition, SAR NGOs are able to immediately impact the maritime and humanitarian landscape of the Central Mediterranean, reshaping it to promote the protection of sea-based migrants.

This chapter explores the immediate impact that SAR NGOs have while at sea by studying the three central phases of a rescue mission. The first section of this chapter, *search and rescue*, details how NGOs abide by maritime laws to locate vessels in distress and conduct rescues amid resistance from the Libyan Coast Guard and European States. The second section, *survivor care*, examines the unique medical and psychological needs of migrants after traveling through Libya and across the sea, and how NGOs address these needs. The final section, *disembarkation*, explores the significance of NGOs upholding the 1979 SAR Convention and always returning survivors to a place of safety, despite obstacles constructed by coastal states. This chapter concludes with the finding that through their actions at sea, SAR NGOs provide critical assistance to people who would otherwise go unaided, and in doing so contest Europe's isolationist policies and reinvigorate the universal maritime and humanitarian norms that govern the sea.

Search and Rescue

Before SAR NGOs initiate a rescue, in the time between their departure from Europe and their arrival at a boat in distress, their work to make the Central Mediterranean safer for migrants

has already begun. This section will discuss how NGOs' approach to maritime communication and their cooperation with aerial and land-based SAR NGOs has increased their ability to quickly locate vessels in distress. By responding rapidly to requests for aid, marine SAR NGOs decrease the amount of time migrants spend at sea as well as lower their risk of shipwreck or interception by the Libyan Coast Guard. In doing so, SAR NGOs respond to migrants' need for assistance, no matter the circumstance, an approach seldom taken by EU state actors or commercial vessels.

When a civil rescue ship begins a mission, it departs Southern Europe and sails toward the 24nm boundary line that separates the high seas from Libya's territorial sea and contiguous zone.⁷⁵ Their aim is to sail as close as possible to the boundary line in the hope of reaching migrant boats shortly after they depart.⁷⁶ On average it takes NGOs one to three days to cover the more than 100nm between Europe and Libya.⁷⁷ While transiting, crews conduct rescue drills, medical training, and equipment maintenance. Once approaching the 24nm boundary line, rescue vessels transition into a mode of "active searching." During this time, crew members stand watch 24 hours a day, keeping a lookout for boats in distress and monitoring all onboard communication systems (VHF, GMDSS, Inmarsat, NAVTEX, Aerial-band, and e-mail) for mayday calls.⁷⁸

⁷⁵ Ani Montes Mier, interview with author, August 21, 2021.

⁷⁶ Here, all ships can enjoy the right of innocent passage and transit the area freely, any closer towards Libyan waters, however, and vessels become subject the same laws that would apply on land.

⁷⁷ Guillaume Duez, interviewed, June 30, 2021.

⁷⁸ Sophie Weidenhiller.

Historically, reports of vessels in distress were most frequently obtained through mayday calls relayed over very high frequency (VHF) radios and by crew members spotting targets from the rescue ships' deck. In these situations, the rescuing vessel would immediately notify the Rescue Coordination Center (RCC) of the country whose SAR Zone the distress case was located in. Upon receiving a distress call the relevant RCC becomes responsible for coordinating the response whether that be dispatching coast guard vessels or working with private ships near the scene to bring those in need to safety.⁷⁹ In these situations, where NGOs can communicate openly, with and receive support from, States, their presence alone increases the likelihood of the vessel being rescued and decreases the amount of time migrants spend exposed to the elements in an unseaworthy boat.⁸⁰ In recent years, however, the number of distress calls reported over VHF has decreased as has the number reported through international broadcasting systems such as NAVTEX and GMDSS.⁸¹ One explanation for this is the requirement of commercial vessels to carry an onboard automatic identification system (AIS), a form of GPS technology that enables states and individuals to view the position of nearly every ship at sea in real-time. If a distress call is made through an international channel such as VHF, NAVTEX, or GMDSS, and a ship's AIS shows that it is nearby, it is difficult for the captain to ignore the call or argue that they are unable to render assistance. Additionally, if a state broadcasts a distress call over one of these channels they assume responsibility for coordinating the rescue and providing the ship with a port of disembarkation.

⁷⁹ International Maritime Organization, "Resolution MSC.167(78).

⁸⁰ Ani Montes Mier.

⁸¹ Ibid.

Knowing this, formal maritime communication channels have become a stage upon which Europe's xenophobia has routinely been displayed. In order to avoid the responsibility of rescuing and disembarking migrants, when Italian and Maltese RCCs receive mayday calls they either outright ignore them or relay messages using coded language. For example, in NAVTEX reports, migrant boats are often described as "empty" or "drifting" and the alert is sent out as a type "B" (navigation) warning, rather than a type "D" (search and rescue) warning. By issuing messages with these "codes" coastal states can alert transiting ships of a migrant vessel in their area without requiring them to investigate the situation.⁸² In response, civil SAR ships pay close attention to cases where "empty," "wooden," "rubber," or "drifting" boats have been sighted, and upon receiving a message with this language, make every effort to respond to the scene. This is an action only consistently taken by SAR vessels and one that routinely results in the recovery of people in distress.

⁸² Ani Montes Mier.

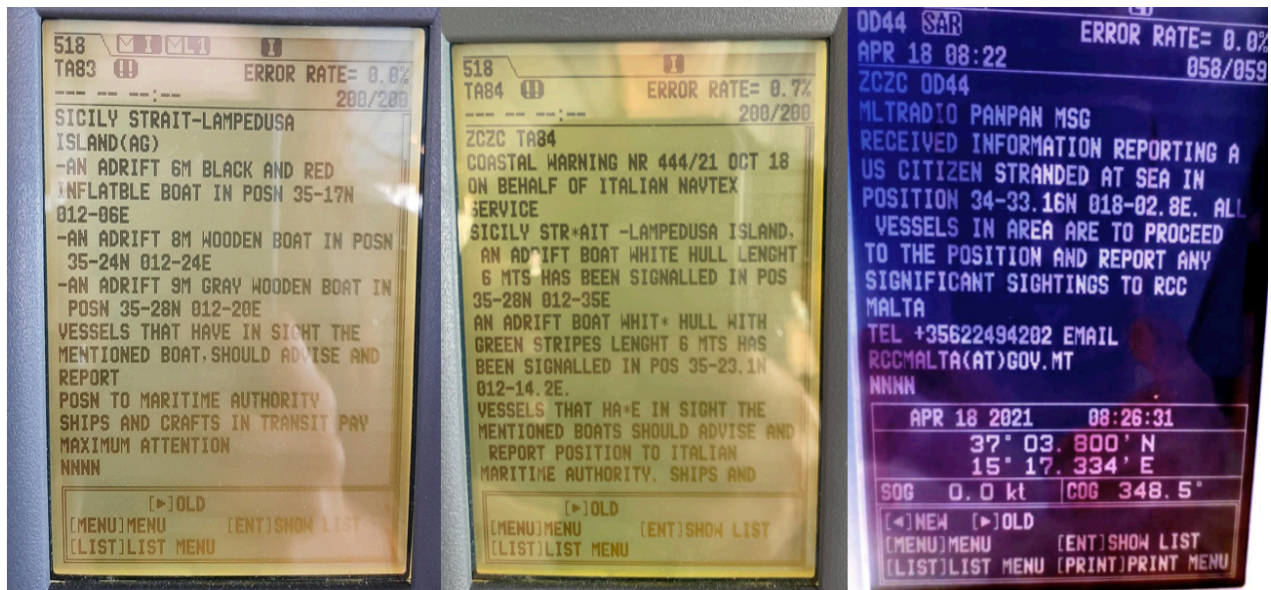


Figure 3: (from left to right). Photographs of NAVTEX alerts taken onboard SAR ships. The first and second images show migrant boats described as “adrift” and requesting ships that “have in sight the mentioned boats” to provide information.⁸³ The third image shows a PAN PAN message from the Maltese JRC released on April 18, 2021 wherein the Maltese authorities included the nationality of a passenger onboard a boat in distress near Libyan waters and requested that “all vessels in the area are to proceed to the position.”⁸⁴ It is highly unusual for a distress relay to include the nationality of those in need of assistance because, per the 1979 SAR Convention, rescues should be carried out irrespective of survivors’ nationality or position in which they were found. Similar reports of boats in distress including that they are “European” or “an Italian Citizen” when hailing ships over VHF are also not uncommon. By including the race or nationality of a person while using coded language to mask even the existence of other people, states have demonstrated their value of Western lives over African lives.

While civil SAR ships continue to monitor international emergency channels when at sea, the majority of distress cases that NGOs have responded to since 2017 have either been spotted by crew members during watches or relayed through aerial and land-based SAR NGOs. Aerial

⁸³ NAVTEX Alert 1 & 2: I took the photographs of the first two NAVTEX alerts in the fall of 2021 while working for MSF onboard *Geo Barents*.

⁸⁴ NAVTEX Alter 3: Sergio Scandura, “Il Suprematismo Maltese Sui Soccorsi in Mare.” Twitter, April 18, 2021. https://twitter.com/scandura/status/1383784183827353607?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1383784183827353607%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fnewsbook.com.mt%2Fen%2Fafm-asks-vessels-to-assist-us-citizen-in-distress-in-international-waters%2F.

NGOs including Pilotes Volontaries, Humanitarian Pilots Initiative, and Sea-Watch Airborne (an extension on Sea-Watch's on-the-water operations), were born out of a desire similar to that of sea-based NGOs: to locate vessels in distress and to document violations of human rights. Using small planes, these NGOs log dozens of hours of flight time every month and have supported the rescue of thousands of migrants. When an airborne NGO locates a boat in distress they inform nearby vessels and governments via Aerial-band and e-mail. Their requests for aid routinely go unanswered by Italy and Malta, however, if not already engaged in operations, NGOs that are at sea can report to the scene. Cooperation with aerial assets in these situations is immensely helpful to NGOs in locating distress cases as well as gathering important information on the situation (such as the material of the boat, the estimated number of people, whether or not there are persons in the water, and if any other vessels are in the area).

On land, the NGO Watch the Med Alarm Phone (Alarm Phone) supports migrants by operating an emergency "alarm number." Migrants who are traveling at sea with a satellite phone and are in distress or are experiencing a pushback can call Alarm Phone and request assistance. Alarm Phone does not operate any rescue vessels, but upon receiving a call for help will call the relevant coast guards and relay the distress call. In the unfortunately likely event that governmental actors neither answer nor respond to requests for assistance, Alarm phone informs SAR NGOs and requests assistance.⁸⁵ By building relationships with non-marine SAR actors, the ability of NGOs on the water to carry out rescues has increased dramatically. In 2020, for example, Sea-Watch Airborne spotted 82 vessels in distress. Of these 82, 4 were rescued by merchant vessels, 19 were intercepted by the Libyan Coast Guard, and 13 were rescued by

⁸⁵ "About," Alarm Phone, accessed January 2, 2022, <https://alarmphone.org/en/about/>.

NGOs.⁸⁶ Alarm Phone issued a similar report following eight weeks of increased departures between September 2nd and October 27th 2018.⁸⁷ During this time, Alarm Phone received 28 calls notifying them of emergency situations involving approximately 1,729 migrants. Of these 28 distress calls, the Libyan Coast Guard intercepted 5 boats, and NGO ships rescued 8 boats carrying 476 people in total.⁸⁸ Given that millions of commercial, governmental, and pleasure vessels transit the Mediterranean Sea annually it is alarming to see that these ships are responsible for a proportionately minuscule number of rescues. Meanwhile NGOs - who operate a combined 1-5 vessels at sea at a time - conduct a large number of rescues relative to their resources. This imbalance becomes increasingly jarring when looking at maps of traffic density and seeing that the Central Mediterranean migration route overlaps with some of the most frequently traveled waters in the Mediterranean.⁸⁹ This is to say that given the high volume of vessels crossing the Central Mediterranean, the low number of rescues relative to the governmental, commercial, and pleasure vessels at sea suggests, at best, a willful ignorance of migrants in distress, and at worst a conscious abandonment of people requiring assistance. It is clear that without the presence and cooperation of NGOs, the coded messages relayed via

⁸⁶ The remaining vessels either reached Europe independently or were rescued by the Italian or Maltese authorities or the Maltese authorities. The outcome of 11 boats remains unknown. "Airborne Annual Report 2020," Sea-Watch, accessed January 2, 2022, <https://sea-watch.org/wp-content/uploads/2021/02/Airborne-Annual-Report-2020.pdf>.

⁸⁷ "Alarm Phone Alerted to 99 Distress Situations, Involving Over 3,580 Individuals," Alarm Phone, published November 14, 2019, <https://alarmphone.org/en/2019/11/14/alarm-phone-alerted-to-99-distress-situations-involving-over-3580-individuals/>.

⁸⁸ Ibid.

⁸⁹ "Mediterranean Sea Ship Traffic Live Map," Marine Traffic, accessed January 5, 2022, <https://www.marinevesseltraffic.com/MEDITERRANEAN-SEA/ship-traffic-tracker>.

international communication systems, cases sighted by aerial NGOs, and the hundreds of distress calls received by Alarm phone would have gone unanswered and thousands of migrants would have been lost at sea or pulled back to Libya.

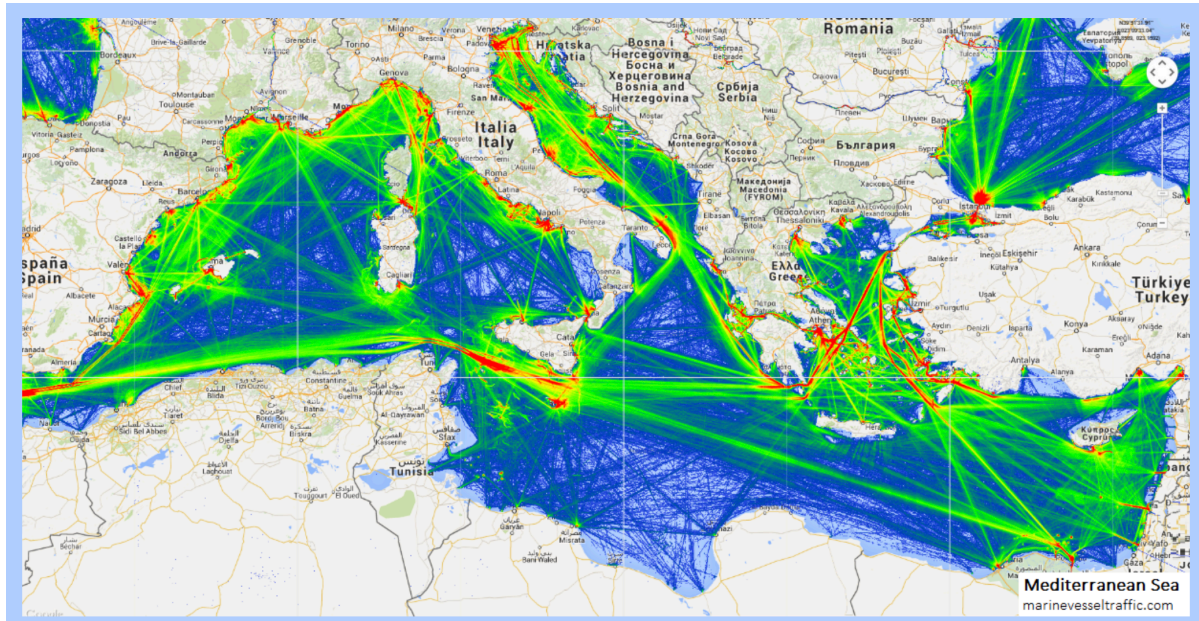


Figure 4: *Map of vessel traffic throughout the Mediterranean Sea⁹⁰.*

⁹⁰ Ibid.

	2013		2014		2015		2016		2017	
Guardia Costiera (also including Frontex units)	20 452	54.89%	38 047	22.87%	41 341	27.14%	35 875	20.11%	28 814	25.21%
Italian Navy	6 183	16.60%	82 952	49.86%	29 178	19.15%	36 084	20.22%	5 913	5.17%
Guardia di Finanza (also including Frontex units)	3 905	10.48%	1 601	0.96%	6 289	4.13%	1 693	0.95%	1 703	1.49%
Carabinieri (also including Frontex units)	33	0.09%	26	0.02%	1	0.00%	174	0.10%	79	0.07%
Polizia	109	0.29%	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Commercial vessels	6 213	16.68%	40 611	24.41%	16 158	10.61%	13 888	7.78%	11 355	9.94%
NGOs (since August 2015)	0	0.00%	1 450	0.87%	20 063	13.17%	46 796	26.23%	46 601	40.78%
Frontex (excluding Italian units)	363	0.97%	978	0.59%	15 428	10.13%	13 616	7.63%	7 657	6.70%
Eunavfor Med (since June 2015)	0	0.00%	0	0.00%	23 885	15.68%	22 885	12.83%	10 669	9.34%
Foreign Navy units	0	0.00%	705	0.42%			7 404	4.15%	1 495	1.31%
TOTAL	37 258	100%	166 370	100%	152 343	100%	178 415	100%	114 286	100%

Figure 5: This table shows the annual number of rescues carried out by marine actors from 2013 to 2017. Since their launch in 2015, the small fleet of civil rescue vessels has grown to be responsible for nearly 41% of all rescues in the Central Mediterranean. Meanwhile, the involvement of governmental and commercial vessels in rescues has dropped from 54.98% to 25.21% and 16.68% to 9.94% respectively.⁹¹

Once an NGO vessel has received news of a distress case they begin a race against time, the sea, and the Libyan Coast Guard. In the Central Mediterranean, migrant mortality is most frequently attributed to injuries sustained as a result of spending extended periods of time in crowded, unseaworthy boats. These injuries include drowning (secondary to the deflation or capsizing of unstable boats and the lack of lifejackets), asphyxiation (from inhaling engine fumes

⁹¹ Paola Cuttia, "Pushing Migrants Back to Libya, Persecuting Rescue NGOs: The End of the Humanitarian Turn (Part 1)," University of Oxford Faculty of Law, published April 18, 2018, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/pushing-migrants>.

while on the lower level of multi-deck boats), crush injuries (due to overcrowding), and acute dehydration or starvation (brought on by being at sea for several days without water or food).⁹² By attempting to rescue migrants promptly, SAR NGOs decrease the time migrants spend at sea and, consequently, their exposure to these risks. Decreasing the time migrants spend at sea also reduces the amount of time the Libyan Coast Guard, a semi-legitimate coalition of human smugglers and Libyan militias infamous for perpetrating human rights violations, has to recapture migrants and “pull” them back to Libya. Beyond the medical and psychological consequences of being at sea, capture by the Libyan Coast Guard is the greatest threat to migrants’ life and security. In no other context are coast guards seen as a threat to human life, so it is worth examining why migrants fear the LYCG and why NGOs race to reach vessels in distress before the European-backed Libyan Coast Guard does.

In an effort to reduce the number of migrants reaching European shores, in February of 2017 Italy and Libya quietly signed a Memorandum of Understanding (MoU).⁹³ The agreement presented itself as a symbol of European and Libyan cooperation in the fight against human trafficking and fuel smuggling that would promote border security on both sides of the Mediterranean Sea. Despite its rosy self-description, in reality, the MoU largely intended to

⁹² Ani Montes Mier.

⁹³ Fayez Al-Serraj and Paolo Gentiloni, “Memorandum of Understanding on Cooperation in the Fields of Development, the Fight Against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders Between the State of Libya and the Italian Republic,” signed February 2, 2017.

reduce the flow of migrants into Italy, even at the expense of human life.⁹⁴ According to the MoU, Europe would provide financial and material support to Libya for the development of a Libyan Coast Guard, and in exchange, the Libyan Coast Guard would prevent migration to Italy and Malta by conducting “pullbacks” of persons attempting to flee the country. As Jean-Marc Joseph, a journalist who sailed with Open Arms explained, “In 2014 Libya didn't have a SAR Zone or Coast Guard because they could not meet the minimum standards, [and] they still cannot. There is civil war, corruption, and torture. But Europe, in a maneuver to stop migrants crossing the sea. . . created a proxy. They financed the Libyan Coast Guard and then created a Libyan SAR zone so there would be a greater probability that [migrants] will be pulled back to Libya.”⁹⁵

Europe’s “outsourcing of the management of migratory flows” has been widely criticized for prioritizing border security over the protection of human rights and safe passage at sea, as has their willingness to enter into an agreement with Libya, a state that is not a signatory to the 1951 Refugee Convention, without including positive conditionality (which would make funding contingent upon Libya meeting certain standards for the treatment of migrants and rescued people).⁹⁶ In February 2017, when the MoU was signed, the instability of Libya and violence towards migrants crossing through the country to reach the coast was already well documented.

⁹⁴ Anja Palm, “The Italy-Libya Memorandum of Understanding: The Baseline of a Policy Approach Aimed at Closing All Doors to Europe?” EU Immigration and Asylum Law and Policy, last modified September 13, 2017, <https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>.

⁹⁵ Jean-Marc Joseph.

⁹⁶ Ibid.

A report from Human Rights Watch at the time noted the following conditions faced by migrants in Libya: “While in Libya, armed groups and guards at migrant detention facilities subjected many to forced labor, torture, sexual abuse, and extortion. . . . [officials held migrants] in prolonged detention without judicial review and subjected them to poor conditions, including overcrowding and insufficient food.”⁹⁷ By providing ships, training, and funds for the development of the Libyan Coast Guard, Italy enabled the reach of Libya’s violence towards migrants to increase, both in the number of people affected and the geographic area covered.⁹⁸

In the four years since the signing of the agreement, Italy has succeeded in bolstering the capacity of the Libyan Coast Guard and reducing the potential number of migrants arriving at its shores. This “success,” however, has come at a great cost to the safety and security of migrants intercepted by the LYCG. Without a safe, legitimate route to Europe, most migrants trying to escape Libya are forced to pay human smugglers for a place onboard an overcrowded boat. Survivors have reported to NGO crew members that many of the people who work for the LYCG are smugglers themselves. “Let’s say at night you work as a smuggler and you get a thousand dollars from somebody who wants to flee, you put them on a boat and send them out. Then in the morning, you put on your Coast Guard outfit and you go back out to get them and bring them

⁹⁷ “Libya: Events of 2016,” Human Rights Watch, accessed January 2, 2022, <https://www.hrw.org/world-report/2017/country-chapters/libya#>.

⁹⁷ The insecurity in Libya was also well known to the United States. In 2014 the U.S Embassy suspended operations in Tripoli, writing, “The Department suspended U.S. Embassy operations in Tripoli on July 26, 2014 because of ongoing violence between Libyan militias in the immediate vicinity.” “A Guide to the United States’ History of Recognition, Diplomatic, Consular Relations, by Country, since 1776: Libya,” Office of the Historian, accessed February 1, 2022, <https://history.state.gov/countries/libya>.

⁹⁸ Palm, “The Italy-Libya Memorandum of Understanding?”

back to Libya.”⁹⁹ Smugglers also reportedly misrepresent the journey, telling survivors that the “lights in the distance are coming from Europe” - when really they are coming from ships or offshore oil platforms - or that, “you will know you have reached international waters when the waves disappear.”¹⁰⁰

Shortly after they departed from shore, often under the false impression that they will reach Europe in a few hours, many migrants are pulled back by the Libyan Coast Guard. During these pullbacks, SAR NGOs have documented the LYCG vessels ramming migrants’ boats, beating passengers, and shooting at humanitarian rescuers. The IOM has also issued reports of migrants being detained or killed upon return to Libya.¹⁰¹ A video from Sea-Watch Airborne on July 1, 2021, showed a LYCG vessel in the Maltese SAR zone, a hundred miles outside their jurisdiction, attacking a migrant boat. The coast guard vessel repeatedly threw objects at passengers and fired warning shots before attempting to ram the boat. As Felix Weiss, a witness to the events described, “Those who shoot at refugees and try to capsize their boats are not there to save them.”¹⁰² Knowing that the money it receives from Italy is contingent upon successfully refouling migrants, the LYCG acts with blatant disregard for the life and rights of the people they encounter. Migrants’ fear of the LYCG is highlighted in SAR NGO crew’s training during which it is explained that upon making contact with a boat in distress they must immediately

⁹⁹ Sophie Weidenhiller.

¹⁰⁰ Jean-Marc Joseph.

¹⁰¹ Fargues, “Four Decades.”

¹⁰² “Caught on Camera: Libyan Coastguard Shoots at Migrant Boat,” Aljazeera, published July 1, 2021, <https://www.aljazeera.com/news/2021/7/1/caught-on-camera-libyan-coast-guard-shoots-at-migrant-boat>.

communicate that they are not the Libyan Coast Guard. If there is doubt about who the NGO is or what their intentions are, their presence can incite panic and create a dangerous situation.¹⁰³

As Sophie Weidenhiller, a member of the Sea-Eye crew explained, “During one of the last rescues, the Libyan Coast Guard was following [a rubber boat] and they were approaching very fast and acting recklessly, so people got scared and jumped into the water. I spoke with one of the guys who jumped in later and he said, ‘We jumped because we saw the Libyans and we didn’t want to go back. I would rather die than go back.’”¹⁰⁴ There are no imaginable scenarios in which a vessel in distress would not welcome assistance from a coast guard ship, except if the passengers fear for their life with the coast guard more than their life at sea.

Given the well-documented threat that the LYCG poses to migrants at sea and the violence they face if returned to Libya, when SAR NGOs receive a distress call they move as quickly as possible to arrive at the scene before the vessel wrecks or the LYCG arrives. Many times they are too late and arrive to find the boat has been intercepted and burned and the passengers pulled back. Other times the LYCG arrives while rescue operations are underway and attempts to disrupt the rescue and recapture migrants. Despite these challenges, NGOs’ continued response to all requests for rescue has prevented thousands of people from being lost at sea or pulled back to Libya.

Survivor Care

After bringing survivors onboard, the focus of rescue vessels turns to survivor care. The following section will discuss how the civil SAR fleet’s presence in the Mediterranean has

¹⁰³ Sophie Weidenhiller.

¹⁰⁴ Ibid.

impacted health outcomes of migrants at sea, and argue that NGOs' ability to respond to medical emergencies reduces the mortality of migrants. This will be accomplished by examining data collected onboard MSF's vessels from November 2016 to December 2018 and onboard Open Arms' vessels from July 2016 to December 2018, as well as insights from Anne Kamel, a medical doctor with SOS Med.

For most migrants, crossing the sea is only part of their journey to reach Europe. Most depart Libya after traveling long distances from their home countries. Throughout this journey, migrants are extremely vulnerable to abuse, sex and gender-based violence (SGVB), kidnappings, trafficking, torture, and extortion.¹⁰⁵ Migrants who have spent extended time in Libya have often been held in overcrowded detention centers that lacked sufficient sanitation, food, and water.¹⁰⁶ These injuries and vulnerabilities are compounded by the long stretches of time spent exposed to the weather and sea without food or water. Reports from all sources agreed that most migrants' injuries were directly related to "the journey on land and sea and stay in Libya."¹⁰⁷ Of the combined 34,762 survivors rescued by MSF and Open Arms between the summer of 2016 and winter of 2018, the most frequently diagnosed health conditions in migrants over 5 years old were acute emergencies resulting from the prolonged time at sea (dehydration,

¹⁰⁵ Polyxeni Theodosopoulou et al., "Rescue Medical Activities Among Sea Migrants and Refugees in the Mediterranean Region: Lessons to be Learned from the 2014-2020 Period," *International Maritime Health* 72, no. 2 (2021): 100, <https://doi.org/10.5603/IMH.2021.0018>.

¹⁰⁶ Guillermo Cañardo et al., "Health Status of Rescued People by the NGO Open Arms in Response to the Refugee Crisis in the Mediterranean Sea." *BioMed Central* 14, 21 (2020): 3, <https://doi.org/10.1186/s13031-020-00275-z>.

¹⁰⁷ Elburg Van Boetzelaer et al., "Health Conditions of Migrants, Refugees and Asylum Seekers on Search and Rescue Vessels on the Central Mediterranean Sea, 206-2019: A Retrospective Analysis." *The British Medical Journal* 12, no. 1 (January 11, 2022): 2. <https://doi.org/doi:10.1136/bmjopen-2021-053661>.

hypothermia, seasickness, and heatstroke), dermatological ailments including fuel burns and scabies, respiratory infections, obstetric emergencies, and violent injuries sustained prior to departing Libya.¹⁰⁸

As migrants arrive onboard during a rescue, they are first greeted by the medical team that conducts a rapid assessment to triage survivors and identify life-threatening injuries such as cardiac arrest, respiratory distress, and major bleeds. If able to stand, survivors form a line and are registered with the humanitarian affairs officer or cultural mediator. Those who are unable to stand or who have been flagged by the medical team will receive treatment immediately.¹⁰⁹ In onboard clinics, the medical team can diagnose maladies using electrocardiograms, glucometers, patient monitors, ultrasounds, urine dips, and rapid testing for communicable diseases, and respond to emergencies using oral and intravenous medications, immobilization and transport equipment, burn cures, oxygen, defibrillators, and even ventilators.¹¹⁰ The most common treatments provided are burn care for fuel burns caused by sitting in a mixture of fuel and seawater for extended periods of time, the administration of topical creams for superficial wounds and scabies, antibiotics for respiratory infections, antiemetics for seasickness, and examinations for survivors of SGBV.

Obstetric care for pregnant women is another vital part of the medical capacity onboard, particularly for women who lack access to antenatal care and have been exposed to acute stress, especially late in pregnancy. Once, the Open Arms team managed the care of a woman who gave

¹⁰⁸ Ibid. 4.

¹⁰⁹ Anne Kamel, interviewed July 23, 2021.

¹¹⁰ Cañardo, Guillermo et al., “Health Status of Rescued People by the NGO Open Arms,” 3.

birth ten minutes after being rescued. The newborn required nine minutes of cardiopulmonary resuscitation after delivery but ultimately both mother and baby were stable and safely transported to an Italian hospital.¹¹¹ In June of 2017, another expectant mother gave birth onboard Save the Children's vessel *Vos Hestia*, and SOS Mediteranee welcomed the fifth baby born during operations in July of 2017.¹¹² A month later SOS Med in partnership with MSF rescued a woman who had given birth in a rubber boat only hours before the NGO arrived; she was brought onboard holding her baby, his umbilical cord still attached, and received immediate care that ensured the survival of both mother and baby.¹¹³ In all of these situations, NGOs were able to provide immediate, emergency care that ensured the survival of the mothers and babies.

After managing any life-threatening emergencies and the initial triage, the medical team enters into a "second phase" of care where they provide consultations on deck or in the clinic. During this time, the team treats common physical maladies, as well as the "invisible illnesses" that begin to manifest. Dr. Anne Kammel, a medical doctor for SOS Med explains, "After a few hours onboard, you sometimes start to hear people say 'I have a headache,' 'My whole body hurts,' 'I cannot sleep.' If you succeed in building trust and have the language, you see that what they are feeling are the psychological wounds from all that they have been through in Libya and

¹¹¹ Ibid. 6.

¹¹² Lizzie Copestake, "Baby Born Aboard Our Rescue Ship in the Med," Save the Children, Published June 29, 2017, <https://www.savethechildren.org.uk/blogs/2017/baby-born-rescue-ship>.

¹¹³ Chris York and Paco Anselmi, "Refugee Rescue Workers Reveals Extraordinary Story of Baby 'Christ', Born On a Boat in Front of 100 Men." HuffPosts India, last modified August 1, 2017, https://www.huffpost.com/archive/in/entry/sos-mediterranee-midwife-speaks-of-rescuing-new-mother-with-baby-still-attached-by-umbilical-cord_a_23061247.

at sea.”¹¹⁴ Nearly everyone onboard has experienced physical violence, whether from abuse in detention centers, forced labor, or sexual assault, and providing psychological first aid is an essential component of survivor care.

While the medical capacity of SAR NGOs is robust and tailored to meet the unique needs of sea-based migrants, urgent cases that require interventions exceeding what is available onboard do arise. In these situations, the NGOs request medical evacuations from the Italian and Maltese Coast Guards. While European RCCs ignore or are slow to respond to initial distress calls and POS requests, historically there has been prompt communication from governments following calls for medical evacuation.¹¹⁵ During two and a half years of operations, MSF organized 23 urgent evacuations by helicopter or fast boat, and Open Arms organized 24.¹¹⁶ Conditions requiring premature evacuation included sepsis, severe heatstroke, severe malnutrition and dehydration, injury by firearm, hydrocephalus, severe chemical burns, splenic hematoma, endometriosis, and cord infections in infants. In these situations, it is indisputable that without rescue by civil actors and rapid transport to onshore hospitals, the health outcomes of these survivors would be far less optimistic.

Providing physical and psychological care for survivors is a central part of SAR NGOs missions. By offering a safe space in which the medical team can treat diseases, support rescued peoples' emotional needs, and escalate care when necessary, SAR NGOs ensure that the immediate health needs of sea-based migrants are addressed. In doing so, civil rescue

¹¹⁴ Anne Kamel.

¹¹⁵ Anne Kamel.

¹¹⁶ Ibid. 5.

organizations protect the lives and rights of vulnerable people and uphold their humanitarian and maritime responsibilities.

Disembarkation

In addition to initiating survivor care, immediately after a rescue the recovering vessel issues a formal request to the relevant RCC for a port of safety where they can disembark survivors. The responsibility of states to respond to these requests and coordinate the timely disembarkation of rescued people, regardless of nationality or the situation in which they are found, is stated in Resolution 167(78) of the IMO's Rescue Guidelines. Though obligated by maritime law, states who do not want to welcome migrants routinely shirk this responsibility. When SAR NGOs emerged in 2015-16 their work was largely perceived as a heroic response to a short-term crisis, and after a rescue Italian, Maltese and Greek, ports would quickly communicate with NGOs to identify a POS and coordinate their arrival. As months passed and it became apparent that there was not a clear end to the migration crisis in sight, countries grew concerned about the social, political, and economic impact of receiving so many asylum seekers. Consequently, European leaders looked for ways to decrease the number of arrivals: this took many forms, such as the previously discussed Italy-Libya MoU and criminalization of NGOs. It also took the form of States attempting to hinder the rescue capacity of NGOs, and any ship transiting the Mediterranean for that matter, by making it difficult for vessels to receive a POS following a rescue. This section will discuss the attempts made by Italy and Malta to dissuade ships from rescuing migrants by denying them a POS, and how SAR NGOs hold governments accountable in these situations and ensure the protection of migrants' right to safety and asylum despite these challenges.

At the same time that the Italian Parliament was negotiating its MoU with Libya, it discussed avenues for containing SAR NGOs' activities. The outcome of these discussions came on August 1, 2017 as a "Code of Conduct on Maritime Rescue".¹¹⁷ The code of conduct was a thinly veiled attempt at decreasing NGOs' rescue capacity by establishing Italian authority over their operations. Included in the Code of Conduct were requirements that NGOs commit to not entering Libyan territorial waters and not obstructing operations being carried out by the Libyan Coast Guard, allowing Italian authorities onboard during all missions to ascertain if any survivors were involved in human smuggling, not transferring rescued people from one ship to another, and sharing all data collected on survivors with the Public Security Authority.¹¹⁸ Criticism of the Code of Conduct came swiftly from NGOs who described it as, "redundant, insinuating, or incompatible with the humanitarian principles of neutrality, impartiality, and independence from political authorities."¹¹⁹ NGOs who were unwilling to agree to the Code of Conduct were threatened with being denied entry into Italian ports, despite such actions being at odds with the rights of seafarers enshrined in maritime laws. Regardless, "both signatory and non-signatory organizations, [saw] their activities severely limited."¹²⁰

In 2018, Italy proved that denying ports to rescue vessels was not an empty threat. Following the March 2018 election of Giuseppe Conte as Prime Minister, the far-right leader

¹¹⁷ Cusumano, "From 'Angels' to 'Vice Smugglers'," 30.

¹¹⁸ Code of Conduct for NGOs Undertaking Activities in Migrants Rescue Operations at Sea (2017). <https://img.ilgcdn.com/sites/default/files/documenti/1510675538-codice%20di%20condotta%20ONG.pdf>.

¹¹⁹ Cusumano, "From 'Angels' to 'Vice Smugglers'," 30.

¹²⁰ Ibid. 30.

Matteo Salvini was appointed Interior Minister of Italy. A vocal anti-immigration voice, Salvini declared in June of 2018 that all Italian ports were closed to foreign-flagged rescue ships. In doing so he, “used his institutional role in identifying an appropriate place of safety to veto or at least delay the disembarkation of migrants in Italian territory.”¹²¹ The importance of bringing rescued people to a place of safety, along with the principle of non-refoulement, has been established as an essential provision for the protection of migrants’ lives and rights. By denying entry of SAR vessels into Italian ports, Italy subjected migrants and rescue crew to stress and long standoffs.

The first demonstration of Italy’s ability to deny SAR NGOs entry into its ports came only weeks after Salvini’s announcement. In the first week of June 2018, the SAR vessel *Aquarius*, operated in partnership by SOS Med and MSF, requested a port of safety from Italy for its 629 survivors. Of the passengers, 229 were rescued by SOS Med’s crew and 400 were received by transfer from Italian Navy and Coast Guard ships at the request of the Italian MRCC. Despite the rescues and transfers taking place in the Italian SAR Zone, at the request of the Italian MRCC, when asked which port the *Aquarius* should sail to, the Italian MRCC stated that the vessel would not be allowed to dock in Italy. The statement shocked the crew and reporters, and ignited a grueling nine-day standoff. During this time, SOS Med repeatedly requested that Italy, as the closest country and the one responsible for the transfer of 400 people onto their ships, permit them to dock. The crew also requested a POS from Malta who denied entry on the grounds that it had nothing to do with the rescue. In an act of solidarity and gesture of humanity, Spain’s newly elected Prime Minister Pedro Sanchez, offered the vessel permission to dock in

¹²¹ Ibid. 30.

Valencia, nearly 1,000nm away.¹²² SOS Med expressed gratitude for Spain's hospitality and criticized Italy for forcing them to subject survivors to another four days at sea while they sailed to Spain.¹²³

Since 2018, the tension between Italy and Malta and SAR NGOs has grown, and NGO vessels have been forced to wait an average of nine days before receiving a POS, though in several cases standoffs have lasted more than three weeks. For migrants who have already experienced trauma, violence, and uncertainty, spending additional days and weeks onboard ships designed for rescue, not accommodation, without means of contacting their family can significantly impact their physical and emotional health. Dr. Anne Kamel explains the physical and psychological impact of long delays, saying, “[Survivors] don’t understand what is going on and why they are staying on this boat. So there is stress, there is fear. I remember once where we were waiting 12 days for a port for 180 people, and they became completely panicked - they began to jump overboard, hurt themselves, hurt each other - and this happens often with standoffs.”¹²⁴

The threat of long standoffs has not only been used to deter rescues by NGOs, but it has also been levied against commercial vessels who stand to lose millions if delayed in offloading their cargo by a single day. On August 4, 2020, a Danish tanker, *Maersk Etienne*, bound for

¹²² Sam Jones, “Spanish Minister Attacks ‘Ostrich Politics’ in Row Over Rescued Migrants,” *The Guardian*, published June 12, 2018, <https://www.theguardian.com/world/2018/jun/12/stranded-migrants-aquarius-to-be-taken-to-spain-says-french-charity>.

¹²³ Megan Specia, “Aboard the Rescue Ship Where Migrants Have Been Stuck for a Week,” *The New York Times*, published June 15, 2018, <https://www.nytimes.com/2018/06/15/world/europe/migrants-ship-mediterranean-europe.html>.

¹²⁴ Anne Kamel.

Tunisia, received a distress call from the Maltese RCC. The tanker proceeded to the site at the Maltese authorities' request and found a sinking boat with 27 migrants onboard.¹²⁵ With time running out and no Maltese vessels in sight, the *Maersk Etienne* crew rescued the migrants and proceeded toward Malta. On approach, however, the Maltese authorities banned the tanker from entering their waters.¹²⁶ For 47 days, the survivors and crew anchored in limbo awaiting a solution from Malta or the European Union at great cost to the physical and emotional health of everyone onboard. On September 11, 2020, the 27 survivors were finally permitted to be transferred onto the NGO ship *Mare Jonio* and brought to Italy the following day. Crew members onboard *Maersk Etienne* expressed concerns over the long standoff, not only for its inhumanity and disregard to maritime law but for the message it sent to other vessels that encounter persons in need of assistance. Chief technical engineer for Maersk Tankers, Tommy Thomassen said, "It is one of the rules of life at sea that you respond to those in distress, and we have always done that and we will keep doing that. But the lack of a response here sends the wrong signal to those out there in the commercial fleet."¹²⁷ The "signal" Malta's inaction sent was clear: ships that respond to distress calls may be forced to choose between weeks of operation and human life, a financial decision that would dissuade many. The message has been received; though thousands of cargo vessels and pleasure boaters transit the Mediterranean, their involvement in rescues in

¹²⁵ Kis Soegaard, "Safe Disembarkation of the 27 Rescued Persons from Maersk Etienne," Maersk Tankers, published September 12, 2020, <https://maersktankers.com/newsroom/caught-at-sea-after-rescuing-27-people>.

¹²⁶ Ibid.

¹²⁷ Megan Specia, "Tanker Asked to Rescue Migrants Off Malta is Denied Permission to Dock," The New York Times, published September 4, 2020, <https://www.nytimes.com/2020/09/04/world/europe/migrant-tanker-mediterranean.html>.

recent years has been remarkably low. This inactivity is largely due to fear of criminalization or shipping delays, as well as feelings of impunity. More recent instances where commercial vessels have responded to distress calls, but chosen to push migrants back, often under the direction of EU states, will be discussed in Chapter 2.

In early 2020 Italy and Malta attempted to further evade their responsibility and deny entry to SAR NGOs, by claiming that, given recent outbreaks of COVID-19, their ports could not be considered “safe” and were therefore closed to NGOs. The Italian government’s decree stated: “for the entire duration of the health emergency, due to the outbreak of coronavirus, Italian ports cannot be classified as ‘safe places’ for the landing of people rescued from boats flying a foreign flag.”¹²⁸ The closures came as another obvious attempt at discouraging SAR operations. If the decision to close the ports was truly aimed at protecting the health of migrants and Europeans, ports would have remained closed to all vessels whether SAR, pleasure, or commercial for equal periods of time. However, this was not the case. Sea-Eye’s vessel, *Alan Kurdi*, received news of the closures shortly after rescuing 149 people from the sea and waited for nearly two weeks before receiving a POS.¹²⁹ Tensions grew among migrants who had already been subjected to brutal conditions prior to their rescue and many became very anxious during the standoff. After ten days a 24 year-old man attempted suicide and was medically evacuated along with two other men in acute distress. The Red Cross disembarked the remaining survivors the following day and transferred them to an Italian ship where they completed a 14-day

¹²⁸ Eric Reidy, “How COVID-19 Halted NGO Migrant Rescues in the Mediterranean,” *The New Humanitarian*, published April 28, 2020, <https://www.thenewhumanitarian.org/news/2020/04/28/EU-migrants-Libya-Mediterranean-NGO-rescues-coronavirus>.

¹²⁹ “Starved, Parched and Drowned in a European Search and Rescue Zone,” *Sea-Eye*, published April 28, 2020. <https://sea-eye.org/en/2020/04/>.

quarantine before landing in Palermo.¹³⁰ While all migrants onboard the *Alan Kurdi*, ultimately arrived safely in Italy, the “closure” of European ports to rescue vessels and imposition of long quarantines (especially those not imposed on other vessels that frequently interact with a large number of people, such as ferries) highlights how a global pandemic has been manipulated by European leaders to obstruct the arrival of irregular migrants.

Despite attempts to delay their disembarkation, SAR NGOs have continued to operate. In doing so, the civil rescue fleet has held governments to account by advocating for migrants’ rights on their social media accounts and sharing testimonies from survivors about their experiences in Libya and what they faced at sea. With these advocacy channels, NGOs promote awareness for the immediate and chronic plight of migrants crossing the Mediterranean. Posts about conditions onboard during standoffs have historically been a powerful tool for engaging the public to apply political pressure and ultimately forcing Italy and Malta to provide a POS. Though civil rescue ships continue to operate, these hurdles demonstrate that SAR NGOs provide essential services, but are ultimately not a long-term solution to the migration crisis.

This chapter has argued that while at sea, civil search and rescue vessels provide lifesaving humanitarian aid that would not otherwise exist without their presence. By responding to distress calls, conducting rescues, providing medical care, and always disembarking survivors in a place of safety, SAR NGOs protect the lives and rights of vulnerable people crossing the Mediterranean. Their actions at sea uphold seafarers’ fundamental duty to rescue, and without their presence and advocacy, mortality rates among migrants crossing the Mediterranean Sea and the number of policies targeting migrants would rise unchecked. However, the void that these

¹³⁰ Ibid.

NGOs are filling is one that has been left by the European Union. Europe's attempts at discouraging vessels from rescuing migrants by closing ports and imposing long standoffs in the name of border security have not only widened the gap between needed and available rescue resources but highlighted Europe's prioritization of Western lives over migrant lives. As maritime researcher Tugba Basaran explains, "By means of a system of sanctions, political authorities attempt to guide human conduct on the seas, encouraging seafarers to look away and even let people die at borders in support of a policy of border deterrence through forces of nature."¹³¹ Externalizing border security through the funding and training of the Libyan Coast Guard has also demonstrated Italy's neo-colonial approach to foreign affairs and a willingness to support actors who routinely violate human rights in order to decrease the number of migrants, fleeing those very violations, from reaching their shores. While SAR NGOs are currently essential for mitigating the loss of life at sea, the only sustainable, long-term solution is a European-led search and rescue operation and the development of safe, legitimate migration routes across the Mediterranean Sea.

¹³¹ Tugba Basaran, "The Saved and the Drowned," 217.

Chapter 2

The Long-term Impact of SAR NGOs

“Our job is not only to rescue people, but to share their stories. We cannot just put a bucket of water on the fire, we have to tackle the source of the fire. For that we interview [survivors], and make media so that people in Europe and America and all over the world see what is happening. . . . That is the real job of NGOs, not only to rescue but to tell the stories of survivors and push for political change.”
-Guillaume Duez, photojournalist for Sea-Eye 4

Tiny feet on tiptoes gather around the railing of Geo Barent’s top deck as crew members hurry to close the tarp curtains and obstruct the view of a dozen small children. 500 yards away, a wooden boat burns next to a Libyan Coast Guard vessel, the smoke of the fire and the exhaust of the LYCG ship mix to form a thick, black cloud above the blazing flames. In the early hours of the morning, the MSF crew received an email from Alarm Phone reporting a rubber boat in distress three hours north of their position. The Geo Barents traveled with full speed to the last known location and arrived to find two ships in distress: one a rubber boat, the other a wooden boat. Also on the scene was a Libyan Coast Guard vessel moving erratically and chasing the wooden boat. The MSF crew successfully recovered all passengers from the sinking rubber boat, but not before the Libyan Coast Guard captured everyone on the wooden boat and set the deck on fire. Survivors with family members onboard the wooden boat sobbed as they watched the LYCG ship speed south to Libya, knowing the conditions that those onboard the LYCG would face both en route to Libya and in the detention centers.

Unfortunately, this was one of the less-violent interactions NGOs have had with the LYCG at sea. Since the signing of the Italy-Libya Memorandum of Understanding, a European border externalization program responsible for funding and training the Libyan Coast Guard, civil rescue ships have witnessed flagrant acts of cruelty by LYCG, from shooting at migrants,

shooting at SAR crew, beating migrants, burning vessels, and abandoning migrants in the sea. As the only constant, independent rescue actors in the Central Mediterranean, SAR NGOs have been instrumental in documenting the LYCGs' actions and arguing for an end to Europe's outsourcing of its borders. The following chapter studies how NGOs have been uniquely effective at collecting and sharing evidence and testimonies from the Central Mediterranean, and how the evidence they have gathered over the past seven years has been used in legal cases to challenge violations of maritime law. In doing so, this chapter examines the lasting impact of SAR NGOs' work on the water, demonstrating that their presence as both activists and "watchdogs" in the Central Mediterranean has resulted in improved legal protections for migrants and increased support for their work from civil society.

This chapter is divided into two sections: the first, *evidence collection at sea*, analyzes cases in which rescue ships have documented illegal activity and shared collected evidence in judicial proceedings. In doing so, SAR NGOs have supported the conviction of seafarers who neglected their duties and brought to light crimes committed by the Italian-sponsored Libyan Coast Guard. By serving as witnesses and providing evidence to courts, SAR NGOs' participation in legal institutions has changed the long-standing sentiment that perpetrators of crimes against migrants at sea are immune from punishment, thus increasing protections for sea-based migrants. The second section, *advocacy and civil society*, studies how SAR NGOs have engaged with civil society to increase public awareness for dangers to migrants at sea, the need for rescue assets in the Central Mediterranean, and the ongoing criminalization of independent rescue efforts. By bringing journalists onboard, gaining support from leaders in art, athletics, and entertainment, and creating informative social media content, SAR NGOs have broadened their

audience and increased public support for and awareness of the need for change in the Mediterranean Sea. In the past seven years, SAR NGOs work at sea has increased accountability for mariners, mobilized civil society, and supported the protection of migrants at sea.

Evidence Collection at Sea

For nearly a decade, civil SAR vessels have operated in the Central Mediterranean, and during this time crew members have documented a myriad of violations of migrants' human rights committed by the Libyan Coast Guard, commercial ships, and Frontex assets. Recordings of these incidents are frequently shared across social media platforms of NGOs and have been a powerful advocacy tool. More recently, however, evidence gathered by NGOs during operations has been used to hold wrongdoers accountable in court. By removing the sense of impunity previously felt by vessels that ignored their duty to rescue or returned migrants to unsafe conditions, SAR NGOs have reengaged commercial vessels in rescue activities, challenged inhumane practices, and promoted the protection of all people crossing the sea.

Asso Ventotto

On July 30, 2018, *Asso Ventotto*, an Italian offshore supply vessel, was operating at the Sabratha Oil Platform between Libya and Lampedusa when it located spotted a small, sinking boat. AIS data showed that *Asso Ventotto* was only one nautical mile away from the boat in distress so the crew proceeded towards the site and successfully recovered all 101 survivors from the sea¹³². With everyone safely onboard, the captain of *Asso Ventotto*, Giuseppe Sotgiu, was obligated to contact the Italian RCC, as Italy is the ship's flag state and maritime law requires

¹³² "Italian Captain Sentenced to Prison for Bringing Migrants to Libya," Marine Executive, published October 14, 2021, <https://www.maritime-executive.com/article/italian-captain-sentenced-to-prison-for-bringing-migrants-to-libya>.

that rescued people are always brought to a POS. Instead, Capt. Sotgiu communicated directly with the LYCG and returned the survivors to Tripoli, a port where refouled migrants are routinely exploited and detained.¹³³ This, unfortunately, was not the first time that a vessel in the Augusta Offshore (*Asso*) fleet had ignored distress calls or illegally pushed back rescued people. In the spring of 2021, five Eritreans filed a lawsuit in the civil court in Rome against the company and Italian authorities for coordinating their return to Libya after being rescued by *Asso Ventinove* on July 2, 2018.¹³⁴

Unlike concerted pushbacks, punishment for those orchestrating them is rare. Between 2018 and 2019 at least 30 commercial vessels were recorded illegally pushing back more than 1,800 migrants.¹³⁵ This case of *Asso Ventotto*, however, was unique; several miles from the offshore supply vessel was the NGO ship *Open Arms*. While not close enough to conduct the rescue themselves, the crew onboard *Open Arms* listened to and recorded conversations between Captain Sotgiu and the LYCG.¹³⁶ Hearing plans of the pushback, Head of Mission onboard *Open Arms*, Riccardo Gatti, repeatedly hailed *Asso Ventotto* advising them against bringing rescued

¹³³ Ibid.

¹³⁴ “Five Eritreans Take Legal Action Against Italy Over Alleged Pushback,” InfoMigrants, published February 16, 2021, <https://www.infomigrants.net/fr/post/30285/five-eritreans-take-legal-action-against-italy-over-alleged-pushback>.

¹³⁵ Patrick Kingsley, “Privatized Pushbacks: How Merchant Ships Guard Europe,” The New York Times, published March 20, 2020, <https://www.nytimes.com/2020/03/20/world/europe/mediterranean-libya-migrants-europe.html>.

¹³⁶ Nello Scavo, “Caso Asso 28, Processo per il Respingimento di 101 Persone. Ecco Gli Audio,” Avvenire, published July 17, 2020, <https://www.avvenire.it/attualita/pagine/caso-asso-28-processo-per-il-respingimento-di-101-migranti>.

people to Libya, as doing so would endanger their lives. Audio recordings and AIS data show that Capt. Sotgiu ignored *Open Arms*' advice.¹³⁷

Two days later, the crew of *Open Arms* would rescue 52 migrants, including two infants, and bring them safely to Italy. The most significant impact of their mission, however, would not be seen for nearly two years when a court in Naples opened an investigation into the actions taken by *Asso Ventotto* on July 30, 2018. Prosecutors in Naples alleged that by returning migrants to Libya and failing to communicate with the Italian MRCC, Capt. Sotgiu had neglected his responsibilities and jeopardized the lives of the survivors onboard.¹³⁸ Central to the investigation were interviews conducted in Naples with the crew of *Open Arms* and recordings of radio conversations between *Open Arms* and *Asso Ventotto*. In October of 2021, the Neopolitan court found Capt. Sotgiu guilty of “abandonment for returning the rescuees to Libya” and sentenced him to one year in prison.¹³⁹ The verdict was a landmark decision. For the first time, a vessel flying the Italian flag had been found guilty by an Italian court for “abandoning minors and vulnerable people,” and recordings gathered at sea by a civil rescue vessel served as crucial evidence in the case.¹⁴⁰ The conviction of Capt. Sotgiu demonstrates that commercial vessels that fail to uphold their maritime obligations are no longer immune to punishment, even in Europe, and that in the absence of an EU-led SAR effort, NGOs play a powerful role in building

¹³⁷ Recordings of the conversations between *Open Arms* and *Asso Ventotto* are available here, in Italian: <https://www.youtube.com/watch?v=3jK-jlXHXHA>.

¹³⁸ Marine Executive, “Italian Captain Sentenced to Prison.”

¹³⁹ Marine Executive, “Italian Captain Sentenced to Prison.”

¹⁴⁰ “Italy Ship Captain Convicted After Sending 101 Migrants to Libya in 2018,” EuroNews, published October 14, 2021, <https://www.euronews.com/2021/10/14/italy-ship-captain-convicted-after-sending-101-migrants-to-libya-in-2018>.

accountability among mariners for their treatment of rescued people. Nicola Fratoianni, an Italian MP who was onboard Open Arms at the time, explained the significance of the ruling, saying “[such a case] has no precedent in the Italian judiciary system and may have relevant consequences. . . . We need to break the silence on tragedies, drownings, and deaths, but also the illegal returns which happen in the Mediterranean against international law. We owe this to all those who lose their lives trying to reach Italy in order to build a better life in Europe.”¹⁴¹ With the conviction of Capt. Sotgiu, a new precedent has been set: ships that bring rescued people to unsafe countries, prioritizing convenience or profit, can be punished.

In response to this new precedent, the maritime landscape in the Central Mediterranean has begun to change. On October 2, 2021, Seabird, an aerial asset for Sea-Watch Airborne, spotted a rubber boat in distress with 65 people onboard. Seabird’s flight crew requested assistance from *Asso Ventinove*, another vessel in the Augusta Offshore fleet that was nearby. *Asso Ventinove* launched a rescue operation and recovered all 65 people from the sinking boat.¹⁴² Seabird’s ground crew hailed the Italian MRCC on *Asso Ventinove*’s behalf and requested a POS as Italy was the closest country and like *Asso Ventotto*, *Asso Ventinove* is flagged in Italy. The Italian MRCC initially replied to this request stating, “I will explain to you again: the position is in Libyan SAR (zone) so you don’t have to call me.”¹⁴³ After repeatedly contacting the Italian MRCC and Augusta Offshore, reminding the company that “a return to Libya would constitute a

¹⁴¹ Francesco Bongarra. “Captain to Face Trial in First Italy ‘Migrant Pushback’ Case,” Arab News, published July 19, 2020, <https://www.arabnews.com/node/1706866/world>.

¹⁴² “Airborne Monthly Factsheet October 2021,” Sea-Watch, accessed January 15, 2021, <https://sea-watch.org/en/airborne-monthly-factsheet-october-2021/>.

¹⁴³ Ibid.

punishable violation of international law,” *Asso Ventinove* was permitted to dock in Lampedusa.¹⁴⁴ The safe disembarkation of all 65 survivors in Italy marked a change in Augusta Offshore vessels’ handling of rescue cases and the influence of NGOs in the company’s decision-making. By challenging *Asso Ventotto*’s actions in court and monitoring the activity of *Asso Ventinove* SAR NGOs have contributed to real, albeit slow, improvements in the treatment of migrants at sea.

The conviction of Capt. Sotgiu has made important strides towards ensuring seafarers respect migrants’ rights, but given the state-imposed economic and political threats against commercial vessels that conduct rescues, shipping companies are still strongly incentivized to avoid engagement. For example, on July 8, 2018, just weeks before the *Asso Ventotto* pushback, the tugboat *Vos Thalassa* rescued 60 migrants from a sinking wooden boat.¹⁴⁵ The captain hailed its flag state’s rescue center, the Italian MRCC, and was initially told to dock in Lampedusa. Shortly after, *Vos Thalassa* was contacted by the LYCG and ordered to “direct the boat to the African coast in order to transship the migrants to a Libyan patrol boat.¹⁴⁶” When the *Vos Thalassa* altered course, survivors onboard realized they were sailing south and became fearful and agitated, asking the crew not to take them back to Libya. As anxiety grew among the survivors and crew, *Vos Thalassa*’s captain requested the Italian MRCC coordinate the disembarkation of the survivors. “After moments of great tension,” described the crew, “the MRCC finally decided to send a naval unit of the coastguards, which took the migrants on board

¹⁴⁴ Ibid.

¹⁴⁵ “The Vos Thalassa Case,” The El Hiblu 3, accessed January 30, 2021, <https://elhiblu3.info/thalassa>.

¹⁴⁶ Ibid.

and brought them to Italy.”¹⁴⁷ The delay in *Vos Thalassa*’s operations after conducting the rescue and inability to quickly disembark the survivors is believed to have influenced *Asso Ventotto*’s decision to refool the people they rescued to Libya. As an author for the Marine Executive explained, “any attempt by *Asso Ventotto* to deliver her rescuees to Italy would likely have encountered the same roadblock.”¹⁴⁸ This bears mentioning because while ultimately Capt. Sotgiu was responsible for bringing rescued people to an unsafe county, port closures under Salvini and Italy’s treatment of other commercial vessels likely disincentivized him from doing the right thing and then criminalized him for failing to do so. This is not said to excuse or diminish the actions of *Asso Ventotto*, but rather to show Italy’s failure as an MRCC and signature of the 1951 Refugee Convention, to support ships after a rescue. The trail of *Asso Ventotto* and the rescues by *Vos Thalassa* and *Asso Ventinove* demonstrate that given Europe’s neglect for the most vulnerable people at sea, SAR NGO’s documentation and sharing of evidence is essential for holding individual actors and governments accountable and making the sea a safer place for migrants.

Another criticism of the *Asso Ventotto* case focused on the duplicity of Italy’s relationship with Libya. In the trial of *Asso Ventotto*, Capt. Sotgiu’s conviction indicated Italy’s recognition of Libya as an unsafe place for migrants. Yet simultaneously Italy was funding institutions, such as the Libyan Coast Guard, that were responsible for keeping migrants in the very same unsafe conditions. As Giorgia Linardi, spokeswoman for Sea-Watch explained, “If you condemn a person for handing migrants to the [Libyan Coast Guard], you are putting into question the

¹⁴⁷ Ibid.

¹⁴⁸ Marine Executive, “Italian Captain Sentenced to Prison.”

legitimacy of that authority.”¹⁴⁹ By outsourcing its border protection and rescue responsibilities, Italy has attempted to evade blame for crimes resulting from failures to uphold these duties. SAR NGOs, however, argue that Italy’s financial and social support of the LYCG makes the European state responsible for the actions of the LYCG. Through evidence collection, and now legal action, SAR NGOs have sought to re-enforce Italy’s obligations to migrants and establish Italian accountability for the actions of the LYCG.

S.S. and Others v. Italy

On the night of November 5, 2017, a rubber boat with an estimated 130 passengers departed from Tripoli in hopes of reaching Europe.¹⁵⁰ After a few hours, weather conditions deteriorated and the overcrowded dinghy began taking on water. Using a satellite phone, the passengers contacted the Italian MRCC and requested assistance.¹⁵¹ At 05:53 on November 6,

¹⁴⁹ “Italian Captain Given Jail Term for Returning Migrants to Libya,” Aljazeera, published October 15, 2021, <https://www.aljazeera.com/news/2021/10/15/italian-ship-captain-jail-returning-migrants-libya>.

¹⁵⁰ In the exploration of the following case, I frequently cite Forensic Architecture's modeling of the "Sea-Watch vs. The Libyan Coast Guard" case. Forensic Architecture, and its maritime branch Forensic Oceanography, combine investigative journalism with computer modeling to build detailed recreation of events on land and at sea. In this video, footage provided by Sea-Watch, footage provided by the Libyan Coast guard, interviews with survivors, and government documents from the European Union and coastal states are brought together to recreate the events of November 6, 2017. This work was self-initiated by Forensic Oceanography and has been shared by the New York Times. Forensic Oceanography states its goal in creating this film was to "[shine] a light on the practices of a coastguard funded and trained by the Italian government."; “Sea-Watch vs. The Libyan Coast Guard,” Forensic Oceanography, published May 4, 2018, video, 00:00-28:55, <https://forensic-architecture.org/investigation/seawatch-vs-the-libyan-coastguard>.

¹⁵¹ “Sea-Watch vs. The Libyan Coast Guard,” Forensic Oceanography, published May 4, 2018, video, 03:10, <https://forensic-architecture.org/investigation/seawatch-vs-the-libyan-coastguard>.

2017, *Sea-Watch 3* was sailing in international waters, just beyond Libya's territorial zone, and received a report of a vessel in distress, followed by its last known position at 06:30. *Sea-Watch 3* proceeded towards the scene as did the Libyan Coast Guard Vessel *Ras Jaddir* and European border control assets including the Portuguese Surveillance Aircraft *MPA P3C Wolf*, the French Warship *L'Her*, and later an Italian Navy helicopter. As *Sea-Watch 3* approached the last known position they remained in constant contact with the Italian MRCC which advised them to "proceed towards north to intercept the target."¹⁵² The Portuguese aircraft was the first to locate the vessel in distress at approximately 08:30. According to survivor testimonies just before the plane arrived the back two chambers of the rubber boat ruptured and twenty people fell into the water. The Portuguese aircraft attempted to assist those in the water by dropping lifejackets and an inflated raft from the air, but few people were able to swim to safety and it is estimated that within fifteen minutes several people drowned. With the rubber boat now in sight, *Sea-Watch 3* proceeded with all speed to the boat and launched its fast-rescue RHIBs while underway. By 09:04 *Sea-Watch 3* and the LYCG had both arrived on the scene - *Sea-Watch 3* to conduct rescues and the LYCG to carry out a pullback - a difference in objectives that would prove irreconcilable.¹⁵³

At 09:05 *Sea-Watch 3*'s RHIBs began recovering people who had fallen out of the rubber boat and were scattered across the sea. The LYCG, meanwhile, approached the rubber boat and attempted to pull it in towards the stern of the *Ras Jaddir*. Doing so, however, further compromised the flotation of the rubber boat forcing people into the sea and trapping many in

¹⁵² Ibid. 05:21.

¹⁵³ Ibid. 11:11.

the water between the sponson and the hull of the *Ras Jaddir*.¹⁵⁴ At this time, the Italian Navy helicopter arrived and requested *Sea-Watch 3*'s RHIBs proceed towards the LYCG and provide assistance.¹⁵⁵ Figure X shows a still image of the scene taken from a video camera onboard one of *Sea-Watch*'s RHIBs. As *Sea-Watch 3*'s second RHIB approached the *Ras Jaddir*, the LYCG crew members began throwing hard polyethylene life-rings and potatoes at the RHIB crew, amplifying the chaos and hindering the rescue operation.



Image 3: A screenshot of footage captured by a *Sea-Watch 3* RHIB on November 6, 2017. Visible in the frame are the LYCG *Ras Jaddir*, the deflating rubber boat, *Sea-Watch 3*, two RHIBs with survivors onboard, and many people in the water.¹⁵⁶

¹⁵⁴ Ibid. 12:00.

¹⁵⁵ Ibid. 13:22.

¹⁵⁶ Ibid. 17:10.

By 09:30 all survivors were either on the RHIBs with *Sea-Watch 3* or had been captured by the LYCG. Videos from the bridge of *Sea-Watch 3* show the LYCG attempting to gain control of the people they seized by roping them in on the deck and beating them repeatedly. The video also recorded two people attempting to escape from the deck: one jumped overboard and was successfully recovered by a RHIB, but before the second person could swim away, the *Ras Jaddir* reengaged its engine and attempted to flee the scene. As the *Jas Raddir* sped off, the second person clung to an external ladder and was dragged through the ship's wake. The Italian Navy helicopter immediately hailed the LYCG shouting, "Stop your engines and cooperate with Sea-Watch. Please cooperate with Sea-Watch¹⁵⁷." Over the VHF crew onboard *Sea-Watch 3* are also heard calling to the LYCG saying, "Libyan Coast Guard. . . . We have on man in the water. You are towing him with speed. You are killing a person. You are killing a person."¹⁵⁸ For nearly one minute the *Ras Jaddir* steamed at full speed. It was not until the LYCG's absolute disregard for human life had become so blatant that the Italian Navy - whose government funds and trains the LYCG - attempted to physically intervene by flying low in front of the ship and shouting, "Stop your engine now. Stop your engine, you have one person on your right side. Stop, please, stop."¹⁵⁹ Eventually, the *Ras Jaddir* decreased its speed for a moment but did not attempt to recover the man on the ladder before continuing to sail south back to Libya. Of the estimated 130 survivors who departed Libya in the rubber boat, 59 were rescued by *Sea-Watch 3*, 47 were intercepted by the LYCG, and more than 20 died. Those rescued by *Sea-Watch 3* were brought

¹⁵⁷ Ibid. 24:16.

¹⁵⁸ Ibid. 25:20.

¹⁵⁹ Ibid. 26:10.

safely to Europe, but those who were returned to Libya faced horrific conditions in Tripoli's Tajura detention center. In testimonies, survivors describe "being beaten three to four times a week by Libyan guards armed with ropes and pipes." After a month, some people were deported to their country of origin while others escaped or were sold to another captor who, "tortured them to extract ransom from their families, who were unable to pay."¹⁶⁰

Following the tragedy, Sea-Watch and several humanitarian international organizations filed a joint lawsuit, *S.S and Others v. Italy*, in the European Court of Human Rights against Italy, demanding change and accountability from the country that had fortified the Libyan Coast Guard. Amnesty International and Human Rights Watch's Public Statement read, "[We] argue that Italy shares responsibility for human rights violations that result from maritime operations by Libyan authorities that are carried out employing unnecessary or disproportion force or that end in people being returned to abusive conditions. . . .¹⁶¹" Central to *S.S and Others v. Italy*, is the evidence and testimony gathered during Sea-Watch's mission on November 6, 2017, that documents the Libyan Coast Guard violating the human rights of migrants and creating a catastrophic situation. Human rights experts and maritime analysts who have studied films from Sea-Watch's bridge and RHIBs concur that the presence of the LYCG caused "strong turbulence which led to the death of at least twenty people" and that, ". . . Italy played an important role in this unfortunate event since they made it possible for the Libyan authorities to carry out the

¹⁶⁰ Ibid. 27:05.

¹⁶¹ "Amnesty International Public Statement," Amnesty International, published November 13, 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/EUR3013922019ENGLISH.pdf>.

operation through financial and practical means.”¹⁶² In other words, despite Italy’s attempts to outsource border policing in the Central Mediterranean to the Libyan Coast Guard, as the primary financial, material, and intellectual supporter of the organization, Italy remains responsible for the lethal outcomes of the LYCG’s activities. The inseparable link between the Italian government and the LYCG was particularly apparent during the events of November 6, 2017, as the boat that the LYCG was operating, the *Ras Jaddir*, had been given to the LYCG by the Italian Interior Minister, Marco Minitti on May 15, 2017, and eight of the thirteen crew members onboard *Ras Jaddir* were trained by the EU through the EUNAVFORMED operation¹⁶³.

The lawsuit is the first of its kind wherein non-governmental organizations seek to hold a state accountable by proxy for the crimes committed by another state’s institutions. As Amnesty International explains, “this case provides a crucial opportunity to secure accountability under the European Convention for Italy’s substantial role in shaping Libya’s border and migration control policy.”¹⁶⁴ If successful, Italy could be held responsible for the numerous crimes committed by the Libyan Coast Guard including, but not limited to, murder, violation of the law of nonrefoulement, reckless endangerment of the lives of migrants and NGO rescue crew, and sexual violence towards migrants. Beyond their actions taken at sea on November 6, 2017, to protect the lives of the 59 migrants rescued, this lawsuit exemplifies how evidence gathered by

¹⁶² David Moya and Georgios Milios, *Court of Human Rights: Ensuring Minimum Standards of Human Rights Protection* (The Netherlands: Koninklijke Brill, 2021), 41.

¹⁶³ Forensic Oceanography, “Sea-Watch vs. the LYCG,” 09:08.

¹⁶⁴ Amnesty International, “Amnesty International Public Statement.”

NGOs at sea is crucial for holding governments accountable for inhuman state-sponsored actions and fighting the brutal treatment of migrants at sea.

Advocacy and Civil Society

The trial of Asso Ventotto and conviction of Captain Guiseppe Sotgiu, and the filing of *S.S. and Others v Italy* demonstrate how SAR NGO's activities on the water, both in conducting rescues and gathering evidence, have made it more difficult for violators of maritime and human rights law to evade punishment. In both of these situations, SAR NGOs have promoted accountability and made the Central Mediterranean safer for those attempting to cross it. This second section will focus on how SAR NGOs' actions at sea, in conjunction with their identity as members of civil society, have enabled them to engage with the public and effectively gather support for migrants' rights and the decriminalization of search and rescue.

Presently, SAR NGOs are responsible for more than 40% of all rescues in the Central Mediterranean and have conducted hundreds of operations since 2015. Given the magnitude of their involvement, civil rescue crews are some of the most knowledgeable and reliable witnesses to migration across the sea. To share the things they have witnessed with the public, most NGOs include spaces among their crew for journalists. By providing opportunities for reporters and photographers with large followings to document search and rescue missions, SAR NGOs have significantly increased public awareness for migration across the sea. In a situation that occurs at sea, far from most eyes, and that often feels removed from the lives of Europeans - or Americans, or almost everyone in the world for that matter - writings, images, and films function to inform their audiences of the ongoing realities faced by migrants and of the human cost both of European policies and of public inaction. The New York Times described the power of written

and visual storytelling, printing, “Not only do pictures help to enhance a story, they also tell a story all their own. When thoughtfully incorporated into the news, photos add context and comprehensibility.”¹⁶⁵ One measure of the effectiveness of visual storytelling is the number of people the story reaches. For example, Vice News, a media outlet with 7.39 million Youtube subscribers, has produced two documentaries on migration across the Mediterranean. In the first film, “Surviving One of the Deadliest Routes to Europe: Refugees at Sea,” journalists joined MSF’s crew onboard the *Bourbon Argos* and documented the rescue and stories of people attempting the crossing in 2016.¹⁶⁶ The documentary has since been viewed by more than 3.3 million people.¹⁶⁷ In the second film, “Inside the World’s Deadliest Migration Route: Europe’s Forgotten Graveyard,” journalist Jean-Marc Joseph spent one month with Open Arms in November of 2020 for its 78th mission.¹⁶⁸ While onboard Jean-Marc documented the rescue of more than 150 people from two critical shipwrecks, though there were many who did not survive. He described the work as “by far the hardest and most intense experience of my career. . . [but] the positive reception of the film gave a sense to all these efforts and made me think that the death of these size people hasn’t been in vain.”¹⁶⁹ The film has been viewed 2 million times on Youtube as of March 1, 2022, and photographs and clips have been shared on Instagram with

¹⁶⁵ “What is Photojournalism and Why is it Important?” The New York Times Licensing, accessed February 1, 2022. <https://nytlicensing.com/latest/marketing/what-is-photojournalism/>.

¹⁶⁶ “Surviving One of the Deadliest Routes to Europe: Refugees at Sea,” Vice News, published March 11, 2016, <https://www.youtube.com/watch?v=nPelTu3iupe>.

¹⁶⁷ Ibid.

¹⁶⁸ Jean-Marc Joseph, interviewed, July 16, 2021.

¹⁶⁹ Jean-Marc Joseph, “Europe’s Forgotten Graveyard,” accessed June 15, 2021, <http://superjeanmarc.com/project/open-arms>.

Open Arms' 222,000 followers and Vice's 4.4 million followers. Photographs from journalists onboard rescue vessels have also been included in print magazines and news articles. Guillaume Duez, a French photographer, who was also interviewed for this research, documented the rescue of more than 400 people by Sea-Eye in May of 2021.¹⁷⁰ His work was shared by Sea-Eye and has been included in articles by the New Humanitarian, The Guardian, Irish Times, and Malta Today.¹⁷¹ Images by Lynsey Addario taken onboard *MV Aquarius* in 2016 were shared with the 20 million subscribers of Time Magazine along with a five-page story on human smuggling and migration across the Central Mediterranean.¹⁷² By providing space for journalists onboard, SAR NGOs have enabled stories of migration across the Central Mediterranean to be seen and read by millions of people around the world. The sharing of these photographs and documentaries has not only been an effective advocacy tool, but also led to the involvement of leaders in art, film, and athletics who have helped NGOs create lasting change in the Mediterranean.

¹⁷⁰ Guillaume Duez, interviewed, June 30, 2021.

¹⁷¹ Ibid.

¹⁷² Aryn Baker and Lynsey Addario, "Between the Devil and the Deep Blue Sea," published September 12, 2016, <https://time.com/4475621/between-the-devil-and-the-deep-blue-sea/>.



Image 4: *Photograph taken by Jean-Marc Joseph in November 2020. During its 78th mission, Open Arms rescued dozens of migrants from the water after the deck of their rubber boat collapsed amid rough seas.*¹⁷³

On August 2, 2017, Italian authorities seized the SAR vessel *Iuventa*, operated by the NGO Jugend Rettet, based on accusations that the ship and its crew were aiding and abetting illegal migrants.¹⁷⁴ The vessel was subsequently impounded and ten crew members, including its German captain Pia Klemp, may face up to twenty years in jail for upholding their duty to

¹⁷³ Jean-Marc Joseph, “Europe’s Forgotten Graveyard.”

¹⁷⁴ Forensic Oceanography, “The Seizure of the *Iuventa*,” published April 20, 2018, video, 05:00, <https://forensic-architecture.org/investigation/the-seizure-of-the-iuventa>.

rescue.¹⁷⁵ News of the case spread internationally and a petition to drop all charges against the crew and release *Iuventa* has been signed by 471,120 people at the time of this writing.¹⁷⁶ Among those moved by the story was the anonymous British artist Banksy who wrote to Klemp and offered to fund the purchase of a new ship. They wrote, “Hello Pia, I’ve read about your story in the papers. You sound like a badass. I am an artist from the UK and I’ve made some work about the migrant crisis, obviously, I can’t keep the money. Could you use it to buy a new boat or something? Let me know. Well done. Banksy.”¹⁷⁷ Klemp moved quickly to assemble a team and by August 18, 2018, the *Louise Michel*, a former French Navy vessel renovated for SAR and painted pink by Banksy, departed Burriana, Spain on its first mission. Banksy’s generous, ambitious, and ultimately successful provision of a new SAR vessel has resulted in the rescue of hundreds of migrants and increased awareness of Europe’s inhumane anti-immigration policies, especially in the art community.¹⁷⁸

In July 2018 Spanish NBA player Marc Gasol joined Open Arms onboard their rescue sailboat *Astral*. The mission was filmed and captured one of the most devastating rescues in the NGO’s history.¹⁷⁹ During the night of July 16, the crew overheard communications between a

¹⁷⁵ Emily Dixon and Barbara Wojazer, “Ship Captain Who Faces Prison Time for Migrant Rescues Refuses Paris Bravery Medal,” published August 22, 2019, <https://www.cnn.com/2019/08/22/europe/france-pia-klemp-bravery-medal-scli-intl/index.html>.

¹⁷⁶ “Straffreiheit für Seenotrettung!” last modified March 2021, <https://www.change.org/p/straffreiheit-für-seenotrettung-carolarackete-seawatch3-freepia-iuventa10>.

¹⁷⁷ Lorenzo Tondo and Maurice Stierl, “Banksy Funds Refugee Rescue Boat Operating in the Mediterranean,” published August 27, 2020, <https://www.theguardian.com/world/2020/aug/27/banksy-funds-refugee-rescue-boat-operating-in-mediterranean>.

¹⁷⁸ Louise Michel, last modified February 26, 2022, <https://mvlouisemichel.org/#live-feed>.

¹⁷⁹ ESPN, “Marc Gasol’s Harrowing Mission to Rescue Migrants,” published August 26, 2018, https://www.youtube.com/watch?v=pcmAO6Gd_hg.

commercial ship and the Libyan Coast Guard about a rubber boat in distress. Assuming the boat departed Tripoli, Captain Ricardo Gatti used current weather conditions to predict the position of the boat. *Astral* and *Open Arms* sailed through the night in a zig-zag search pattern until the partially deflated rubber boat was spotted by *Open Arms* during the afternoon of July 17.¹⁸⁰ From the bridge of *Open Arms*, it appeared that the boat had already been intercepted by the LYCG and that three bodies were floating among the wreck. *Open Arms* and *Astral* launched their RHIBs and upon arrival found one survivor, a Cameroonian woman named Josefa who had been floating in the sea for hours. Video from the rescue showed plainly the suffering inflicted by Europe's border externalization and was shared with ESPN's 8.2 million sports fans on August 26, 2018.¹⁸¹ Gasol's participation with Open Arms not only supported the rescue of Josef but built awareness for the need for search and rescue among the American and European sports community. Spanish football manager Pep Guardiola has also used his position in European athletics to garner support for SAR NGOs by wearing an Open Arms sweatshirt during press conferences, donating thousands of euros to the organization, and inviting founder Oscar Camps to speak to Manchester City's athletes about the ongoing crisis.¹⁸²

In a similar act of solidarity, while on vacation in Rome in August of 2019, American actor Richard Gere flew to Lampedusa and offered to support to an Open Arms ship after learning they had been anchored off the Italian island for days waiting for a port of safety for the

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Zak Garner-Purkis, "The Story Behind Manchester City Manager Pep Guardiola's Open Arms Hoodie," published March 7, 2021, <https://www.forbes.com/sites/zakgarnerpurkis/2021/03/07/the-story-behind-manchester-city-manager-pep-guardiolas-open-arms-hoodie/?sh=164374705aea>

147 survivors onboard. Gere and shoreside volunteers gathered food and water donations and brought the supplies to the crowded ship.¹⁸³ Gere remained onboard for several hours and spoke with survivors about their experiences in Libya and at sea. Having witnessed the human costs of anti-immigration policies that have removed state rescue assets and hindered NGO activities, Gere joined Open Arms Camps in a press conference and argued that Italy had a moral imperative to disembark the survivors. After 19 days at sea and no end to the standoff in sight, several migrants attempted to swim to Lampedusa.¹⁸⁴ They were quickly brought back onboard *Open Arms*, however, tensions among migrants, who had already been subjected to immeasurable stress, grew and the NGO decided to defy Salvini's port closure and dock in Lampedusa. All survivors safely disembarked or were evacuated by August 20th, but *Open Arms* was seized by Italian authorities upon arrival.¹⁸⁵

The full impact of the days' events, however, would continue to be seen. On October 23, 2021, Matteo Salvini, the Deputy Prime Minister of Italy who had declared Italian ports closed to rescue ships, went to trial in Sicily on charges of "abuse of power, dereliction of duty and kidnapping 147 migrants and asylum seekers."¹⁸⁶ The trial has been followed closely by news

¹⁸³ Ani Montes Mier.

¹⁸⁴ Richard Gere, "'It Was Mind-Boggling': Richard Gere on the Rescue Boat at the Heart of Salvini Trial." Interviewed by Lorenzo Tondo, *Global Development*, November 19, 2021, <https://www.theguardian.com/global-development/2021/nov/19/richard-gere-open-arms-rescue-boat-heart-of-salvini-trial>.

¹⁸⁵ Ibid.

¹⁸⁶ Miriam Berger, "Italy's Ex-Interior Minister is on Trial for Blocking a Migrant Boat from Docking. Actor Richard Gere is a Witness," published October 24, 2021, <https://www.washingtonpost.com/world/2021/10/24/matteo-salvini-richard-gere-migrant-boat-kidnapping/>.

outlets in the United States as Richard Gere is set to testify against Salvini on the unsafe and inhumane conditions migrants were subjected to under his policies.¹⁸⁷ A verdict has not yet been reached, but if Salvini is found guilty it would be a monumental step towards holding European leaders responsible for the consequences of their policies and reinforcing the legitimacy of civil rescue organizations.

Through the inclusion of onboard journalists and the garnering of support from artists, athletes, and actors, SAR NGOs have significantly increased the reach of their advocacy. In doing so they have increased public awareness of Europe's inhuman immigration practices as well as the immense need for rescue ships in the Central Mediterranean. The effect of this growing awareness can be seen in the emergence of new land-based NGOs that respond to different aspects of migrants' needs, increased donations to NGOs that have funded the purchase of better-equipped rescue ships, and more public support for pro-immigration policies.¹⁸⁸

Over the past seven years, SAR NGOs have gradually reshaped the maritime landscape for migrants in the Central Mediterranean. By documenting and sharing the events that they have witnessed at sea, SAR NGOs have reinvigorated the enforcement of maritime laws and garnered support from civil society. In doing so, they have encouraged commercial ships to protect migrants' rights by rescuing people in distress, irrespective of nationality or condition, and delivering them to a safe port. Their work has also supported ongoing legal efforts to hold Italy accountable for the crimes committed against migrants by its border police proxy, the Libyan

¹⁸⁷ Ibid.

¹⁸⁸ Phillip Connor, "A Majority of Europeans Favor Taking in Refugees, but Most Disapprove of EU's Handling of the Issue," Published September 19, 2018, <https://www.pewresearch.org/fact-tank/2018/09/19/a-majority-of-europeans-favor-taking-in-refugees-but-most-disapprove-of-eus-handling-of-the-issue/>.

Coast Guard. Through their operations, SAR NGOs have used their role as a "watch-dog" in the Central Mediterranean to promote the long-term protection of sea-based migrants by educating civil society, creating accountability amongst seafarers, and challenging unjust border practices.

Conclusion

“My dream would be that you don’t need any more rescue boats. That the European states would understand that we don’t have a crisis here, that we are not the people receiving the most migrants. That there is no reason to fear, so they open safe travel for people. That is my dream. And I think it is possible.”

- Anne Kimmel, medical doctor for SOS Med

Globally, marine search and rescue vessels function to prevent the loss of life at sea by responding to the immediate needs of people in distress. Though coastal states are responsible for coordinating the provision of assistance at sea, in the Central Mediterranean xenophobic and isolationist rhetoric coupled with anti-immigration policies have resulted in European states abandoning this responsibility. At the receiving end of these policies are migrants, pushed out of their home countries by civil war, religious persecution, economic instability, and human rights violations, who attempt to reach security and stability by crossing the world's most dangerous migration route. Since 2015 humanitarian organizations have operated independent SAR vessels to bridge the gap in rescue resources and protect the life and rights of all people at sea. These civil rescue actors have supported the immediate protection of sea-based migrants by responding to all calls for aid, providing emergency care for survivors onboard, and always disembarking survivors in a port of safety. Their sustained presence at sea has also enabled them to be effective monitoring resources, using documented violations of migrants’ rights and maritime law to hold individuals and states accountable as well as engaging with civil society to garner support for search and rescue.

In their seven years of operations, SAR NGOs have rescued thousands of people from the sea and vocally advocated for safer migration pathways to Europe. Though their work has been highly effective, it has also been severely constrained by ever-changing European policies.

Looking to the future, it is clear that leaving the duty to rescue hundreds of thousands of people to a handful of ships is unsustainable and comes at a high human cost. As SAR Team leader for MSF, Ani Montes Mier explained, "I am not a pessimistic person, I am a realistic person, and thinking about it realistically I don't see any kind of future, at least not one that is good for the people in need. . . and I am sure that the authorities and the people who don't want [SAR NGOs] to work will look for new problems or ways to control and stop us. I don't know if this can be called a future."¹⁸⁹

Given the rising mortality rate among migrants attempting to cross the sea and the demonstrated need for more rescue assets, the task now is to ask what a humane future for the Central Mediterranean could look like and what actions would be required to create it. Based on this research and recent reports from the UNHCR and the IOM there are three tiers of actions that need to be taken in order to build a just environment for migrants in the Mediterranean.¹⁹⁰ Organized by urgency, the first necessary action is to end the illegitimate criminalization of SAR NGOs and all vessels that uphold their maritime duty to rescue. The second necessary action is to terminate border externalization practices and establish a European maritime operation with a dedicated rescue mandate. Finally, the third necessary action is to create safe, regular routes for migrants along which their rights are respected and monitored.

The first step in creating a just future for migrants at sea is increasing the resources available to support them during their crossings and ending the state-imposed constraints on

¹⁸⁹ Anabel Montes Mier, interview.

¹⁹⁰ International Organization for Migration, *Migration in the West and North Africa and Across the Mediterranean*, (Geneva: International Organization for Migration, 2020), 355, <https://publications.iom.int/books/migration-west-and-north-africa-and-across-mediterranean>.

those trying to do so. Ending the arbitrary criminalization and seizure of NGO vessels would increase the rescue capacity of the civil rescue fleet and reverse the rise in mortality per crossing attempt that was attributed to the reduction in SAR activity in 2018. Additionally, removing the threat of criminalization and imposition of lengthy stand-offs would likely reengage commercial and pleasure vessels that previously avoided rescuing migrants due to fears of legal or financial consequences. By supporting ships that rescue migrants the European Union could exponentially increase the rescue coverage of the Central Mediterranean and consequentially improve the outcomes of crossing attempts.

The second step in building a safer environment for migrants forced to cross the sea is to reestablish an EU-led search and rescue operation and end the EU's border externalization programs. Civil rescue organizations, though vital and effective, presently depend on donor support to continue their work. NGOs have been successful in garnering support, as evidenced through their growth since 2015, but their available resources are still minuscule in comparison to the funds and resources allocated to the European border and coast guard agency, Frontex. In 2021 the annual budget for Frontex was 543 million euros, a 382% increase from its 142 million euro budget in 2015 and 498% of Operation Mare Nostrum's 109 million euro budget in 2014¹⁹¹. Using only a fifth of Frontex's current budget, the European Union could reinstate a dedicated search and rescue operation in the Central Mediterranean and further decrease the risk of fatality associated with crossing the sea. In addition to taking responsibility for their search and rescue zones, Europe can make the Mediterranean Sea safer by ending its border externalization programs and withdrawing its support of the Libyan Coast Guard. Between 2014-2020 the

¹⁹¹ "FAQ," Frontex, last modified 2021, <https://frontex.europa.eu/about-frontex/faq/key-facts/>.

European Union provided 57.2 million euros to Libya through the EU-Trust for Africa for “integrated border management” in order to “strengthen the capacity of the relevant Libyan authorities. . .”¹⁹² In reality, the majority of these funds were used to prop up the LYCG and fund the pull-back of migrants to Libya. Numerous investigations from the IOM, UNHCR, and NGOs have concluded that the LYCG systemically violates migrants’ human rights, and as the primary financier and beneficiary of the LYCG’s actions, Europe bears responsibility for these crimes. Moving forward the EU can prioritize the protection of migrants by establishing a dedicated search and rescue operation and terminating programs that outsource border policing without positive conditionality.

The creation of a just search and rescue environment in the Mediterranean is essential and possible, but ultimately the most effective tool for preventing deaths at sea is reducing the number of attempted crossings. In addition to supporting SAR, Europe could decrease migrant mortality at sea by opening safe, legitimate pathways for admission to European countries. Alternative routes to Europe could include expanded visa opportunities, resettlement programs, or even ferries from Libya and Tunisia.¹⁹³ As the IOM reports, “rescue at sea cannot [be] the only solution. Alternatives must be offered to those who risk their lives at sea, and the most

¹⁹² “EU Support on Migration in Libya,” European Union Emergency Trust Fund for Africa, published June 2020, https://ec.europa.eu/trustfundforafrica/sites/default/files/july_2020_eutf_factsheet_libya_2.pdf.

¹⁹³ “UNCHR Unveils Far-Reaching Proposal for European Action in the Mediterranean Sea,” The United Nations High Commissioner for Refugees, published March 12, 2015, <https://www.unhcr.org/en-us/news/press/2015/3/55019bce6/unhcr-unveils-far-reaching-proposals-european-action-mediterranean-sea.html>.

important one is to provide legal channels to Europe for migrants seeking international protection.”¹⁹⁴

As migration across the Central Mediterranean continues to evolve, research stands as an essential tool for analysis and advocacy. Looking ahead, studies on the changing patterns of migration - such as the routes taken, types of boats used in crossings, and the frequency of interceptions by the LYCG - would benefit the rescue organizations that need to adapt to these changes as well as European leaders responsible for enacting migration policies. The creation of a database wherein evidence gathered during rescues could be reported and shared would be an immensely useful resource in these projects. Presently, such a dataset does not exist, however, the legal advocacy NGO, SAROBMED, is working to bring the concept to life, as is the IOM. Additionally, research into the different standard operating procedures of rescue vessels would be useful for developing NGO-wide practices and facilitating knowledge sharing among organizations to maximize the safety of crew and survivors during operations.

It is apparent that finding a long-term, human-focused response to irregular migration across the Central Mediterranean will require additional research and significant political change. Realistically, the full implementation and impact of positive changes may not be seen for years, and during this time hundreds of thousands of people are predicted to attempt to cross the sea. Until safe, legitimate pathways for migration are created and Europe fully accepts its maritime and humanitarian responsibilities, SAR NGOs stand as essential actors in the Central Mediterranean. Through their provision of life-saving aid, engagement with civil society, and

¹⁹⁴ “IOM Applauds Italy’s Life-Saving Mare Nostrum Operation: ‘Not a Migrant Pull Factor,’” International Organization for Migration, published October 31, 2014, <https://www.iom.int/news/iom-applauds-italys-life-saving-mare-nostrum-operation-not-migrant-pull-factor>.

reinvigoration of the legal and moral norms at sea, civil rescuers have supported the immediate and lasting protection of sea-based migrants.

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