

Navigating Borderspaces: Criminalization and Positionality of SAR NGOs in European Migration Governance

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I. KEY FINDINGS

- Criminalization drives SAR NGOs to politicize their actions as antagonistic vis-à-vis the state. However, shifts in positionality are not determined exclusively by changes in criminalization policies but are influenced by alternative explanatory factors, such as national context, financial considerations, and, most notably, path dependency.
- SAR NGOs guard their original diverging approaches to some extent. While both NGOs under scrutiny shifted towards a more political positioning alongside increasing criminalization, differences in positionality and how they conceptualize their actions remain. Ultimately, the research findings observe neither a widening gap nor a convergence but rather a parallel 'politicization' of SAR NGOs.
- Criminalization measures become increasingly targeted and SAR NGOs more resilient. The research underlines the complexity of the interplay between criminalization and the positionality of SAR NGOs. On the one hand, criminalization measures became increasingly targeted,

progressively limiting the civil fleet's operational space, thus essentially keeping them on a 'leash.' On the other hand, civil SAR NGOs became more resilient, resisting the incorporation into the border regime and politicizing their public communication and reaction strategies.

II. INTRODUCTION

This research brief analyzes the impacts of criminalization in the context of the EU's and, specifically, Italy's migration governance, reflecting on the positionality and experience of civil SAR organizations in the Central Mediterranean. I explore how SAR NGOs navigate the complex space between EU legislation, national implementation, and international legal frameworks, and how they approach the dilemmas they face differently. The goal is to provide new insights into NGO-state relations and the positioning of SAR NGOs, enhancing our understanding of how to navigate and address these dilemmas.

III. BACKGROUND

In the early hours of October 3, 2013, over 360 people died in a shipwreck close to the coast of the Italian island of Lampedusa.¹ Only eight days later another boat capsized after authorities failed to respond to distress calls.² For hours no one came to the rescue. These tragedies seemed to be a catalyst for change, spurring the creation of Mare Nostrum, a proactive state-led Search and Rescue (SAR) mission in the Central Mediterranean.³ However, Italy's rescue mission lasted only one

year, and a decade later, the Central Mediterranean is once again the deadliest known migration route in the world.⁴ The death toll is not decreasing; on the contrary, an estimated 1,295 people have been recorded as dead or missing in the second quarter of 2023 alone, almost three times more than during the same period in 2022.⁵

Despite these tragedies and the duty to rescue people in distress at sea under international law, there is currently no European framework for conducting SAR operations.⁶ In response, civil SAR has been filling the gap left by states.⁷ As of June 2023, the civilian fleet counts around eighteen rescue vessels of varying sizes.⁸ Their rescue efforts are anchored in international law and human rights, most prominently in the International Convention on Maritime Search and Rescue (SAR Convention) of 1979, the International Convention for the Safety of Life at Sea (SOLAS Convention) of 1974, and the United Nations Convention on the Law Of the Seas (UNCLOS) of 1982, which inscribe the duty to rescue people in distress at sea, regardless of their nationality or other status. Nonetheless, governmental representatives from EU member states have issued decrees and regulations that tend to criminalize their work. Such measures have been issued by several states and must be seen in conjunction with regulations on the European level. Nevertheless, this research primarily focusses on Italy as a crucial case for analysis; being the primary country of arrival for maritime migration across the Mediterranean and having initiated the highest number of legal proceedings against civil SAR actors since 2016.⁹

The dilemmas that SAR NGOs face in the Central Mediterranean reflect many historical and contemporary quandaries deeply embedded in humanitarianism, especially in the context of debates on humanitarianism's core values and humanitarian aid versus solidarity activism. The *raison d'être* of all the NGOs in the Central Mediterranean is saving the lives of those who would otherwise drown. However, the extent to which this remains their exclusive goal differs.

While all of them are compelled to conceptualize their action within the broader framework of European border spaces and practices, variations exist in their perceived capacity and duty to effect political change.

IV. OPERATIONALIZING POSITIONALITY

Operationalizing positionality and defining the 'political' and the 'humanitarian' in humanitarian action is a complex task. Central to the 'political' is the creation of room for dissent, the possibility of disagreement, and the contestation of the dominant order. Such disagreement must challenge the status quo so that in the context of migration, the 'political' refers to "moments when conditions of exclusion, domination, and discrimination in migration societies are challenged, contested, interrupted, altered or reformed in favour of a different alternative".¹⁰ On the other hand, the essence of the 'humanitarian' is arguably alleviating human suffering and saving lives. In other words, classical humanitarians, despite accepting that their actions have political ramifications, might concentrate on addressing suffering effectively rather than utilizing their leverage to reach a particular political transformation.¹¹ Nonetheless, these two ends of the spectrum are not neatly divided. In the words of Slim (2002): "to think that humanitarianism is either all charity or all politics is simplistic".¹² Especially in migration and the context of the Central Mediterranean, the boundaries between classical humanitarian forms of 'helping' and 'political activism' are often blurred.¹³ Ultimately, there is a fluidity between the different humanitarian positionalities, and the focus should be on the spectrum between them rather than on the assignment of rigid categories.

V. HYPOTHESIS

In relation to migration governance, the literature highlights the growing entanglements between humanitarian and security logics in a complex border space,¹⁴ emphasizing the dynamic and evolving role of civil society.¹⁵ Carrera and colleagues (2019) note that SAR NGOs may respond differently to operational restrictions, necessitating

more research to explore how different types of civil society actors (CSAs) strategically position themselves and how their approaches change due to policing experiences.¹⁶ It is exactly these complexities and spaces between apparent opposites such as states and CSAs, or politics and humanitarianism that overlap in often messy ways, which make studying the experiences and positionalities of SAR NGOs particularly relevant. Accordingly, this study aims to provide an updated analysis of SAR NGOs considering shifts in criminalization, while interrogating the potential differentiations between NGOs, by addressing the question: To what extent does criminalization affect the positionality of civil SAR NGOs?

To interrogate the complexities faced by civil SAR NGOs, three hypotheses were mobilized based on existing literature:

i. Criminalization leads to politicization as adaptation. SAR NGOs become more radically opposed to governments criminalizing them.

Increased criminalization arguably renders the implications of SAR NGOs' actions hyper-visible and even more difficult to ignore. It might seem intuitive that intensifying criminalization automatically pushes SAR NGOs and states into increasingly opposing and antagonistic roles. Scholars have overwhelmingly underlined this idea of growing opposition and radicalization on both sides.¹⁷ Della Porta and Steinhilper (2021) note that the "politicization of frames" leads to traditional distinctions between seemingly neutral humanitarianism and political action being increasingly enmeshed and difficult to distinguish.¹⁸

ii. Criminalization leads to depoliticization as adaptation. SAR NGOs self-censor themselves, increasingly avoiding political criticism and confrontation.

To save lives, SAR NGOs rely on state cooperation to access safe ports, making neutrality a strategic choice. This approach minimizes political advocacy to maintain field access, echoing the humanitarian logic from conflict zones where neutrality facilitates aid provision that does not interfere with the conflict.¹⁹ Increased policing and

threats of fines or vessel seizures may lead NGOs to emphasize their humanitarian work, avoiding political confrontation.²⁰

iii. There is no general rule. The evolution of SAR NGOs' positionality in relation to criminalization differs between NGOs or mostly depends on other factors such as path dependency, finances, or national contexts.

Existing literature repeatedly highlights the divergences between SAR NGOs and their interpretation of humanitarian action and advocacy.²¹ Likewise, Cusumano (2021) stresses that intensified criminalization reinforces existing differences between SAR NGOs, which results in differentiated reactions.²²

VI. METHODS AND FINDINGS

To answer the research question, first criminalization was conceptualized and its evolution traced from the early 2000s until 2023. On this basis, a qualitative content analysis of SAR NGO's public communication around key moments in criminalization policy shifts was conducted. For this first step of the analysis, the five SAR NGOs operational since 2017 and still active in 2023 were considered: MSF, Sea-Watch, SOS Mediterranée, Sea-Eye, and Proactiva Open Arms. Ultimately, Sea-Watch and Sea-Eye were selected due to their representation of opposite sides of the spectrum between 'political' and 'humanitarian' positionalities. Sea-Watch was founded in 2015 by four German families.²³ In contrast to other SAR NGOs at the time, Sea-Watch initially focused on providing essential support such as life vests, water, and urgent medical assistance rather than engaging in comprehensive SAR missions due to limited financial resources and an explicitly political approach.²⁴ In the beginning, the Sea-Watch crew consisted exclusively of activists and volunteers.²⁵ With time, effective fundraising efforts and international media attention enabled Sea-Watch to acquire larger vessels and initiate an aerial reconnaissance mission.²⁶ Sea-Eye founded by the German entrepreneur Michael Buschheuer and his family, commenced operations in May 2016 and mirrored Sea-Watch's operational model of

spotting and assisting boats in distress until the arrival of larger vessels.²⁷ However, unlike Sea-Watch, Sea-Eye relies on funding from German Protestant churches, favoring an initially more accommodating approach and a greater willingness to comply with Italian authorities.²⁸

The qualitative analysis was enriched by interviews conducted with members of the SAR community. I interviewed three people from Sea-Eye and four from Sea-Watch of which three were primarily engaged in operations, three in legal or advocacy-related activities from land, and one with substantial experiences in both. The results of the analysis show that except for Sea-Eye in 2017, both SAR NGOs became more 'political' in their overall positionality. Nonetheless, they kept their relative positionalities in the sense that Sea Watch remained more 'political' than Sea-Eye across all periods, while Sea-Eye was more 'humanitarian' throughout.

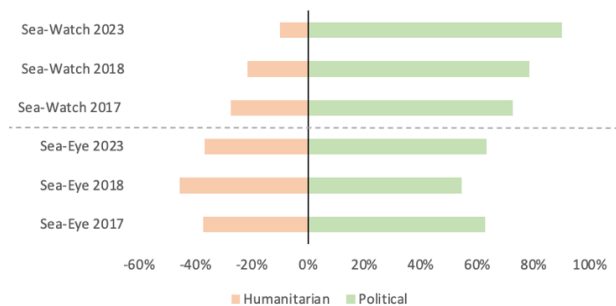


Fig. 1: Positionality scale of Sea Watch and Sea Eye (Source: Author)

The results primarily support the first hypothesis, namely that criminalization increases the politicization of SAR NGOs, bringing states and NGOs into more adversarial positions and catalyzing the development of counter-strategies. However, this observation must be considered in conjunction with other influencing factors outlined in the third hypothesis. Thus, this study underscores that the ultimate positionality of SAR NGOs is shaped not exclusively by criminalization measures but, to varying degrees, by national context, financial considerations, and, most notably, path dependency. Accordingly, while both NGOs under scrutiny shifted towards a more political positioning alongside increasing criminalization, they did not converge but instead guarded their original divergent approaches to a

certain extent. Ultimately, the research findings observe neither a widening gap nor a convergence but rather a parallel 'politicization' of SAR NGOs.

Criminalizing measures and narratives against solidarity actors contribute to the polarization of societies and debates around migration and SAR. Despite their humanitarian mandate requiring SAR NGOs to be physically present and operational, the interviews underline that such polarization might create an increased determination to represent a 'counterweight' in society, becoming more actively engaged in framing the debate. Ultimately, the selected SAR NGOs progressively embraced their political potential. Simultaneously, they remained committed to their humanitarian objectives and maintained distinct stances, embracing the diversity of the civil fleet as a strength. This evolution appears to align, to some degree, with trends in humanitarianism advocated by scholars such as Radice (2022):

*Humanitarianism is structurally to move beyond the tendency of humanitarian governance to depoliticize, and to find ways to simultaneously remain true to its purpose, embrace a positive account of its political role in conflict contexts, and most importantly, foreground and uphold the political subjectivity of those threatened by conflict.*²⁹

VII. CONCLUSIONS

In summary, these findings underlined a prevailing trend of politicization despite the remaining differences in the positionalities of SAR NGOs. The examination of public communication and interviews indicated that Sea-Eye tends to adopt a more practical approach in its humanitarian action at sea. At the same time, Sea-Watch places greater emphasis on principled aspects and the structural context. Regardless of such divergences, all members of the civil SAR community emerge as engaged and active citizens contributing to the transformation they aspire to witness. The results also underline the complexity of the interplay between criminalization and the

positionality of SAR NGOs. On the one hand, criminalization measures became increasingly targeted, progressively limiting the operational space for the civil fleet, thus essentially keeping them on a 'leash.' On the other hand, civil SAR NGOs became more resilient, resisting the incorporation into the border regime and politicizing their public communication and reaction strategies. This heightened antagonism might again be interpreted from two perspectives. It may be advantageous for politicians who campaign on pledges to curb migration, allowing them to demonstrate to their constituents that they are addressing the perceived 'problem.' By scapegoating SAR NGOs and criminalizing their actions, political shortcomings in establishing a long-term solution or combatting smuggling networks could be masked so that an inhumane status quo or increased deterrence measures are presented as seemingly desirable options. Contrastingly, the heightened politicization of SAR NGOs arguably strengthens political criticism, which makes it more difficult for states to normalize these failures and their logic of exclusion. As emphasized in the interviews, an opposing segment of society is incensed by unjust criminalization measures, leading to increased support for SAR NGOs and the mobilization of individuals protesting the depoliticized border regime.

To conclude, it is reasonable to assume that the influx of people crossing the sea in search of a better life is not likely to diminish in the foreseeable future, given climate change, escalating conflicts, and various other factors. Consequently, there is a pressing need to establish a just and functioning European migration and asylum system, along with the provision of safe and legal pathways and a state-led SAR mission. This is essential to cease the shameful practice of evading responsibility and to finally align actions with the agreed legal and moral standards. Blaming those who advocate for human rights and refuse to endorse a policy of neglect is an inadequate solution, as cemented by the unjustifiably high death rates. Ultimately, despite facing criminalization, increasingly hostile narratives, and diminishing operational space, all

interview participants emphasized their unwavering dedication to standing in solidarity with people on the move and saving lives for as long as needed. In the words of one of the interviewees:

The migration phenomenon is something that goes in parallel with the evolution of human beings and societies as we know them now. It didn't stop in the past because of previous criminalization waves and it will not be stopped by the Italian government in the coming years. So, as long as people will migrate, I think that it is our duty as white privileged European people, not just European, but in our case, to stand in solidarity with the people that are on the boats. And so, it doesn't matter what the obstacles are. If they can take them, we can take them too. (Sea-Watch 4)

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APPENDIX

Name	Interview Location	Interview Date	Department
Sea-Eye 1	Zoom	15.06. & 27.10.2023	Operations
Sea-Eye 2	Zoom	17.11.2023	Both
Sea-Eye 3	Zoom	21.11.2023	Office
Sea-Watch 1	Zoom	19.10.2023	Operations
Sea-Watch 2	Zoom	24.10.2023	Office
Sea-Watch 3	Zoom	14.11.2023	Operations
Sea-Watch 4	Zoom	16.11.2023	Office

List of interviewees

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