

UNIVERSITY OF VIENNA

**European Master's Programme in Human Rights and
Democratisation
A.Y. 2024/2025**

The Law and the Lifebuoy:
Legal Responses To State Repression Of
Civilian Search and Rescue In the
Mediterranean (Greece, Malta and Italy)

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Word Count Declaration: 29,983

*"Y a fuerza de desventuras
Tu alma es profunda y oscura"*

Joan Manuel Serrat, *Mediterráneo* (1971)

To all those who are forced to fight for their humanity.
And to those who fight for the humanity of all.

Abstract

Since 2015 civilian search and rescue (SAR) vessels have rescued more than 175,000 people in distress on the main Mediterranean migration routes, yet the governments of Greece, Malta and Italy have increasingly met these humanitarian efforts with criminal prosecutions, administrative blockades and hostile legislation. Framed by the Border Justice theory, this thesis investigates whether such measures amount to systematic state repression and how SAR organisations and civil society have mobilised the law in response. To map the evolving state practice and legal landscape, the research combines doctrinal analysis of international maritime, refugee, human-rights and EU law with eight semi-structured interviews conducted among SAR practitioners, lawyers and policy experts. The case-study comparison reveals a common, escalating repertoire of state repression: from smear campaigns and vessel seizures to the “closed-ports” policy, the enactment of targeted repressive legislation, and the outsourcing of rescues to Libya and Türkiye, measures that undermine the duty to render assistance at sea and shrink the sea’s normative humanitarian character. In response, SAR organisations and civil society have forged innovative litigation strategies before domestic courts, European tribunals and UN bodies that are beginning to check abuses, clarify state obligations and reopen humanitarian space in the Mediterranean. The findings highlight the transformative potential of legal mobilization in re-asserting the primacy of human rights at Europe’s maritime frontier.

Glossary

International Maritime Law: a specialized branch of public international law that regulates the rights, duties, and jurisdiction of states and other actors in maritime contexts. It encompasses legal norms governing navigation, safety at sea, maritime boundaries, the exploitation of ocean resources, marine environmental protection, and the legal status of the high seas and territorial waters. It is primarily codified in the United Nations Convention on the Law of the Sea (UNCLOS).

International Maritime Organization (IMO): specialized agency of the United Nations responsible for regulating shipping. Its primary purpose is to develop and maintain a comprehensive regulatory framework for the safety, security, and environmental performance of international shipping.

International Non-Governmental Organization (INGO): a non-profit, independent organization operating across borders to provide humanitarian aid. In the context of Search and Rescue (SAR) in the Mediterranean, INGOs conduct or support missions to locate and assist migrant boats in distress at sea, often filling critical gaps in state-led operations and advocating for the protection of human rights and maritime rescue obligations.

Search and Rescue (SAR): operations conducted to locate and assist individuals in distress or imminent danger. In the maritime context, SAR activities are governed by international law, including the International Convention on Maritime Search and Rescue (1979) and the International Convention for the Safety of Life at Sea (SOLAS, 1974), which obligate coastal states to coordinate and provide assistance to persons in danger at sea, regardless of their nationality, status, or the circumstances under which they are found.

Search and Rescue Region (SRR): designated geographic area of responsibility assigned by IMO to a coastal state for coordinating and conducting search and rescue operations. Within this area, the assigned state is responsible for organizing the prompt location and assistance of persons in distress at sea, ensuring effective cooperation among maritime and aerial assets to save lives.

Push-back/pull-back: the unlawful, often collective, expulsion of foreign nationals by state authorities at a country's border, without an individual assessment of their protection needs, often in convenience with third-party actors. Such actions violate the principle of non-refoulement under Human Rights and Refugee Law, which prohibit returning individuals to a country where they may face persecution, torture, or other serious harm.

Frontex: the European Border and Coast Guard Agency responsible for coordinating border control efforts among EU member states. In the maritime context, Frontex assists in managing irregular migration and security at the EU's external borders, including through joint operations, surveillance, and support to national authorities. Its role has been scrutinized for involvement in controversial practices, including alleged complicity in push-back operations.

Place of Safety (POS): a location where rescue operations conclude and the safety of rescued persons is ensured, including protection of their fundamental rights. A POS must be capable of meeting basic human needs, ensure no further risk to life or freedom, and typically falls under the jurisdiction of a coastal state. This obligation is established under the International Convention on Maritime Search and Rescue (1979) and the International Convention for the Safety of Life at Sea (SOLAS, 1974), and is interpreted in light of human rights law, particularly the principle of non-refoulement.

Acronyms

CJEU	Court of Justice of the European Union
ECCHR	European Centre for Constitutional and Human Rights
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
EU	European Union
EUFRA	European Union Agency for Fundamental Rights
HRCtee	Human Rights Committee
HR	Human Rights Watch
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
IMO	International Maritime Organization
INGO	International Non-Governmental Organization
LCG	Libyan Coast Guard
MRCC	Maritime Rescue Coordination Centre
MS	Member State
MSF	Medécins Sans Frontieres
MSH	Mediterranea Saving Humans
POS	Place of Safety
PSC	Port State Control
RSA	Refugee Support Aegean
SAR	Search and Rescue
SMH	Salvamento Marítimo Humanitario
SOLAS	Convention for the Safety of Life at Sea
SRs	Special Rapporteurs
SRR	Search and Rescue Region
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

SAR INGOs mentioned (2015-2025)

Name	Country	Area of operations	Vessels/aircraft associated	Last active
Emergency Response Centre International (ERCI)	Greece, international	Eastern Mediterranean	Unknown	2018
Humanitarian Pilots Initiative (HPI)	Switzerland	Central Mediterranean	<i>Moonbird</i>	2025
Jugend Rettend	Germany	Central Med.	<i>Iuventa</i>	2017
M.V. Louise Michel	France	Central Med.	<i>Louise Michel</i>	2025
Mare Liberum	Germany	Eastern Med.	<i>Mare Liberum, Sebastian K</i>	2020
Médecins Sans Frontières (MSF)	International	Eastern Med. Central Med.	<i>Geo Barents, Sea-Watch 4, Vos Prudence, Aquarius</i>	2024
Mediterranea Saving Humans	Italy	Central Med.	<i>Mare Jonio, Alex Mediterranea, Mediterranea</i>	2025
Mission Lifeline	Germany	Central Med.	<i>Eleonore, Lifeline</i>	2023
Open Arms	Spain	Eastern Med. Central Med.	<i>Open Arms, Astral, Golfo Azzurro</i>	2025
Proem-Aid	Spain	Eastern Med.	Unknown	2017
RESQSHIP	Germany	Central Med.	<i>Nadir</i>	2025
Salvamento Marítimo Humanitario (SMH)	Spain	Central Med.	<i>Aita Mari</i>	2025
Save the Children	International	Central Med.	<i>Vos Hestia</i>	2017
Sea-Eye	Germany	Central Med.	<i>Alan Kurdi, The Sea Eye, Seefuchs, Sea-Eye 4, Sea-Eye 5</i>	2025
Sea-Watch	Germany	Central Med.	<i>Aurora, Sea-Watch 5, Seabird 1, Seabird 2, Sea-Watch 4, Sea-Watch 3, Moonbird, Sea-Watch 3</i>	2025
SOS - Méditerranée	France	Central Med.	<i>Ocean Viking, Aquarius</i>	2025
SOS Humanity	Germany	Central Med.	<i>SOS Humanity 1</i>	2025
Team Humanity	Denmark, Greece	Eastern Med.	Unknown	2016

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1. Introduction

1.1 Theoretical framework: Border Justice

Since 2014, and due to the ongoing displacement crisis at the southern borders of Europe, the Mediterranean Sea has become the undesired graveyard of over 32,000 persons.¹ From 2015, humanitarian civil Search and Rescue (SAR) has played a vital role in saving lives of migrant people in the Mediterranean. However, from 2017, international non-governmental organisations (INGOs) engaged in SAR activities face increasing resistance and barriers imposed by EU Member States on their action. Driven by securitization and migration control agendas, States like Greece, Malta and Italy have engaged in practices such as pushbacks at sea, denial of aid to boats in distress, refusal to grant disembarkation to organizations and the detention of their vessels.

This thesis analyses how Greece, Malta, and Italy, as EU coastal states, use administrative and legal measures to repress humanitarian and civil SAR efforts, and how civil society responds through legal mobilization. Framed by the Border Justice approach, the research challenges traditional views of state sovereignty and border control, focusing instead on the structural injustices and power imbalances at Europe's borders.

Border Justice, as defined by scholars like Achiume,³ Costello, and Mann, sees borders not just as territorial lines but as contested sites of human rights, legality, and violence.⁴ For Mann, there is too an underlying action mandate to the framework of Border Justice. Once the issue is acknowledged, legal mobilization must be put forward to restrict governments from using extreme violence and failing to meet their legal obligations when enforcing border control.⁵ Ioannis Kalpouzou explains that when these practices are it is possible to deter governments from continuing them.⁶

¹ International Organization for Migration, 'Missing Migrants Project: Mediterranean' (2025) <https://missingmigrants.iom.int/region/mediterranean> accessed 5 July 2025

³ E Tendayi Achiume, 'Migration as Decolonization' (2019) 71 *Stanford Law Review* 1509, 1558

⁴ Cathryn Costello and Itamar Mann, 'Border Justice: Migration and Accountability for Human Rights Violations' (2020) 21 *German Law Journal* 311, 317

⁵ Itamar Mann, 'Border Justice in the Age of Pandemic' (Just Security, 2020)

<https://www.justsecurity.org/72078/border-justice-in-the-age-of-pandemic/> accessed 15 May 2025

⁶ *Ibid.*

Relevant legal actors such as the European Centre for Constitutional and Human Rights (ECCHR) apply this framework exposing how EU states prioritize deterrence and externalization over protection, normalizing pushbacks and rightlessness, often driven by racial profiling.⁷ In the Mediterranean, civil society and SAR INGOs have built on Border Justice legal strategies to challenge state repression and hold governments accountable to international obligations, protecting the right to life, freedom from torture, and access to asylum in territorial waters and Search and Rescue Regions (SRRs). They also defend their rights to association, political action, and the humanitarian duty to save lives, as well as the freedom of movement for their vessels.

This thesis examines how legal mobilization advances migrant rights and civil society solidarity. Amid growing disregard for international law, it also calls for renewed faith in Europe's democratic foundations of justice, freedom, and equality.

1.2 Case study: the Mediterranean Sea, international border

1.2.1 Mixed-migration flows in the Mediterranean

The Mediterranean, Earth's largest enclosed sea and a cultural nexus uniting 18 states (seven in the EU), has channelled migrations for long. Since 2015, maritime flows from Sub-Saharan Africa, North Africa, the Middle East, and Asia toward Europe have sharply intensified.⁸

These growing and increasingly relevant movements are termed mixed migration due to the diverse profiles and protection needs of those involved, ranging from refugees and trafficking victims to unaccompanied minors, stateless persons, and vulnerable groups. Though their reasons for migrating vary, they often follow the same routes, travel irregularly, and share destinations.⁹ In the Mediterranean context, their shared goal is achieving protection and better life opportunities in the EU countries. The number of

⁷ ECCHR, 'Border Justice' (2025) <https://www.ecchr.eu/en/border-justice/> accessed 25 April 2025

⁸ Phillip Connor, 'Number of Refugees to Europe Surges to Record 1.3 Million in 2015' (Pew Research Center, 2016)

⁹ Global Migration Group and Office of the High Commissioner for Human Rights, *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations* (2017) 15

people who have resorted to maritime irregular migration through the Mediterranean from 2014 is higher than 2.6 million.¹⁰

Mixed-migration flows are closely linked to forced migration: typically large-scale population movements marked by involuntariness, often driven by pressures or threats such as armed conflict, repressive political cycles or natural disasters in their countries of origin.¹¹ Although such displaced populations may not always fall into clearly defined legal protection categories under EU law and the complementary domestic protection of EU Member States (MS), they nonetheless have urgent humanitarian needs, and lack information about protection mechanisms.¹²

These individuals are frequently forced to use dangerous modes of transport, including smugglers and other facilitators, which can expose them to exploitation, violence, trafficking, or abuse. Throughout their journey, they often lack access to water, adequate food, or medical care. Many spend long periods in transit countries like Türkiye, Libya or Morocco, often in irregular and precarious conditions, without access to justice and at risk of multiple human rights violation, such as sexual abuse, gender-based violence, arbitrary detention, torture, border closures, denial of asylum rights, arbitrary pushbacks, collective expulsions, violence by state authorities or non-state actors, and degrading, cruel, or inhumane reception conditions.¹³

The Mediterranean Sea is often the final barrier to cross before reaching European soil; yet, it is precisely at this stage that the risk of death becomes most acute. This is largely due to the widespread use of unseaworthy, overcrowded boats lacking basic supplies or life-saving equipment such as life jackets. Many times these embarkations are operated by migrants themselves with little or none seafaring experience, requested to do so in the last moment by the smugglers.¹⁴ These factors exponentially increase the risk of losing course, disappearances and fatal shipwrecks. Besides, in a high number of cases, both in transit countries and the very Mediterranean Coastal Countries, many of these individuals

¹⁰ UNHCR, ‘Operational Data Portal: Europe Sea Arrivals’ (2025)

<https://data.unhcr.org/en/situations/europe-sea-arrivals> accessed 15 June 2025

¹¹ Mixed Migration Centre, ‘MMC’s Understanding and Use of the Terms “Mixed Migration” and “Human Smuggling”’ (Mixed Migration Centre, 2025)

¹² Ibid.

¹³ Global Migration Group and OHCHR (n 9) 6–7

¹⁴ Aegean Boat Report, ‘Sharp increases in arrests of what Greek authorities call “Migrant Smugglers”’ (2024) <https://aegeanboatreport.com/2024/12/17/sharp-increases-in-arrests-of-what-greek-authorities-call-migrant-smugglers/> accessed 27 June 2025

are often denied humanitarian assistance, as service provision is not clearly separated from immigration law enforcement.¹⁵

In the European shore, Greece, Malta and Italy are, together with Spain and Cyprus, among the countries experiencing the Mediterranean mixed-migration flows with most intensity.

1.2.2 The main migration routes in the Mediterranean

Mixed-migration flows have been identified in different areas in the Mediterranean, mostly depending on the country of origin of the migrants, the destination of the flows, the circumstances of departure and the ability to cross the transit countries. For the purpose of this research, they are divided in Eastern, Central and Western Mediterranean.

In the Eastern Mediterranean, the main route since 2015 has been the crossing in the North Aegean Sea, between the Turkish mainland and the Greek islands of Lesbos, Samos, Chios and the other Dodecanese islands. Numbers were very high in 2015 (over 800,000)¹⁶ and 2016 (over 170,000)¹⁷, leading to the creation of multiple refugee camps and hotspots in the islands. Currently, the number of arrivals remains high (12,911 people by mid-2025). So far more than 1,274,892 people have taken this route to Europe since 2015 and at least 3,041 have lost their lives.¹⁸ Despite the danger of the journey and the risks of being detained and deported by Greek authorities, this remains a popular route due to the close geographical proximity of the Greek Aegean islands to Türkiye, allowing sailing times of in some cases less than 2 hours.¹⁹

Because crossings from Syria and Lebanon to Cyprus are sparse²⁰ and there are no SAR INGO present in the region, Cyprus is excluded from this study.

The situation is most extreme in the central Mediterranean, where vast stretches of high seas between Italy, Malta, Tunisia and Libya are crossed daily by people in precarious

¹⁵ Global Migration Group and OHCHR (n 9) 6–7

¹⁶ UNHCR, ‘Over one million sea arrivals reach Europe in 2015’ (2015) <https://www.unhcr.org/news/stories/over-one-million-sea-arrivals-reach-europe-2015> accessed 2 May 2025

¹⁷ UNHCR (n 10)

¹⁸ Ibid.

¹⁹ ABR (n 14)

²⁰ Julia Litzkow, ‘Cyprus’ migration dilemma: hardline measures, regional conflict and rising pressures’ (MMC, 2024).

boats. Unlike the Eastern Mediterranean route, sailing can take up to five days in dramatic weather conditions, without food and drink. Often, migrants have no knowledge of navigation and they do not know how to swim.²¹ In 2023 there were 212,100 reported attempts by migrants to cross the central Mediterranean, of which only 150,300 arrived to Italy and 400 to Malta.²² 1,908 people were reported dead and missing.²³ In 2024 the number of arrivals went down to 66,617 in Italy and 238 in Malta, but the number of victims remained high in 1,172.²⁴ For 2025, the tendency continues low with 23,004 arrivals to Italy and 28 to Malta.²⁵ So far at least 114 people have lost their lives in 2025 in the Central Mediterranean route.²⁶

Finally, the Western Mediterranean context presents smaller flows towards Spain, mostly departing from Algeria and Morocco. The United Nations High Commissioner for Refugees (UNHCR) has reported 6,150 crossing on this route in 2025 so far.²⁷ Although Spanish authorities conduct SAR operations, shipwrecks and tragic events continue to occur.²⁸ Given the absence of SAR INGOs present in the area, Spain is not included in this research either.

1.2.3 Death in the Mediterranean

The Mediterranean Sea has in the 21st century become one of the deadliest migration routes in the world. According to data from the International Organization for Migration (IOM) and the UNHCR, over 2.65 million sea crossings were recorded between 2015 and May 2025, with 28,741 people reported dead or missing, representing a mortality rate of 1.1% across the decade.²⁹ Since records began in 2014, 32,230 people have lost their lives while migrating across the Mediterranean.³⁰

²¹ Charlotte Oberti, 'Mediterranean Sea: Migrant boat departures from eastern Libya on the rise' (InfoMigrants, 2022) <https://www.infomigrants.net/en/post/45041/mediterranean-sea-migrant-boat-departures-from-eastern-libya-on-the-rise> accessed 18 April 2025

²² UNHCR, *Migrant and Refugee Movements through the Central Mediterranean Sea in 2023* (2023) 1

²³ UNHCR (n 10)

²⁴ Ibid.

²⁵ Ibid.

²⁶ IOM (n 1)

²⁷ UNHCR (n 10)

²⁸ Amnesty International, 'Spain/Morocco: a tragedy at the border' (2015) <https://www.amnesty.org/en/latest/campaigns/2015/02/spain-morocco-a-tragedy-at-the-border/> accessed 21 April 2025

²⁹ See Figure 1

³⁰ IOM (n 1)

As shown in Figure 1, in 2015, the number of recorded crossings peaked at over one million (1,032,408), driven by conflict in Syria.³¹ Remarkably, the mortality rate that year was relatively low at 0.4%. However, this trend would not last.

Beginning in 2016, there was a dramatic shift. Although total crossings dropped sharply, to 363,123, the number of deaths rose to 5,136, and the mortality rate tripled to 1.4%. This marked the beginning of a persistent pattern: despite fluctuating numbers of arrivals, the proportion of people dying at sea has remained consistently above 1%, reaching a peak of 2.0% in 2018. Academic studies and INGO reports have linked this increase to a host of factors, notably the criminalisation of SAR operations, which, rather than deterring departures, increased the likelihood of fatalities.³²

The last decade has been punctuated by shipwrecks in the Mediterranean and European shores. One of the most devastating occurred on April 18, 2015, when a fishing boat carrying up to 1,100 people capsized off the Libyan coast. Only 28 survived.³³ On February 26, a wooden boat carrying around 200 people broke apart near *Cutro* (Calabria, Italy), resulting in 94 confirmed deaths, including at least 35 children.³⁴ Just months later, on June 14, the trawler *Adriana*, carrying between 500 and 750 people, sank near Pylos (Greece). Only 104 people were rescued; 82 bodies were recovered, and over 500 people are presumed dead.³⁵ Investigations suggest that the Greek coastguard may have contributed to the capsizing by attempting to tow the vessel, and a judicial inquiry found breaches of maritime regulations.³⁶ Shipwrecks continue to occur regularly in both the Eastern and Central Mediterranean. In April 2025, at least 12 migrants died off the coasts

³¹ UNHCR (n 10)

³² Isabella Lloyd-Damnjanovic, 'Criminalization of Search-and-Rescue Operations in the Mediterranean Has Been Accompanied by Rising Migrant Death Rate' (Migration Information Source, Migration Policy Institute, 2020) 2.

³³ SOS Méditerranée, '10 Years Later: The Mediterranean's Deadliest Shipwreck' (2025) <https://www.sosmediterranee.org/migrants-deadly-shipwreck-mediterranean-2015/> accessed 6 May 2025

³⁴ MSF, 'Cutro shipwreck: joint statement by 10 NGOs to prevent further deaths at sea' (2025) <https://searchandrescue.msf.org/news/cutro-shipwreck-joint-statement-by-10-ngos-to-prevent-further-deaths-at-sea.html> accessed 16 April 2025

³⁵ HRW, 'Greece: 6 Months On, No Justice for Pylos Shipwreck' (2023) <https://www.hrw.org/news/2023/12/14/greece-6-months-no-justice-pylos-shipwreck> accessed 16 April 2025

³⁶ Renée Maltezos, 'Greek inquiry into 2023 migrant shipwreck finds coastguard breached maritime rules' (Reuters, 14 February 2025) <https://www.reuters.com/world/europe/greek-inquiry-into-2023-migrant-shipwreck-finds-coastguard-breached-maritime-2025-02-14/> accessed 16 April 2025

of Lesbos.³⁷ In June 2025, around 60 people went missing after two boats sank off the coast of Libya.³⁸

Major actors such as Human Rights Watch (HRW)³⁹ and Médecins Sans Frontières (MSF),⁴⁰ have repeatedly condemned the ongoing violations of the right to life and the erosion of guarantees for access to protection and asylum, which European states are obligated to uphold under international law. These organizations have documented systematic failures in SAR operations and denounced policies that prioritize deterrence over human safety. Between 2014 and 2020, nearly half of the more than 38,000 global migrant deaths and disappearances occurred in the Mediterranean, with 82% in the Central Mediterranean alone.⁴¹ Despite fewer overall crossings, after 2020 the lethality of the route remained high. While it is challenging to establish direct causality, humanitarian organizations strongly correlate these deaths with EU and State policies restricting INGO rescue operations.⁴² Experts like Eugenio Cusumano have emphasized that, given the rising number of migrant deaths, the Mediterranean has become the scenario of a humanitarian emergency. In this context, the establishment of a coordinated, well-resourced SAR system is a legal and moral imperative to safeguarding human life and dignity.⁴³

³⁷ StoNisi, 'Τους έστειλαν με πλωτό φέρετρο στο θάνατο' (StoNisi, 2025) <https://www.stonisi.gr/post/89953/toys-esteilan-me-plwto-feretro-sto-thanato-video> accessed 16 April 2025

³⁸ Agenzia Nova, 'Migranti: almeno 60 dispersi in due naufragi nel Mediterraneo centrale' (2025) <https://www.agenzianova.com/news/migranti-almeno-60-dispersi-in-due-naufragi-nel-mediterraneo-centrale/> accessed 29 June 2025

³⁹ HRW, *The Mediterranean Migration Crisis: Why People Flee, What the EU Should Do* (2015)

⁴⁰ MSF, *Deadly Manoeuvres: Obstruction and Violence in the Central Mediterranean* (2025)

⁴¹ Lloyd-Damnjanovic (n 32) 2

⁴² Ibid.

⁴³ Eugenio Cusumano, 'The sea as humanitarian space: Non-governmental search and rescue dilemmas on the Central Mediterranean migratory route' (2018) 3 *Mediterranean Politics* 387, 389.

Year	Reported number of sea crossings ⁴⁴	Reported number of dead and disappeared people ⁴⁵	Mortality rate (%)
2015	1.032.408	4.055	0,4
2016	363.123	5.136	1,4
2017	184.000	3.139	1,7
2018	116.644	2.337	2,0
2019	102.431	1.885	1,8
2020	88.149	1.450	1,6
2021	117.496	2.048	1,7
2022	152.540	2.411	1,6
2023	263.048	3.155	1,2
2024	188.988	2.476	1,3
2025 (May)	43.259	649	1,5
Totals	2.652.086	28.741	1,1

Figure 1: Number of dead and missing migrant people in the Mediterranean (2015-2025)⁴⁶

1.2.4 State abdication and the criminalisation of migration and humanitarian assistance in the Mediterranean

Before 2014, EU MS adopted a humanitarian approach to maritime migration, anchored in obligations under international law. Italy's Operation *Mare Nostrum* exemplified this commitment, rescuing over 156,000 people in one year and effectively reducing deaths at sea.⁴⁷ However, this state-led SAR strategy was short-lived.

With the 2015 peak in maritime arrivals, the EU shifted from state responsibility in SAR to a securitized, enforcement-centric border management approach. *Mare Nostrum* was replaced by Frontex's Operation *Triton* and the EU Naval Force's Operation *Sophia*, neither of which had a specific SAR mandate. The limitations of these operations, combined with an emphasis on surveillance and anti-smuggling efforts, drastically curtailed SAR capacity and made sea crossings more perilous. This withdrawal from SAR responsibilities had lethal consequences: by 2019, one in 21 migrants died attempting the

⁴⁴ UNHCR (n 10)

⁴⁵ IOM (n 1)

⁴⁶ Mortality rate = deaths and disappearances ÷ total attempted crossings

⁴⁷ Eugenio Cusumano and James Pattison, 'The non-governmental provision of search and rescue in the Mediterranean and the abdication of state responsibility' (2018) 31 *Cambridge Review of International Affairs* 53, 2

Central Mediterranean crossing, more than double the mortality rate in 2015.⁴⁸ Cusumano and Pattison identified in this period the “state abdication on SAR”.⁴⁹

As EU MS retreated from direct SAR responsibilities, European organisations and INGOs such as MSF, Open Arms, Sea-Watch, Sea-Eye or SOS Humanity stepped in. Many of these organisations were born during this period from civil-society initiatives, then growing to become key humanitarian actors in the Mediterranean. From 2015 to 2016, the number of INGO rescue vessels tripled; by 2017, INGOs were responsible for 38% of all rescues.⁵⁰ Since 2015, non-governmental rescue ships have provided humanitarian emergency assistance in the central Mediterranean. By April 2025, the “civil fleet”, consisting of 15 rescue vessels, 7 sailing ships, and 4 reconnaissance airplanes, had been involved in rescuing 175,595 people.⁵¹

Their growing role in SAR was met not with support but with increasing legal and political hostility. Beginning in 2015, and intensifying thereafter, EU member states began actively criminalizing these humanitarian actors: INGO vessels were seized, and crew members were prosecuted for alleged facilitation of illegal immigration. Between 2017 and mid-2020, at least 17 INGO ships were entangled in legal proceedings and over 40 criminal investigations against the organisations were launched.⁵²

Based on both the actions and public statements of State officials, the State obstruction of SAR operations appears to be driven by two main factors: first, the persistent, though widely debunked, myth that INGO-led SAR efforts act as a pull factor for irregular migration;⁵³ and second, the role of civil society actors in SAR, whose presence at sea enables them to bear witness to and denounce State inaction and violations of international law.⁵⁴ Faced with the inability to substantiate the pull-factor claim, governments have shifted strategies, increasingly resorting to the criminalisation of humanitarian organisations. The dominant political narratives have redefined as criminal

⁴⁸ Lloyd-Damnjanovic (n 32) 3–4

⁴⁹ Cusumano and Pattison (n 47) 71

⁵⁰ Lloyd-Damnjanovic (n 32) 4

⁵¹ Sea-Eye, ‘175,000 Lives Saved – A Decade of Civil Search and Rescue in the Central Mediterranean’ (2025) <https://sea-eye.org/en/175000-lives-saved-a-decade-of-civil-search-and-rescue-in-the-central-mediterranean/> accessed 20 June 2025

⁵² Lloyd-Damnjanovic (n 32) 6–7

⁵³ Neil Graffin, Matt Howard and Joanne Vincett, ‘Criminalisation and Control: Mediterranean Maritime Search and Rescue Workers’ Perceptions of Uses of Law’ (2025) 00 *Refugee Survey Quarterly* 1, 7.

⁵⁴ Eleanor Gordon and Henrik Kjellmo Larsen, “‘Sea of blood’”: the intended and unintended effects of criminalising humanitarian volunteers assisting migrants in distress at sea’ (2020) 46 *Disasters* 3, 17.

acts what were previously cooperative or complementary rescue efforts. These discourses portray rescue crews and individuals piloting migrant vessels not as life-savers, but as smugglers complicit in facilitating irregular migration, thus erasing the humanitarian imperative and legal obligations to prevent deaths at sea.⁵⁵

One often-overlooked fact in media and political discourse is that humanitarian organisations currently account for only 10–20% of rescues.⁵⁶ The vast majority, up to 80%, are carried out by State authorities. Yet coastguard operations receive far less media coverage and face none of the policy restrictions imposed on INGOs. Their vessels routinely disembark at southern ports with hotspot facilities. As SOS Humanity notes, this indicates that States continues to recognise their duty to rescue, as long as they retain control.⁵⁷

The humanitarian impact of this obstruction has been profound. Both activists and scholars have framed it as deliberate state repression;⁵⁸ INGOs and human rights experts have condemned these policies as deadly and ethically untenable. MSF explicitly accused the EU MS of "actively sabotaging attempts to save lives".⁵⁹

In sum, the retreat of EU MS from their SAR obligations, combined with the criminalisation of humanitarian actors, has coincided with, and arguably contributed to, a sharp increase in migrant deaths along the Eastern and Central Mediterranean routes. This pattern reveals not only a moral and legal abdication, but also a broader deterrence strategy that instrumentalises danger, where the cost of migration is increasingly paid in human lives. Greece, Malta, and Italy stand out as critical case studies for this thesis.

⁵⁵ Eleanor Paynter, 'Rescue amid shifting politics in the Central Mediterranean' (Forced Migration Review, 2025) <https://www.fmreview.org/dangerous-journeys/paynter/> accessed 19 June 2025

⁵⁶ There are no SAR INGOs present in the Eastern Mediterranean since 2022

⁵⁷ Paynter (n 55)

⁵⁸ Federico Alagna and Eugenio Cusumano, 'Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean' (2024) 709 *Annals of the American Academy of Political and Social Science* 105, 106

⁵⁹ MSF, *Deadly Manoeuvres* (n 40) 7

1.2 Research questions, methodology and limitations

This thesis analyses the conflict between international and European law, and the obstruction practices of Greece, Malta and Italy as EU Member States, and existing legal responses through the following questions.

1.2.1 Research Questions

1. How do Greek, Maltese, Italian and European authorities obstruct SAR humanitarian operations?
 - Can this obstruction be categorised as State repression?
 - How do Greek, Maltese, Italian and European practices and migration policies interact with international law in regulating SAR operations?
2. How do SAR INGOs and other civil society actors react to State repression and which legal means do they use to challenge it?

1.2.2 Methodology

This research adopts an interdisciplinary approach, combining legal-analytical and empirical social sciences methods. It consists of, first, a doctrinal legal analysis, which examines international treaties, EU law, national laws governing SAR operations, and relevant case law; and empirical research, which involves conducting semi-structured interviews with SAR actors, legal experts, and political analysts to document repression practices and legal responses.

Eight semi-structured interviews with key informants were conducted, offering critical insights into the legal, political, and humanitarian aspects of SAR operations in the Mediterranean. Interviewees included lawyers, legal experts, Advocacy managers and Heads of Mission at SAR INGOs, a professor of political sciences in Italy, and a board member of a SAR INGO. One participant is also a defendant in a criminal case concerning the alleged criminalisation of humanitarian SAR activities in Greece.

All eight interviews with key informants were audio-recorded and transcribed verbatim by the researcher, with participants' prior consent. Consent forms were signed for each

interview, outlining the study aims, voluntary participation, the right to withdraw at any time, and how data, including transcripts, would be used, stored, and anonymised upon request. A copy of the consent form and a sample interview guide are included in the Annex (7.1).

Later, the research draws on the comparative analysis of State repression and legal responses in Greece, Malta, and Italy using data from interviews, reports, news sources, and academic literature. In addition, it involves empirical and doctrinal analysis of litigation efforts, reviewing past and ongoing cases before domestic courts, the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR), the UN Special Rapporteurs (SRs), the Human Rights Committee (HRCtee), and the International Criminal Court (ICC).

1.2.3 Research limitations

This research faced several limitations. First, the researcher does not possess a formal legal background and addressed a broad scope spanning multiple legal systems, jurisdictions, and the high seas. Language barriers complicated access to legal and media sources, while time constraints limited engagement with a fast-evolving legal field and restricted opportunities for interviews, particularly with State actors. Additionally, literature on the topic remains scarce, with no focused studies on legal responses and the most recent update on criminalisation cases by the EU Fundamental Rights Agency (EUFRA) was published only in late June 2025.

2. Legal Framework: the (high) Seas as a Humanitarian Space?

2.1 The Humanitarian Space: definition and evolution

The humanitarian space is a political-legal concept referring to the operational environments where humanitarian action can be delivered without subordination to military, political, or economic agendas.⁶⁴ As Cusumano emphasizes, it encompasses both a physical domain and a symbolic sphere in which humanitarian actors are able to operate in alignment with the core principles of humanity, neutrality, impartiality, and independence. This space is safeguarded by an explicit legal framework, often rooted in international and customary law that enshrines fundamental rights such as the right to life and the prohibition of torture and ill-treatment.

Historically, the humanitarian space has been most clearly defined by International Humanitarian Law, especially the Geneva Conventions.⁶⁶ However, over the past two decades, humanitarian contexts have become more complex, involving newer actors and evolving crises, such as violence outside armed conflict, disasters in fragile settings, and mixed migration flows through high-risk zones.⁶⁷ In many of these cases, legal support for humanitarian action is limited to human rights and refugee law, often dependent on political will.

Maritime SAR, however, offers a rare chance to reclaim humanitarian space. As Cusumano notes, sea rescues can better uphold neutrality, impartiality, and independence, supported by international maritime law, especially UNCLOS Article 98.⁶⁸ Mixed migration flows at sea also engage refugee, EU, and domestic law protections.

However, the particularities of the context convey Itamar Mann to conversely describe the Mediterranean as a space of “de jure rightlessness,” where migrants lack enforceable rights due to the absence of clear duty-bearers. He highlights legal failures in areas like

⁶⁴ Francisco Rey Marcos and Víctor de Currea-Lugo, *El debate humanitario* (Icaria 2002) 25

⁶⁶ Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC 2019) 146

⁶⁷ David P Forsythe, ‘Humanitarian protection: The ICRC and the UNHCR’ (2001) 83 *International Review of the Red Cross* 675, 90.

⁶⁸ Cusumano (n 43) 390

the right to life, refugee law, and maritime law, creating “legal black holes” where obligations and protections break down.⁶⁹

2.2 The Legal Framework in the Mediterranean

The Mediterranean, like any other open sea, presents a complex multi-layered legal framework where different jurisdictions meet over the same mass of water. Eighteen different countries and a number international organizations cohabit on or by its waters. At the same time, it encompasses vast expanses of international waters, or high seas, where international law serves as the sole governing norm, coexisting with extraterritorial jurisdictions exercised by vessels flying a national flag or offshore platforms.

2.2.1 International Law

A) International Maritime Law

The International Maritime Law is the framework of international treaties, agreements, and customary international law governing the open seas and its relation with national seas. Its core lies currently in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which was pre-existed by customary maritime law and the 1958 Geneva Conventions on the Law of the Sea.

The International Maritime Organization (IMO) is a specialized agency of the United Nations, established in 1948⁷⁰ with a mandate to promote safe, secure, and efficient shipping.⁷¹

a) The United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS establishes the grid upon which the different jurisdictions are then placed, defining the existence of territorial waters, contiguous zones, and the high seas.⁷² National and supranational jurisdictions occupy the appropriate spaces of this grid

⁶⁹ Itamar Mann, ‘The Right to Perform Rescue at Sea: Jurisprudence and Drowning’ (2020) 21 *German Law Journal* 598

⁷⁰ International Maritime Organization, *IMO – What it is, What it Does, How it Works* (2013) https://wwwcdn.imo.org/localresources/en/About/Documents/What%20it%20is%20Oct%202013_Web.pdf accessed 9 July 2025

⁷¹ *Ibid.*

⁷² United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS) arts 2-4

following both direct and functional jurisdictions, and applying in them the pertinent elements of domestic and international law. All these jurisdictions interact under different regimes.

Under UNCLOS, a coastal State has full sovereignty over its territorial sea, which extends up to 12 nautical miles from the baseline.⁷³ This sovereignty includes control similar to sovereignty over land. However, foreign vessels are allowed "innocent passage" through these waters, provided their transit is continuous, non-threatening, and complies with coastal State regulations.⁷⁴ The coastal State's authority to intervene in criminal or civil matters aboard transiting foreign vessels is limited, except in specific situations (threats to peace, drug trafficking, etc.)⁷⁵ Pursuant to Article 18, ships may stop or anchor for navigational needs, emergencies, or to assist those in distress.⁷⁶ According to Valentin J. Schatz and Marco Fantinato, this principle is claimed by SAR NGOs as one of the key legal grounds supporting their right to disembark rescued persons in a place of safety.⁷⁷

Beyond the territorial sea lies the contiguous zone, extending up to 24 nautical miles.⁷⁸ While not sovereign, coastal states like Italy and Malta can enforce customs, immigration, fiscal, and health laws here.⁷⁹ As Schatz and Fantinato note, this limited jurisdiction is preventive and punitive, allowing states to address violations affecting their territory.⁸⁴

The high seas lie beyond national jurisdiction, usually past 200 nautical miles⁸⁶ from the baseline.⁸⁷ No State can claim sovereignty.⁸⁸ Activities must be peaceful and follow global rules on issues like piracy and environmental protection.⁸⁹ Vessels in the high seas are subject to the exclusive jurisdiction of their flag state⁹⁵ and flag states only must ensure their ships meet international safety and regulatory standards.⁹⁶ As noted by the

⁷³ 22.2 km

⁷⁴ UNCLOS (n 72) arts 17–19

⁷⁵ UNCLOS (n 72) arts 27–28

⁷⁶ UNCLOS (n 72) art 18

⁷⁷ Valentin J Schatz and Marco Fantinato, 'Post-rescue Innocent Passage by Non-governmental Search and Rescue Vessels in the Mediterranean' (2020) 35 *International Journal of Marine and Coastal Law* 740, 774.

⁷⁸ 44.4 km

⁷⁹ UNCLOS (n 72) art 33

⁸⁴ Schatz and Fantinato (n 77) 773

⁸⁶ 370.4 km

⁸⁷ UNCLOS (n 72) art 86

⁸⁸ UNCLOS (n 72) art 87

⁸⁹ UNCLOS (n 72) art 88

⁹⁵ UNCLOS (n 72) art 92

⁹⁶ UNCLOS (n 72) art 94

legal experts consulted, this plays a key role in the legal challenges against detentions on technical grounds in Italian ports.⁹⁷

Given the lack of clear state responsibility on the high seas, analysing refugee and human rights obligations in international waters requires the establishment of functional jurisdictions. Violeta Moreno-Lax proposes a rethinking of jurisdiction under the European Convention on Human Rights (ECHR), adapting it to contexts of extraterritorial migration control. Central to her argument is the shift from territorial control or physical presence to “contactless situational control”,⁹⁸ the capacity to shape outcomes through the exercise of public authority.⁹⁹

Contactless control refers to the indirect yet decisive exercise of state authority through intermediaries or technology, without territorial or personal presence.¹⁰⁰ She emphasizes how this allows states to externalize migration control while evading accountability, like Italy’s training and equipping of the LCG, its management of SRR, and orchestration of interceptions together.¹⁰¹

Under Article 98, UNCLOS outlines essential SAR obligations for both flag and coastal states, aimed at ensuring effective assistance to any persons in distress at sea. Shipmasters are required to render assistance to anyone found at sea in danger.¹⁰² They must also respond with all possible speed to reports of distress, insofar as is reasonably practicable.¹⁰³

In addition to obligations on shipmasters and flag states, Article 98(2) imposes a complementary duty on coastal states to promote the establishment, operation, and maintenance of an adequate and effective search and rescue service. Where appropriate, they are also encouraged to cooperate with neighbouring states to ensure coordinated

⁹⁷ Ulrich Stege (Lawyer, ASGI; Professor, University College of Turin; Legal Advisor, Sea-Eye), personal interview, 19 June 2025

⁹⁸ Violeta Moreno-Lax, “The Architecture of Functional Jurisdiction: Unpacking Contactless Control—On Public Powers, *S.S. and Others v. Italy*, and the “Operational Model”” (2020) 21 German Law Journal 385, 390.

⁹⁹ Moreno-Lax (n 98) 392

¹⁰⁰ Moreno-Lax (n 98) 394

¹⁰¹ Moreno-Lax (n 98) 401–02

¹⁰² UNCLOS (n 72) art 98(1)(a)

¹⁰³ UNCLOS (n 72) art 98(1)(b)

SAR capabilities.¹⁰⁷ This provision underpins the formation of regional SAR zones, also known as SRRs.

UNCLOS also addresses port entry and departure. Article 17 permits vessels to leave internal waters, and Article 18(1) (b) includes such movements within innocent passage. Article 21(1) allows coastal states to adopt laws for navigational safety and to enforce customs, immigration, and health regulations in internal waters.¹⁰⁸

However, the duty to allow disembarkation of rescued persons, especially from foreign-flagged SAR vessels, remains unclear. While UNCLOS and the SAR Convention require disembarkation, they do not specify where it must occur. This ambiguity has led states like Italy to deny port entry and propose returns to North Africa, raising concerns under international law, particularly regarding non-refoulement and collective expulsion.¹⁰⁹

b) The International Convention for the Safety of Life at Sea (SOLAS)

The 1974 International Convention for the Safety of Life at Sea (SOLAS) sets minimum safety standards for the construction, equipment, and operation of ships to ensure the safety of ships and the people on board, particularly in the high seas.

In a similar way to UNCLOS, it establishes State¹¹⁰ and shipmaster obligations¹¹¹ related to the SAR of individuals in distress in Chapter V (Safety of Navigation). Additionally, after its 2004 amendment, it also includes provisions regarding the coordination of rescue operations and clarifies that rescued persons must be delivered to a Place of Safety (POS) promptly, whilst limiting the assisting master's delay.¹¹²

c) The International Convention on Maritime Search and Rescue (SAR)

The 1979 International Convention on Maritime Search and Rescue (SAR Convention) establishes similar State obligations to ensure the coordination and provision of SAR services at sea. Its core provision is the duty to render assistance to any person in distress

¹⁰⁷ UNCLOS (n 72) art 98(2)

¹⁰⁸ UNCLOS (n 72) arts 17, 18 and 21

¹⁰⁹ Schatz and Fantinato (n 77) 773

¹¹⁰ International Convention for the Safety of Life at Sea (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 278, ch V reg 15

¹¹¹ SOLAS (110) ch V, reg 10

¹¹² International Maritime Organization, Resolution MSC.153(78) (adopted 20 May 2004) 'Amendments to the International Convention for the Safety of Life at Sea, 1974, as amended' reg 33 para 1-1

at sea “regardless of the nationality or status of such a person or the circumstances in which that person is found”.¹¹³

The Convention requires States to establish rescue coordination centres (RCCs) and sub-centres¹¹⁴ and to organize their search and rescue regions (SRRs) through mutual agreement.¹¹⁵ When distress is reported, States must take immediate and appropriate steps to coordinate the response.¹¹⁶ Furthermore, the Convention encourages interstate cooperation, allowing rescue units from other countries to enter territorial waters for the purpose of life-saving operations.¹¹⁷

Importantly, the SAR Convention expanded its scope in 2004 similarly to the amendment to SOLAS, mandating that the State responsible for the relevant SRR must “exercise primary responsibility” to ensure survivors are “disembarked from the assisting ship and delivered to a place of safety (POS)”. It also broadened the definition of “rescue”¹¹⁹ to include “retrieval, initial medical treatment, and safe delivery” heightening emphasis on humanitarian duty. According to Anuscheh Farahat and Nora Markard, a ship cannot be considered a POS under the Convention simply because people are no longer at immediate risk, as it lacks adequate facilities for prolonged stays.¹²⁰

d) The IMO Guidelines on the Treatment of Persons Rescued at Sea

The 2004 IMO Guidelines on the Treatment of Persons Rescued at Sea are non-binding guidelines adopted to serve as a supplement to existing binding international instruments, “providing guidance to Government and shipmasters on their humanitarian and international law obligations”,¹²² however regarded as critical in aspects as clarifying the nature of POS.

¹¹³ International Convention on Maritime Search and Rescue (adopted 27 April 1979, entered into force 22 June 1985) 1405 UNTS 97 (SAR Convention) ch 2 para 2.1.10

¹¹⁴ SAR Convention (n 113) ch 2 paras 2.3.1–2.3.3

¹¹⁵ SAR Convention (n 113) ch 2 paras 2.1.4–2.1.7

¹¹⁶ SAR Convention (n 113) ch 5 paras 5.1.1–5.3.3

¹¹⁷ SAR Convention (n 113) ch 3 paras 3.1.2–3.1.6

¹¹⁹ International Maritime Organization, *Resolution MSC.155(78): Adoption of Amendments to the International Convention on Maritime Search and Rescue, 1979, as Amended* (20 May 2004) 3–4

¹²⁰ Anuscheh Farahat and Nora Markard, *Places of Safety in the Mediterranean: The EU’s Policy of Outsourcing Responsibility* (2020) 16

¹²² International Maritime Organization, *Resolution MSC.167(78): Guidelines on the Treatment of Persons Rescued at Sea* (adopted 20 May 2004) annex 1, 3

According to the Guidelines, rescued persons must be afforded respect for their human rights without discrimination, receive necessary medical care and basic needs such as food, water, and shelter, and be protected from harm or undue restraint¹²³. The Guidelines emphasize the obligation of states and shipmasters to facilitate the prompt disembarkation of survivors to POS, specifying this is the only location where rescue operations are considered to terminate. Recalling the SAR Convention, a POS is “a place where the survivors’ safety is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met”. Moreover, it is also a point from which survivors can be facilitated in continuing their journey to their next or final destination.¹²⁴ The Appendix to the guidelines recalls the prohibition of refoulement, asserting disembarkation must be avoided in places where the lives of refugees and asylum seekers could be at risk of persecution, torture or other serious harm.¹²⁵

Farahat and Markard stress how, virtue to this in conjunction with EU law, EU states and MRCCs (Maritime Rescue Coordination Centres) cannot lawfully instruct rescue ships, state or private, to disembark people in unsafe locations with present risks of torture, persecution, or chain refoulement.¹²⁶

B) International Refugee Law

Although the 1951 Refugee Convention and its 1967 Protocol do not explicitly regulate the rights of asylum seekers encountered on the high seas, prevailing scholarly and legal opinion maintains that the international maritime SAR regime must be interpreted and applied in a manner consistent with international refugee and human rights law.¹²⁷ This interpretative approach, supported by scholars like Killian S. O’Brien and Spiridoula Katsoni, is particularly vital in light of the increasingly mixed and complex nature of contemporary migration flows, which often involve individuals seeking international protection alongside other migrants.

It argues that the Refugee Convention, particularly Article 33(1) (non-refoulement) holds extraterritorial application on the high seas when a state exercises jurisdiction over

¹²³ Resolution MSC.167(78) (n 122) annex, para 5, 5

¹²⁴ Resolution MSC.167(78) (n 122) annex, para 6, 8

¹²⁵ Resolution MSC.167(78) (n 122) annex, para 6, 9

¹²⁶ Farahat and Markard (n 120) 16

¹²⁷ UNHCR, *Legal Considerations on the Roles and Responsibilities of States in Relation to Rescue at Sea, Non-Refoulement and Access to Asylum* (2022) 1

individuals, noting that physical control over individuals, such as during rescue or interdiction, triggers state obligations.¹²⁸ According to Katsoni, non-refoulement constitutes a hybrid State obligation, incorporating positive obligations, such as actively preventing refoulement and ensuring access to procedures with effective SAR.¹²⁹

This way, rescued individuals in the Mediterranean with a potential refugee claim are protected by the three cardinal principles of refugee law: non-discrimination, non-penalization and non-refoulement. Firstly, access to this protection needs to apply in equal terms regardless of race, religion, or country of origin.¹³⁰ Second, States are prohibited from penalizing asylum-seekers and refugees merely because they have entered a country irregularly (as it is the case of the Mediterranean routes).¹³¹ Following rescue, disembarkation arrangements must not result in direct or indirect refoulement, nor hinder access to international protection for those in need, and the transfer of individuals to places where they face persecution, serious harm, or onward removal to such risks is prohibited.

Non-refoulement applies even if individuals have not explicitly requested asylum, and states must conduct an independent assessment of potential protection needs before taking any measures that could place them at risk.¹³² However, the principle of non-refoulement often comes into tension with security regulations and the sovereign right of States to control their borders in the face of threats such as terrorism or public health crises. In response, the UNHCR and scholars like Seline Trevisanut contend that non-refoulement constitutes now *jus cogens*, a non-derogable norm whose peremptory status should prevail over conflicting legal obligations.¹³³

The UNHCR emphasizes that disembarkation arrangements must not hinder rescued individuals from seeking asylum or leaving a country, especially when fleeing conflict or persecution. When rescued persons are transferred between states, the process must

¹²⁸ Killian S O'Brien, 'Refugees on the High Seas: International Refugee Law Solutions to a Law of the Sea Problem' (2011) 3 Goettingen Journal of International Law 715, 727–28

¹²⁹ Spyridoula Katsoni, 'Is the Obligation Not to Refoule a Positive Obligation? An Intermediate Approach Toward the Classification Dilemma' (2025) 25 Human Rights Law Review 1, 5

¹³⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 3; and Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

¹³¹ C. Refugees (n 130) art 31

¹³² C. Refugees (n 130) art 33

¹³³ Seline Trevisanut, 'The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection' (2008) 12 Max Planck Yearbook of United Nations Law 205, 215

ensure their right to claim asylum, access fair procedures, be treated according to international refugee and human rights law (including protection from arbitrary detention), and receive protection if found in need.¹³⁴

The responsibility of protecting against refoulement is therefore directly applicable to the Flag States of State (or ‘public’) vessels, and Coastal States, including States that have responsibility for the relevant SRR or who are otherwise coordinating, participating or exercising effective control in a rescue response.

C) International Human Rights Law

The work of SAR INGOs at sea is firmly underpinned by key principles of international human rights law and the State obligations emerging from them; all SAR actors highlighted during the interviews how human rights serve as a normative roadmap to their action.

Foremost among these is the right to life, enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which imposes positive obligations on states to protect life,¹³⁵ like ensuring prompt rescue and disembarkation of persons in distress at sea. The prohibition of torture and inhuman or degrading treatment or punishment is imposed by customary international law and reaffirmed in numerous treaties to which European States are party, such as Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹³⁶ Articles 6, 7 and 9 of the ICCPR. The principle of non-refoulement is also codified in Article 3 of the Convention against Torture (CAT)¹³⁷ and implicit in Article 7 of the ICCPR.¹³⁸

The right to freedom of association (Article 22, ICCPR), expression (Article 19), and movement (Article 12) further protects the ability of INGOs to organize and operate SAR missions without arbitrary restrictions.¹³⁹ In fact, this is used by scholars like Mann shift

¹³⁴ UNHCR (n 127) 3

¹³⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6

¹³⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 3

¹³⁷ *Ibid.*

¹³⁸ ICCPR (n 135) art 7

¹³⁹ ICCPR (n 135) arts 12, 19 and 22

the founding provisions of civil SAR operations to the civil and political rights of volunteer rescuers. He argues that while migrants may be rightless, rescuers are rights-bearing agents whose freedoms of expression, assembly, and movement are often infringed by state efforts to criminalize their activities.¹⁴⁰ Drawing on Hannah Arendt's theory of civil disobedience, Mann proposes that these rescue actions constitute a form of "maritime civil disobedience." By invoking their own rights, rescuers can catalyse the creation of enforceable legal relationships that reattach rights to the rightless.¹⁴¹ In his opinion, that is the only way of bridging the juridical gap left by State abdication in the Mediterranean.¹⁴²

Customary and soft law are present in the legal analysis of the Mediterranean as a humanitarian space: Article 14 of the Universal Declaration of Human Rights enshrines the right to access asylum, key in determining the end of the SAR operation in a POS.¹⁴³ Moreover, the UN Declaration on Human Rights Defenders recognizes the right of individuals and groups like SAR INGOs to promote and protect human rights at national and international levels. It affirms the legitimacy of civil society actors and calls on states to ensure their protection from obstruction, threats, or retaliation.¹⁴⁴

Parallely, there are also provisions within the UN treaty core system requiring contracting states to adopt legislation to establish criminal offences of people trafficking and people smuggling for financial or material benefit, such as Articles 5 and 6 of the Palermo Protocols to the UN Convention against Transnational Organized Crime,¹⁴⁵ but UN Human Rights Committee (HRCtee) has affirmed that any international law regarding human trafficking and smuggling must be read alongside the relevant law on search and rescue.¹⁴⁶ Similarly, the European Union Agency for Fundamental Rights (EUFRA) has emphasized that efforts to combat migrant smuggling must not lead to the punishment of

¹⁴⁰ Mann (n 69) 611

¹⁴¹ Mann (n 69) 616

¹⁴² Mann (n 69) 617

¹⁴³ United Nations General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III), art 14

¹⁴⁴ UNGA, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (adopted 9 December 1998) UNGA Res 53/144, arts 1, 5, 8(2), 9(4)

¹⁴⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507 (Palermo Protocol) arts 5 and 6

¹⁴⁶ UN Human Rights Council, *Human Rights and International Solidarity: Report of the Independent Expert on Human Rights and International Solidarity to the Human Rights Council* (2019) UN Doc A/HRC/41/44, para 27

individuals, including INGO workers, who provide humanitarian aid, particularly in the context of life-saving SAR operations.¹⁴⁷

2.2.2 European Law

A) *EU Law*

The dominant view on the application of EU law to SAR and disembarkation holds that it applies only when these activities are carried out during Frontex-led operations, not when EU MS act independently. Under this interpretation, the EU Sea Borders Regulation obliges rescue and safe disembarkation in line with fundamental rights and non-refoulement.¹⁴⁸ Yet, within this framework, Farahat and Markard argue consistently that that under EU law, countries like Libya, Tunisia, and Egypt cannot be considered Places of Safety (POS) due to systemic rights violations and lack of asylum systems.¹⁴⁹

A minority view, supported by a 2022 European Parliament report, contends that EU law, including the EU Charter of Fundamental Rights, applies whenever a Member State acts within its scope, such as during border patrols under the Schengen Code, even outside Frontex missions. This would activate Charter rights like the right to life (Art. 2),¹⁵⁰ the ban on inhuman treatment (Art. 4), and the prohibition of refoulement (Art. 19). It also strengthens protections for SAR INGOs, whose work supports these rights.¹⁵¹ Further, freedom of association (Art. 12) legitimizes SAR INGO activity, and any state interference must meet strict legal standards. Rights to asylum (Art. 18) and non-discrimination (Art. 21) also reinforce the need for fair disembarkation and access to asylum.¹⁵²

However, The European Commission adopts an intermediary position and in its Recommendation on cooperation among Member States concerning SAR operations carried out by private vessels, encourages Member States to ensure rapid disembarkation

¹⁴⁷ European Union Agency for Fundamental Rights, *Search and Rescue (SAR) Operations and Fundamental Rights – June 2025 Update* (2025) 5

¹⁴⁸ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union [2014] OJ L189/93, arts 4(2), 9 and 10

¹⁴⁹ Farahat and Markard (n 120) 18–30

¹⁵⁰ Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 2

¹⁵¹ CFREU (n 150) arts 4 and 19

¹⁵² CFREU (n 150) arts 12, 18 and 21

of rescued people at a place of safety, where their fundamental rights are guaranteed, in conformity with the EU Charter and the principle of non-refoulement.¹⁵³

The Recommendation urges MS to ensure safe, rights-respecting disembarkation. If rescue occurs in a MS' waters, disembarkation should happen there; if on the high seas, a third country may be considered, only if it is safe. If not, the coastal Member State must allow disembarkation.¹⁵⁴

Finally, Council Directive 2002/90/EC defines and criminalizes the facilitation of unauthorised entry, transit, and residence in the EU, requiring MS to impose penalties. It includes only a limited, optional humanitarian exception for aiding entry or transit, not residence, and lacks a clear definition, offering weak protection for humanitarian actors.¹⁵⁵

The European Commission's 2020 guidance stresses that legally mandated acts, like maritime rescues,¹⁵⁶ must not be criminalized,¹⁵⁷ warning that prosecuting INGOs or volunteers undermines human rights and EU obligations.¹⁵⁸

B) Council of Europe Law

Similarly to the EU Charter, the European Convention on Human Rights (ECHR) protects the right to life under Article 2. Moreover, the jurisprudence of the European Court of Human Rights (ECtHR) has clarified that maritime pushbacks, delays, or failures to respond to distress at sea may constitute a breach of this article if life is endangered as a result.¹⁵⁹ However, as will be discussed later, a central challenge to applying the ECHR at sea lies in establishing jurisdiction under the Convention on the high seas. Determining when a State exercises effective control, triggering its human rights obligations, remains

¹⁵³ Commission Recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities [2020] OJ L317/9

¹⁵⁴ Commission Recommendation (EU) 2020/1365 (n 156) para 5

¹⁵⁵ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [2002] OJ L328/17, arts 1–2

¹⁵⁶ Commission Recommendation (EU) 2020/1365 (n 153) para 9

¹⁵⁷ Commission Recommendation (EU) 2020/1365 (n 153) para 5

¹⁵⁸ Commission Recommendation (EU) 2020/1365 (n 153) para 6

¹⁵⁹ ECHR-KS, “Summary returns of migrants and/or asylum-seekers (‘push-backs’) and related case scenarios” (Last updated 28 February 2025) 3

a contested and complex issue in extraterritorial maritime contexts, as seen recently in *S.S. and Others v. Italy*.¹⁶⁰

Article 3, prohibiting torture and inhuman or degrading treatment, becomes salient in contexts where state actions, including the return or non-assistance of persons at sea,¹⁶¹ lead to foreseeable exposure to ill-treatment, such as refoulement to unsafe countries like Libya or Türkiye. The Court has held that the indirect responsibility of European states may arise where their actions contribute to such outcomes.¹⁶²

Equally relevant is Article 11, the right to freedom of assembly and association,¹⁶³ which may encompass the freedom of INGOs to organize, operate, and mobilize resources to carry out humanitarian missions, including maritime rescue. From a rights-based interpretation, this would imply that the impounding of vessels, the initiation of legal proceedings, or the imposition of disproportionate administrative requirements could amount to unjustifiable interference under this provision, unless they meet the criteria of legality, necessity, and proportionality in a democratic society.

Also pertinent are Article 10, freedom of expression,¹⁶⁴ especially where INGOs disseminate information about SAR activities or human rights violations at sea, Article 13, the right to an effective remedy,¹⁶⁵ and Article 14, the prohibition of discrimination,¹⁶⁶ reinforcing the obligation of states to ensure that affected persons and assisting entities can challenge violations in accessible and non-discriminatory legal forums.

2.2.3 Domestic law

Most European countries did not have any specific legal framework regulating non-state SAR operations prior to the escalation of the Mediterranean refugee crisis in the late 2010s. The emergence of large-scale maritime migration exposed the regulatory vacuum and prompted varied responses across the region. Particularly notable is the case of Italy,

¹⁶⁰ *S.S. and Others v Italy* (dec.) (ECtHR, 2 February 2023) App No 002-14474

¹⁶¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, opened for signature 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR) art 3

¹⁶² ECHR-KS (n 159) 6

¹⁶³ ECHR (n 161) art 11

¹⁶⁴ ECHR (n 161) art 10

¹⁶⁵ ECHR (n 161) art 13

¹⁶⁶ ECHR (n 161) art 14

which from 2017 onward enacted repressive legislation aimed at constraining the activities of SAR INGOs. Greece has also implemented restrictive measures.

A) Greece

Greece regulates SAR domestically through *Law 1844/1989*, which incorporates the SAR Convention and designates the Joint Rescue Coordination Centre in Piraeus as the national SAR authority for the Greek SRR.¹⁶⁷ *Laws 1753/1919*¹⁶⁸ and *3922/2011*¹⁶⁹ define the Coast Guard's responsibilities. Prior to 2021, there was no national legislation relating to the role of SAR humanitarian INGOs.

International law applies directly in the Greek legal system with a monist approach, as established by the Constitution of Greece. Article 28, paragraph 1, provides that the generally accepted rules of international law, as well as international conventions once ratified by law, become an integral part of domestic law and prevail over any contrary provision of domestic legislation, excluding the Constitution.¹⁷⁰ Consequently, international norms hold a supra-legislative status, meaning they override conflicting national laws, although they remain hierarchically below constitutional provisions. Greece is party to all the international conventions previously analysed.

B) Malta

In Malta, Articles 305–306 of the 1973 Merchant Shipping Act specifically implement SAR obligations under UNCLOS, SOLAS, and the IMO SAR Convention by establishing Malta's SAR Region and its legal duties to coordinate rescues. The Marine Safety Investigation Unit (MSIU) is responsible for investigating maritime accident.¹⁷⁴ To date, there is no legislation relating to the role of SAR INGOs.

The application of international law within the domestic legal system follows a dualist approach in its Constitution, meaning that international law does not automatically

¹⁶⁷ Law 1844/1989 (Greece) *Promulgating the International Convention on Maritime Search and Rescue (Hamburg, 1979)* (A' 100/1989) art 2

¹⁶⁸ Law 1753/1919 (Greece) on the Sanctioning of the International Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea (A' 208/1919)

¹⁶⁹ Law 3922/2011 (Greece) on Technical Harmonisation with EU Aviation Legislation and Other Provisions (A' 35/2011)

¹⁷⁰ Constitution of Greece (as amended in 2019) art 28(1)

¹⁷⁴ Merchant Shipping Act (Malta, Chapter 234 of the Laws of Malta, 1973) arts 305–306

become part of Maltese law unless it is explicitly incorporated through domestic legislation. The Constitution of Malta does not contain a general clause on the direct applicability of international law. Instead, treaties and other international obligations require enabling legislation by Parliament to have legal effect domestically.¹⁷⁵ While Malta is bound by international law on the international plane, such obligations are not directly enforceable in Maltese courts unless they have been transformed into national law.

Furthermore, although Malta is party to UNCLOS, SOLAS and the SAR Convention, it remains the only Mediterranean EU MS that has not ratified neither of the 2004 SAR amendments clarifying the states' duty to cooperate for timely disembarkation and defining the POS.¹⁷⁶

C) Italy

The *Regolamento di attuazione della legge 3 aprile 1989, n. 147* implements Italy's adherence to the 1979 Convention on Maritime SAR. This regulation establishes the national framework for coordinating SAR operations under international obligations. It designates the *Corpo delle Capitanerie di Porto* as the responsible authority, organizes the Italian Search and Rescue Region (SRR), and outlines procedures for maritime emergency response, cooperation with other states, and operational command.¹⁷⁸ Before 2017, no national legislation addressed the role of SAR humanitarian INGOs.

According to the Italian Constitution, international law applies directly within the domestic legal system. Article 10 affirms that the Italian legal order conforms to the generally recognized principles of international law, thereby granting automatic incorporation to customary international norms without the need for implementing legislation.¹⁷⁹ Additionally, Article 117 requires that both state and regional legislation comply with international obligations, including those arising from treaties and European Union law.¹⁸⁰ Once ratified, international treaties become an integral part of the Italian

¹⁷⁵ Constitution of Malta (1964, as amended) art 65(1)–(2)

¹⁷⁶ EUFRA (n 147) 5

¹⁷⁸ Implementing Regulation of Law No 147 of 3 April 1989 (Italy), Presidential Decree No 662 of 28 September 1994

¹⁷⁹ Constitution of Italy (as amended in 2022) art 10

¹⁸⁰ Constitution of Italy (n 179) art 117

legal system, holding a status superior to ordinary laws but subordinate to constitutional norms. Italy is party to all the international conventions mentioned above.

2.3 State Implementation of the Legal Framework

International law imposes clear obligations for maritime SAR, rooted in long-standing maritime tradition and reliant on global cooperation. Although States hold the primary responsibility, individual obligations are also recognised for shipmasters. The most relevant is the duty to assist anyone in distress at sea, regardless of nationality or status, whenever it is safe to do so, and treat all rescued individuals humanely.

Flag States are required to enforce this duty among vessels flying their flags, as well as to monitor technical compliance with international frameworks. Coastal States must maintain effective SAR services and, where needed, cooperate regionally. Upon receiving distress alerts, authorities must act swiftly to ensure assistance is provided. States responsible for specific SRRs must coordinate responses, using available resources, but are not obligated to use their own assets in every case. They must establish Rescue Coordination Centres (RCCs), manage communications, and facilitate prompt, coordinated SAR operations.¹⁸¹

In the Mediterranean, as of mid-2025, the SRRs established under the SAR Convention and recognised by IMO are the Spain, France, Italy, Malta, Greece, Cyprus, Turkey, Israel, Egypt, Libya, and Tunisia. Each state operates a Maritime Rescue Coordination Centre (MRCC), tasked with organizing and coordinating search and rescue operations within its designated SRR.¹⁸²

As depicted in the Figure 2, Italy is responsible for a Central Mediterranean SRR, while Malta administers an SRR that overlaps partially with Italy's and Libya's maritime zones. Greece maintains jurisdiction over a large eastern Mediterranean SRR, including both the Ionian and Aegean Seas. Libya established its SRR in 2018, assuming responsibilities that were previously covered in part by Italy. Despite ongoing operational challenges, the Libyan SRR has since been acknowledged by the IMO. Tunisia operates a provisional

¹⁸¹ UNHCR (n 127) 2–4

¹⁸² Schatz and MF (n 77) 744

SRR in the West-Central Mediterranean since 2024. Although not fully delineated, Tunisia’s zone is actively managed and recognized.

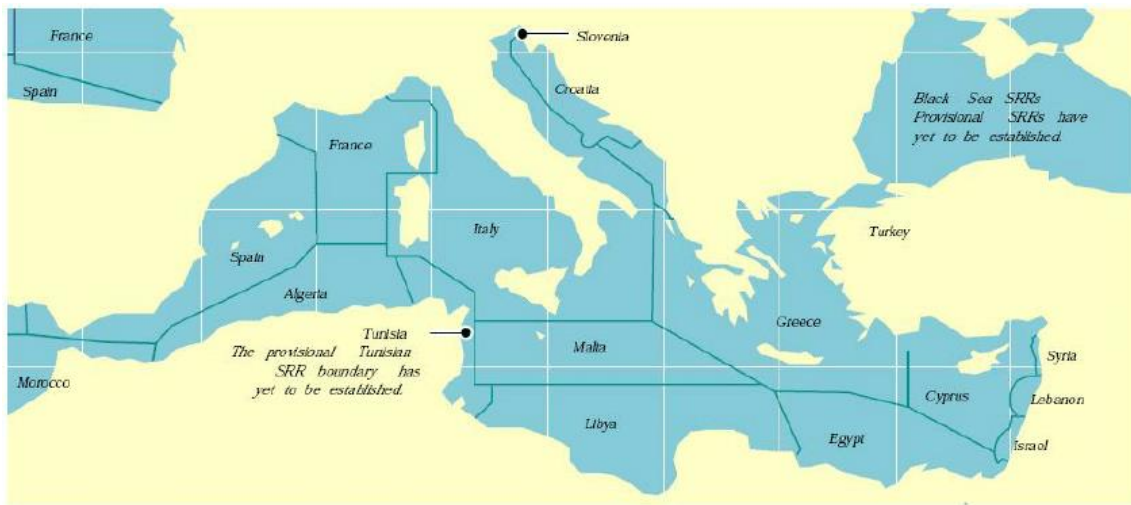


Figure 2: Mediterranean SRRs.¹⁸³

The IMO and the UNHCR have consistently advocated for a humanitarian and precautionary approach to the identification and response to potential distress situations at sea, aligning with the prevailing understanding and practices of numerous maritime actors. This approach entails a broad interpretation of the concept of “distress,” particularly in cases where vessels carrying asylum seekers and migrants are unseaworthy, lack crew, are inadequately equipped, or are dangerously overcrowded.¹⁸⁴ The UNHCR has also emphasized the importance of inter-state cooperation in coordinating search and rescue SAR operations, especially in areas of overlapping responsibility or when a POS can be identified within a state’s territory, even if the rescue occurred outside its official SAR region.¹⁸⁵

However, since 2015, the Mediterranean has witnessed a continuous deterioration in both SAR efforts and interstate cooperation. Political agendas centred on securitization and the externalization of border controls have led European countries to increasingly rely on North African states, where the conditions necessary to ensure a genuine place of safety

¹⁸³ Tanja Aalberts, ‘Sovereignty at Sea: The Law and Politics of Saving Lives at the *Mare Liberum*’ (2014) 20 *Journal of International Relations and Development* 1

¹⁸⁴ UNHCR (n 127) 1

¹⁸⁵ UNHCR (n 127) 3

for disembarkation are lacking. Moreover, states have implemented a range of measures aimed at obstructing the presence and humanitarian SAR activities of civil society actors.

3. State repression of civilian SAR in the Mediterranean

The legal framework governing the Mediterranean offers compelling grounds for interpreting the region as a humanitarian space, one that not only imposes clear rescue obligations on states but also supports and safeguards the life-saving work of civil society organizations. Normatively, it reflects a commitment to fundamental rights and the protection of human life at sea. However, as all SAR actors interviewed stressed, this humanitarian space is deeply contested in practice,¹⁸⁶ undermining legal principles and raising serious concerns about the erosion of international obligations.

The legal norms derived from international maritime law, European law, human rights law, and refugee law have, over the past decade, been increasingly challenged by European state authorities with obstruction, criminalization, and selective enforcement, often in cooperation with North African countries such as Libya and Tunisia. Administrative practices, legislative measures, and judicial actions within Europe have progressively obstructed the operations of these INGOs. The following analysis seeks to clarify the nature of these measures and their practical and legal implications.

The research on this part draws on the initial analysis of Neil Graffin, Matt Howard and Joanne Vincett, made through interviews with humanitarian workers and activists in the SAR field in both Eastern and Central Mediterranean.¹⁸⁷ This initial research helped identifying State practice. It was completed with the identification of cases through media and the EUFRA 2025 report.¹⁸⁸ Later, the information gathered in the interviews with experts and relevant informants in the SAR field helped revise cases and identify trends.

¹⁸⁶ Juan Matías Gil (Search and Rescue Representative and Head of Mission at Médecins Sans Frontières), personal interview, 24 May 2025; Mirka Schäfer (Head of Advocacy and Mobilisation at SOS Humanity), personal interview, 2 June 2025; INGO Board Member (Board Member of a SAR INGO), personal interview, 6 June 2025

¹⁸⁷ Graffin, Howard and Vincett (53)

¹⁸⁸ EUFRA (n 147)

3.1 State repression against SAR INGOs: conceptualisation

Graffin et al research points out the “pull factor” as the main argument used to criminalise and control SAR operations. Furthermore, Gordon and Larsen SAR concluded that activists feel being controlled and criminalised because they bear witness and report on what is happening in the Mediterranean and interfere in “pushbacks”.¹⁹³ Being present to interfere with pushbacks when rescuing people, challenging the narrative on migration, and reporting on the many deaths and human rights violations taking place in the Mediterranean is key to understanding why SAR activists and organisations are obstructed and criminalised. European states wish to control their borders and control the narrative, and that takes precedence over saving lives.¹⁹⁴

Gordon and Larsen also argue that the repression and criminalisation of SAR workers by European states is a deliberate and multi-faceted strategy rooted in political, symbolic, and strategic considerations.¹⁹⁶ Additionally, criminalisation serves a performative function, enabling states like Greece to reassert sovereignty and demonstrate control both domestically and to the European Union, particularly in the wake of crises that exposed state unpreparedness.¹⁹⁷ The use of legal mechanisms against volunteers is also politically motivated, intended to intimidate, disrupt humanitarian action, and suppress grassroots solidarity through arrests and regulations, even when prosecutions lack substantive legal basis.¹⁹⁸ This strategy further contributes to the securitisation of migration by recasting both migrants and those who assist them as security threats, thus eroding public empathy and legitimising increasingly punitive border practices.¹⁹⁹ Finally, by targeting non-state actors who fill the void left by retreating state SAR efforts, governments effectively shift responsibility while maintaining an appearance of legal and border control.²⁰⁰

As mentioned in the introduction, the shared state rationale behind the repression of SAR INGOs goes back to the interplay of securitisation and anti-migration agendas, political narratives and domestic legal frameworks. According to Alagna, the different forms of limitation and obstruction of SAR efforts are state repression because of the proved

¹⁹³ Gordon and Larsen (n 54) 14

¹⁹⁴ Ibid.

¹⁹⁶ Ibid. 6–7

¹⁹⁷ Ibid. 10–11

¹⁹⁸ Ibid. 14

¹⁹⁹ Ibid. 17–18

²⁰⁰ Ibid. 6

punitive and dissuasive nature of the measures taken by State authorities, in particular the Italian government.²⁰¹

The repression, exercised through State officials practice, policy and legislation, has evolved significantly over time, reflecting broader political dynamics and shifting state interests. Participants in the study of Graffin et al described working within fluctuating conditions that often hinged on the state of their relationships with local authorities, relationships shaped by the broader political climate, particularly the rise of anti-migrant sentiment and increasing efforts by states to exert control over SAR activities.²⁰² They point to the inherently porous nature of legal frameworks governing SAR, noting that in the absence of stronger and more consistent provisions in international law, such state opportunism and discretionary enforcement are likely to persist.²⁰³

3.2 Evolution and varieties of repression

State strategies have evolved over time, following a geographically and temporally differentiated trajectory. Before, between 2014 and 2016, both the Eastern and Central Mediterranean regions were characterized by a period of relative cooperation between states and civilian actors, exemplified by Italy's *Mare Nostrum* operation and collaborative efforts on the island of Lesbos.

Following the increase in maritime crossings in 2015 and 2016, and the concurrent political shift within European countries toward more securitized and restrictive border policies, the governments of Greece, Malta, and Italy have progressively implemented a series of evolving repressive measures against civilian SAR actors. The successive, adaptive, and escalating nature of these measures has been consistently highlighted by key informants interviewed for this study²⁰⁴ and emphasized by Alagna and Cusumano.²⁰⁵

This study identifies, in chronological order of emergence, the following repressive strategies: public smear campaigns and defamation, criminal prosecution, bureaucratic

²⁰¹ Federico Alagna (Adjunct Professor, Department of Political and Social Sciences, Università di Bologna), personal interview, 27 May 2025

²⁰² Graffin, Howard and Vincett (n 53) 11

²⁰³ Ibid. 20

²⁰⁴ Gil, Schäfer and INGO Board Member (n 186); Lucia Gennari (Lawyer, Associazione per gli Studi Giuridici sull'Immigrazione), personal interview, 29 May 2025

²⁰⁵ Alagna and Cusumano (n 58) 110

and administrative impediments (comprising multiple and distinct subcategories), the implementation of closed-port policies and redirection of SAR operations to Libya, Türkiye, and Tunisia, and the enactment of repressive legislation specifically targeting SAR INGOs. Port closures were brief, but outsourcing SAR to third states persists. Legal crackdowns and prosecutions stalled in 2023, though their impact lingers. Finally, defamation and administrative hurdles have eased as civil SAR vanished in Greece and shrank in Malta after 2021.

3.2.1 Public smear and defamation (2016-2025)

Early opposition against SAR INGOs in Greek, Italian, and Maltese waters took the form of smear campaigns by officials at every level, framing the groups within wider narratives that criminalized migrants and solidarity actors. Legally, defamation, libel or slander, consists of false statements that damage reputations.

A) The Eastern Mediterranean: Greece and Lesvos (2016-2025)

Both Graffin et al.'s and this thesis findings show that, at the start of the Lesvos emergency in late 2015, Greek authorities and SAR INGOs enjoyed an unusually smooth partnership.²⁰⁷ One aid worker recalls “a relatively good working relationship” in which the Hellenic Coast Guard, local police and Frontex viewed his organisation as an asset. INGOs launched missions only when the Coast Guard asked, effectively serving as an auxiliary force under official direction.²⁰⁸

Nevertheless, Graffin et al.'s study shows a fluctuating relationship with the Greek authorities: it soured in 2017, briefly improved, and then declined again in 2020²⁰⁹, with particular relevance of the public discourse on INGOs. The criminal prosecution in 2016 of three Spanish firefighters from Proem-Aid and two Danish activists from Team Humanity for “attempting to smuggle people,” signalled for the first time that sea-rescue could be treated as a crime.²¹⁰ It is argued by the account of a SAR worker that “a wide

²⁰⁷ Graffin, Howard and Vincett (n 53) 8

²⁰⁸ Seán Binder (Lawyer; former SAR worker with ERCI; defendant in criminal case), personal interview, 22 June 2025

²⁰⁹ Graffin, Howard and Vincett (n 53) 8

²¹⁰ DW, ‘Greek court clears Spanish and Danish aid workers on migrant-smuggling charges’ (2018) <https://www.dw.com/en/greek-court-clears-spanish-and-danish-aid-workers-on-migrant-smuggling-charges/a-43693777> accessed 12 June 2025

shift began after Frontex’s 2017 Risk Analysis branded civilian SAR operations a “pull factor,” insinuating that INGOs attract smuggling activity”.²¹¹ This discourse supplied prosecutors with the narrative that ordinary humanitarian tools constitute evidence of facilitating illegal entry. Routine SAR practice was thus relabelled as organised crime, while extended pre-trial delays keep allegations alive in the public sphere, chilling other organisations and serving as a reputational punishment.²¹²

Between 2017 and 2021, state officials on Lesbos repeatedly portrayed humanitarian groups as criminals, normalising ever-tighter restrictions on rescue work. Greek police escalated the rhetoric in August 2018, announcing they had “dismantled an organised criminal network” run by the INGO Emergency Response Centre International (ERCI) and charging 24 volunteers with espionage and trafficking.²¹³ Visiting the island on 10 February 2020, Deputy Migration Minister Giorgos Koumoutsakos branded a “galaxy of dodgy NGOs... leeches,” accusing them of abetting smugglers²¹⁴. Migration Minister Notis Mitarachis used a press conference in December 2020 to allege that Aegean-based INGOs were “funding Somali migrants” travel and coordinating their sea crossings”.²¹⁵

Furthermore, activists in Lesbos recount an increasingly hostile environment during 2018, 2019 and 2020: organised far-right patrols set up roadblocks, fired warning shots, and vandalised INGO vehicles, with the support of part of the local population.²¹⁶ Graffin et al. interviews also reveal the active participation of public authorities in the campaign: in many areas of Lesbos, a change of mayor could abruptly usher in raids, arrests and charges under smuggling or public-order laws.²¹⁷ The unrest galvanised anti-INGO locals: on 5 March 2020, hundreds of Lesbos residents, some far-right-organised, blocked

²¹¹ Binder (n 208)

²¹² Ibid.

²¹³ Patrick Strickland, ‘Refugee advocates blast arrests of rescue workers in Greece’ *Al Jazeera* (2018) <https://www.aljazeera.com/news/2018/9/16/refugee-advocates-blast-arrests-of-rescue-workers-in-greece> accessed 20 June 2025

²¹⁴ Anthee Carassava, ‘Greece: NGOs accused of stoking unrest in refugee camp’ *DW* (11 February 2020) <https://www.dw.com/en/greece-ngos-accused-of-stoking-unrest-in-refugee-camp/a-52320720> accessed 14 May 2025

²¹⁵ Statewatch, ‘Greece: Government attacks on NGOs debunked’ (22 December 2020) <https://www.statewatch.org/news/2020/december/greece-government-attacks-on-ngos-debunked/> accessed 14 May 2025

²¹⁶ Graffin, Howard and Vincett (n 53) 8

²¹⁷ Ibid.

the German SAR vessel *Mare Liberum* from docking in Mytilene, chanting “NGOs out!” and forcing the crew to stay offshore.²¹⁸

Due to the effects of the intense defamation campaign, the Covid-19 lockdown and the 2021 effective prohibition of civil SAR in Greek waters, no SAR INGOs operate in Lesvos anymore. Yet, official rhetoric still vilifies humanitarian actors today. MSF is now the sole INGO providing shoreline aid in collaboration with Greek police and the coast guard. Announcing a new investigation, Shipping Minister Vassilis Kikilias again claimed in March 2025 that “coast-guard evidence could prove INGOs colluding with smugglers”,²¹⁹ indirectly accusing MSF.

B) The Central Mediterranean: Italy and Malta (2017-2023)

The MSF SAR Representative situates the genesis of what he calls a “systematic defamation campaign” in the Central Mediterranean in 2017, when Italy’s then-Interior Minister Marco Minniti simultaneously unleashed public accusations that civil-rescue vessels were “working with traffickers” and promoted a deliberately non-binding Code of Conduct to frame INGOs that declined to sign, such as MSF, “as unreliable actors”.²²⁵ That year, Catania’s chief prosecutor told state television that “some NGOs could be financed by traffickers”, claiming without evidence to know of direct contacts between crews and smugglers.²²⁶ Weeks later, Luigi Di Maio popularised the epithet “taxi cabs for migrants”, urging the closure of Italian ports to all INGO vessels.²²⁷

According to the MSF SAR Representative, traditional media outlets echoed the claims while prosecutors opened more than twenty criminal investigations against humanitarian captains and crew. Although virtually all were later dismissed for lack of evidence, the

²¹⁸ Greek City Times, ‘Migrant search and rescue ship denied entry into Lesvos’ *Greek City Times* (6 March 2020) <https://greekcitytimes.com/2020/03/06/migrant-search-and-rescue-ship-denied-entry-into-lesvos> accessed 14 May 2025

²¹⁹ *Ekathimerini*, ‘Investigation launched into NGOs suspected of aiding migrant smugglers’ (28 April 2025) <https://www.ekathimerini.com/news/1268129/investigation-launched-into-ngos-suspected-of-aiding-migrant-smugglers/> accessed 3 June 2025

²²⁵ Gil (n 186)

²²⁶ *La Repubblica Palermo*, ‘Migranti, procuratore di Catania: ONG forse finanziate da trafficanti’ (27 April 2017) https://palermo.repubblica.it/cronaca/2017/04/27/news/migranti_procuratore_catania_ong_forse_finanziati_e_da_trafficanti-163997418/ accessed 20 May 2025

²²⁷ Francesco Floris and Lorenzo Bagnoli, ‘Accusations against NGOs at sea: what is false or misleading in that smear campaign?’ *OpenMigration* (2017) <https://openmigration.org/en/analyses/accusations-against-ngos-at-sea-what-is-false-or-misleading-in-that-smear-campaign/> accessed 23 May 2025

protracted proceedings sustained public suspicion and, in the representative's words, "turned the courts themselves into an instrument of defamation".²²⁸ This defamation hardened under Interior Minister Matteo Salvini. On 5 July 2018 he barred INGO ships from disembarking and accused them of "causing trouble" by rescuing people "who should have remained in Libya"²²⁹. Salvini's rhetoric normalised the notion that humanitarian crews were accomplices of human traffickers.

After the 2022 elections the discourse was revived at cabinet level. Prime Minister Giorgia Meloni said her *Decreto-legge* 2 of January 2023, would curb INGO ships that act like "ferry boats, travelling back and forth with human traffickers".²³⁰ The same month, current Italy's Interior Minister, Matteo Piantedosi, alleged that humanitarian rescue ships act as a "pull factor," encouraging irregular sea migration along the Central Mediterranean route. Despite the lack of empirical evidence backing the claim, it was used to underpin ministerial decrees that restricted INGO operations.²³¹

Malta's discourse has been sharper in spikes but less permanent. During the *Lifeline* vessel stand-off case in June 2018, Prime-minister Joseph Muscat insisted INGOs "need to be better regulated" for flouting maritime law.²³² During the Covid-19 emergency, Foreign Minister Evarist Bartolo called INGO activity "urging people-traffickers", and Premier Robert Abela closed ports on public-health grounds²³³. After Italy's 2023 decree, Home-affairs Minister Byron Camilleri echoed Rome, claiming "INGO boats are a pull factor".²³⁴

²²⁸ Gil (n 186)

²²⁹ Angela Giuffrida, 'Matteo Salvini's anti-migrant pledge "practically impossible" to fulfil' *The Guardian* (2018) <https://www.theguardian.com/world/2018/jul/05/matteo-salvini-italy-migrant-pledge-practically-impossible-fulfil> accessed 23 May 2025

²³⁰ Jacqueline Howard, 'Italian Prime Minister Giorgia Meloni's controversial fight against migrant boats setting sail to cross the Mediterranean' *ABC News* (2023) <https://www.abc.net.au/news/2023-03-07/italian-government-targeting-ngos-to-stop-the-boats/102036522> accessed 23 May 2025

²³¹ Federico Alagna and Eugenio Cusumano, 'Varieties of criminalization: Italy's evolving approach to policing sea rescue NGOs' (2023) 15 *Contemporary Italian Politics* 494, 494

²³² Rebekah Cilia, 'Rule of law needs to be followed by all, including by NGOs, PM insists' *Independent Malta* (2018) <https://www.independent.com.mt/articles/2018-06-25/local-news/Rule-of-law-needs-to-be-followed-by-all-including-by-NGOs-PM-insists-6736192446> accessed 3 June 2025

²³³ Karl Azzopardi, 'Decision to close ports based on keeping Malta's health as top priority' *Independent Malta* (2020) <https://www.independent.com.mt/articles/2020-04-12/local-news/Decision-to-close-ports-based-on-keeping-Malta-s-health-as-top-priority-Robert-Abela-6736221955> accessed 3 June 2025

²³⁴ Daniel Ellul, 'NGO boats a pull factor – minister doubles down on comment' *Times of Malta* (2023) <https://timesofmalta.com/article/ngo-boats-pull-factor-minister-doubles-comment-migration.1006834> accessed 3 June 2025

These accusations had tangible consequences in the activities of INGOs: private donations fell and their credibility eroded, while the protracted criminal investigations kept suspicion alive long after the cases collapsed for lack of evidence.²³⁵

SAR INGOs stress that defamation operates hand-in-glove with wider obstruction: by branding INGOs as criminals or incompetents, authorities legitimise closed-port policies, postpone disembarkations for days, and divert rescue ships on multi-day journeys to distant “safe” harbours, tactics that systematically thin coverage and lengthen response times.²³⁶

3.2.2 Criminal prosecution of civilian SAR activities (2016-2025)

The criminal prosecution of civilian SAR activities began in Greece, Malta, and Italy shortly after the defamation and public criminalisation of humanitarian initiatives assisting migrants became part of the governmental narratives. Gordon and Larsen note that humanitarian actors have increasingly been prosecuted under EU legal frameworks originally designed to combat human smuggling and trafficking.²³⁷ Yet, smuggling accusations remain the most common threat deployed against rescue crews. Participants in Graffin et al’s study revealed that the fear and anxiety caused by this criminalisation drive some teams to tread carefully: they defer to official instructions, scrupulously follow every coast-guard rule, and even hesitate before reporting abuses, all to avoid provoking an arrest.²³⁸

While judicial systems in European countries governed by the rule of law are formally independent, increasingly punitive legal frameworks, combined with favourable political climates, have paved the way for such prosecutions. Notably, in instances like the *Iuventa* case, State authorities have even intervened in the proceedings in support of the prosecution. Moreover, these legal actions have often been publicly leveraged by national authorities to justify their policies and to reinforce the incriminating narrative that INGOs operate as facilitators of irregular migration. In fact, the vast majority of these prosecutions are based on allegations of facilitating migrant smuggling. Those targeted for prosecution have included not only boat captains in Greece, Malta and Italy but also

²³⁵ Gil (n 186)

²³⁶ Stege (n 97)

²³⁷ Gordon and Larsen (n 54) 9

²³⁸ *Ibid.*

migrants who were forced to steer vessels, grassroots volunteers, and humanitarian workers.²³⁹

According to the EUFRA 2025 report on SAR Operations in the Mediterranean and Fundamental Rights, since 2017, Germany, Italy, Malta, the Netherlands and Spain have initiated 86 administrative or criminal proceedings affecting SAR operations by civil-society actors. Of that total case number, 16 were criminal proceedings affecting SAR INGOs: 1 in Malta and 15 in Italy.²⁴⁰ Greece has seen two cases, both in Lesvos.

A) The Eastern Mediterranean: Lesvos (2016-2025)

Various SAR INGOs like Hellenic Rescue Team, Open Arms, Proem-Aid, MSF, Sea-Eye, Team Humanity or Refugees 4 Refugees were present in the island by the beginning of 2016, providing both shoreline assistance and seafaring activities, including patrolling and search-and-rescue operations. Shortly after, other organisations like Emergency Response Centre International (ERCI), Mare Liberum and Refugee Rescue UK joined the efforts.

In January 2016, two Danish activists from Team Humanity and the three Spanish lifeguards from Proem-Aid were detained by the Greek Coast Guard during a sea rescue operation, and charged with “attempted migrant smuggling” from Türkiye to Greece. The Coast Guard also cited possession of knives and an undeclared two-way radio. Within days, all five were released on bails ranging from 5,000 to 10,000€.²⁴¹ Amnesty International condemned the prosecution, stating that “the absurdity of dragging these (...) volunteers before a court on surreal smuggling charges makes a mockery of justice and exposes the moral confusion among those who seek to criminalise acts of solidarity and intimidate human rights defenders²⁴².” Although in May 2018 the Criminal Court of

²³⁹ Priya Pillai, ‘Stymieing Humanity – On the Prosecution of Aid to Migrants’ (*Opinio Juris*, 2019) <https://opiniojuris.org/2019/08/27/stymieing-humanity-on-the-prosecution-of-aid-to-migrants/> accessed 3 June 2025

²⁴⁰ EUFRA (n 147) 9

²⁴¹ Anealla Safdar, ‘NGOs decry charges against volunteers in Greece’ *Al Jazeera* (2016) <https://www.aljazeera.com/news/2016/1/16/ngos-decry-charges-against-volunteers-in-greece> accessed 16 May 2025

²⁴² Amnesty International, ‘Greece: Absurd “people smuggling” charges against three NGO volunteers should be dropped’ *Amnesty International UK* (2018) <https://www.amnesty.org.uk/press-releases/greece-absurd-people-smuggling-charges-against-three-ngo-volunteers-should-be> accessed 16 May 2025

Mytilene acquitted all five and ordered the return of the bail,²⁴³ this case marked the emergence of the criminal prosecution of INGO workers in the Mediterranean, increasingly linked to charges of migrant smuggling and, in some instances, aggravated by accusations such as espionage, disobedience, or profiting.

Another high-profile case from Lesbos concerns the criminal prosecution of a group of ERCI volunteers, including the activists Seán Binder, Sarah Mardini and Nassos Karakitsos, who were arrested in 2018 on two separate cases. In February 2018 the Greek police questioned Binder and Mardini during a night shoreline watch, arrested and then released them after 24h. In August that same year, 24 volunteers linked to the INGO were arrested. Seán and Sarah, non-Greek nationals, and Nassos, Field Coordinator, were held in pre-charge detention for 106 days.²⁴⁴ When the detention took place, ERCI was registered in Greece and had regularly cooperated with the authorities on missions in Greek waters from 2016 to 2018.²⁴⁵

In August 2018, misdemeanour charges were filed for espionage, illegal use of radio frequencies, and forgery.²⁴⁶ HRW noted factual errors in the police report, including allegations of participation in rescues by individuals not present in Greece at the time. The espionage charge related to monitoring unencrypted radio communications to locate migrant vessels.²⁴⁷ The forgery charge involved a false military plate found under a civilian one on an INGO-marked vehicle, though no attempt to access restricted zones was proven.²⁴⁸ The first hearing in 2021 collapsed due to procedural errors. In 2023, espionage charges were dismissed as vague and untranslated; most others were time-barred. In January 2024, sixteen Greek-speaking defendants were unanimously acquitted.²⁴⁹

²⁴³ *Keep Talking Greece*, ‘Lesvos: Spanish firefighters, Danish NGO acquitted’ (2018) <https://www.keeptalkinggreece.com/2018/05/07/lesvos-spanish-firefighters-danish-ngo-acquitted/> accessed 16 May 2025

²⁴⁴ Human Rights Watch, ‘Greece: Migrant Rescue Trial to Begin’ *Human Rights Watch* (2022) <https://www.hrw.org/news/2022/12/22/greece-migrant-rescue-trial-begin> accessed 23 May 2025

²⁴⁵ International Commission of Jurists, ‘Greece: Criminalization of humanitarian support to migrants and refugees must end’ *ICJ* (2023) <https://www.icj.org/greece-criminalization-of-humanitarian-support-to-migrants-and-refugees-must-end/> accessed 23 May 2025

²⁴⁶ Binder (n 208)

²⁴⁷ HRW (n 244)

²⁴⁸ *Ibid.*

²⁴⁹ Binder (n 208)

A separate felony case from 2018 misrepresents ERCI's humanitarian SAR work as migrant smuggling by a criminal enterprise. Charges include facilitation of illegal entry, money laundering, and leadership of a criminal organization.²⁵⁰ Despite the severity, the case has not gone to trial; proceedings are scheduled for 4 December 2025. Delays, attributed to untranslated evidence, have prolonged the pre-trial phase. Defendant Seán Binder described the drawn-out process as a “chill-factor” to deter humanitarian action.²⁵¹ Each offense carries prison terms of 5–20 years under Greek law.²⁵²

The case is also marred by procedural flaws: defendants are identified only by numbers, charges are unclear, documents are incomplete and untranslated, and some individuals never received indictments. Sarah Mardini was at one point barred from entering Greece to attend her own trial.²⁵³

Despite the withdrawal of civilian SAR actors post-2021, prosecutions for smuggling-related charges have continued against groups like Aegean Boat Report²⁵⁴ and migrants themselves. In a high-profile case, nine Egyptians were charged after the June 2023 Adriana shipwreck that killed over 600.²⁵⁵ They were acquitted in May 2024 due to lack of evidence and jurisdiction.²⁵⁶ Human rights groups condemned the case as scapegoating to deflect from alleged failures by the Greek Coast Guard.²⁵⁷

B) The Central Mediterranean: Italy (2017-2025)

The *Golfo Azzurro* case, a vessel operated by Open Arms, represents the first instance of criminal prosecution of civilian SAR operations in the Central Mediterranean. The Prosecutor of Palermo initiated an investigation against the crew in May 2017, accusing

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² HRW (n 244)

²⁵³ Ibid.

²⁵⁴ CIVICUS Monitor, ‘Arrest warrant issued for refugee aid worker over work with asylum seekers’ *CIVICUS Monitor* (2024) <https://monitor.civicus.org/explore/arrest-warrant-issued-for-refugee-aid-worker-over-work-with-asylum-seekers/> accessed 10 July 2025

²⁵⁵ Moira Lavelle, ‘Nine Egyptians to go on trial in Greece over deadly Pylos shipwreck’ *Al Jazeera* (2024) <https://www.aljazeera.com/news/2024/5/20/nine-egyptians-to-go-on-trial-in-greece-over-deadly-pylos-shipwreck> accessed 20 June 2025

²⁵⁶ Marina Rafenberg, ‘Greek court acquits nine Egyptians accused of involvement in fatal shipwreck’ *Le Monde* (2024) https://www.lemonde.fr/en/international/article/2024/05/22/greek-court-acquits-nine-egyptians-accused-of-involvement-in-fatal-shipwreck_6672221_4.html accessed 23 June 2025

²⁵⁷ Helena Smith, ‘Mediterranean migrant boat disaster: men on trial are “scapegoats”, say lawyers’ *The Guardian* (2024) <https://www.theguardian.com/world/article/2024/may/20/mediterranean-migrant-boat-disaster-men-on-trial-are-scapegoats-say-lawyers> accessed 24 June 2025

them of criminal association with the aim of “facilitating illegal immigration” and of “alleged connivance with traffickers from Libya”, although it was discontinued in June 2018.²⁵⁸

Shortly after, the infamous *Iuventa* case started when the Tribunal of Trapani (Sicily) initiated proceedings against four crew members of the German INGO Jugend Rettet, on charges of “facilitating irregular entry” into Italy.²⁵⁹ Similarly as in the Binder and Mardini case, the preliminary hearings were delayed until May 2022, and by June 2022, the proceedings were suspended due to procedural errors attributed to the prosecution. In February 2023, the court rejected the request by the Prime Minister’s Office to participate in the trial as plaintiffs. Nonetheless, the Ministry of the Interior was formally admitted as a third party to the proceedings.²⁶⁰

On 19 April 2024, after more than 40 preliminary hearings over a two-year period, the Court of Trapani acquitted the defendants and terminated the proceedings. A conviction could have resulted in prison sentences of up to 20 years and financial penalties amounting to millions of euros.²⁶¹

In the *Aquarius* case, Italian prosecutors took a different approach by charging SOS Méditerranée and MSF staff with “illegal waste management” for allegedly mishandling 24 tonnes of waste, including medical and contaminated materials, at Italian ports from 2017 to 2018.²⁶² Similar charges were brought against the MSF-operated *Vos Prudence*. Both INGOs called the accusations disproportionate and politically motivated. Although the *Aquarius* was released in early 2019 due to lack of evidence of waste trafficking, the criminal trial against the crew began in September 2023 and remains ongoing as of June 2025.²⁶³

The criminal prosecution continued in 2019 with the high-profile case of Sea-Watch member and Captain Carola Rackette. The German INGO had already been investigated

²⁵⁸ EUFRA (n 147) 30

²⁵⁹ Iuventa Crew, “The Case” *IUVENTA Crew – Solidarity at Sea* <https://iuventa-crew.org/en/case/> accessed 17 June 2025

²⁶⁰ EUFRA (n 147) 26

²⁶¹ ECCHR, “Sea Rescuers Under Attack: Iuventa Crew Criminalized by Italian Government” <https://www.ecchr.eu/en/case/sea-rescuers-under-attack-iuventa-crew-criminalized-by-italian-government/> accessed 23 June 2025

²⁶² EUFRA (n 147) 28

²⁶³ EUFRA (n 147) 26

by the Prosecutor of Catania in January 2019 on the charges of facilitation of illegal migration, but the investigation was discontinued shortly after.²⁶⁴ In Rackete's case we observe the joint action of criminal prosecution, as well as the development of repressive legislation targeting SAR INGOs and the redirection of SAR operations to Libya.

On 12 June 2019, the crew of the *Sea-Watch 3* conducted the rescue of 53 individuals in distress in international waters of the Central Mediterranean, approximately 35 nautical miles off the Libyan coast. On the same day, the LCG designated Tripoli as a safe port for disembarkation. However, Captain Rackete declined to return the rescued persons to Libya, citing international legal obligations. The vessel proceeded towards international waters adjacent to Lampedusa, the nearest recognized POS. An official request to disembark in Italy was submitted but was rejected on 14 June 2019.²⁶⁵

Rackete also submitted a request for interim measures under Rule 39 of the ECtHR, seeking authorization for the disembarkation of rescued individuals in Lampedusa. It was partially rejected on 25 June 2019²⁶⁶ but the Italian coastguard evacuated ten individuals in need of urgent medical assistance.²⁶⁷

On 15 June 2019, the Italian government enacted the *Security Decree Bis*, which conferred upon the Minister of the Interior the authority to restrict or prohibit the entry, transit, or anchoring of vessels within Italian territorial waters on grounds of public order and national security. Non-compliance with the decree carried significant legal and financial consequences, including potential criminal liability for the ship's captain and owner, imposition of substantial fines, and the seizure of the vessel.²⁶⁸

Citing the deteriorating conditions and urgent humanitarian needs on the vessel, Rackete proceeded to navigate towards the port of Lampedusa. She was later arrested at 3 a.m. on June 29 by approximately 20 police officers. Following her arrest, she was placed under house arrest in Lampedusa and brought before the investigating judge in Agrigento (Sicily) on July 1, 2019.²⁶⁹ Criminal proceedings were initiated by the Public Prosecutor's

²⁶⁴ EUFRA (n 147) 24

²⁶⁵ Ibid.

²⁶⁶ Graffin, Howard and Vincett (n 53) 5

²⁶⁷ Sea-Watch Legal Aid, 'Sea-Watch 3 seized in Lampedusa: Carola Rackete' *Sea-Watch Legal Aid* <https://swla.eu/en/project/sea-watch-3-seized-lampedusa-carola-rackete/> accessed 25 June 2025

²⁶⁸ Ibid.

²⁶⁹ EUFRA (n 147) 24

Office of Agrigento under the charges of aiding and abetting illegal immigration (up to 15 years in prison), resistance or violence against a warship” and non-compliance with orders to enter, transit or stop in Italian territorial waters.²⁷⁰ The case of Carola Rackete involved both criminal proceedings at the Court of Agrigento and a ruling by the Court of Cassation in January 2020.²⁷¹

Linked to the *Iuventa* case, in March 2021, formal charges of "aiding and abetting illegal immigration"²⁷² were brought against 21 individuals, including former crew members and staff affiliated with MSF and Save the Children, in connection with operations conducted by the *Vos Prudence* and *Vos Hestia* as well as the shipping company that owned the vessels.²⁷³

According to EUFRA, 15 criminal investigations and prosecutions were open in Italy affecting SAR civil organisations between 2016 and 2023. In comparison to Greece and Malta, it is the country where criminal prosecution has been employed most extensively and persistently as a strategy of state repression. Prominent cases involved the Spanish organisation Open Arms, in March 2018, under the charges of criminal association, facilitation of irregular migration and disobedience of Interior Ministry orders (acquitted) or the Italian Mediterranean Saving Humans (MSH), investigated multiple times in March, May and July 2019, for aiding illegal immigration and refusing to obey a warship (all acquitted), and in June 2020 (still pending).

In the opinion of Alagna and other legal experts who were consulted, high-profile cases such as the arrest and subsequent release of Carola Rackete served to galvanize public support for SAR INGOs.²⁷⁴ These developments marked a shift in governments approach, characterized by an increased reliance on Port-State Controls (PSC) and confiscations if found non-compliant with regulatory standards, administrative sanctions and delayed assignment of a POS.²⁷⁵

Despite the decrease in the number of criminal prosecution cases after 2023, a case involving MSH, pending since 2021, made it to trial in May 2025. As pointed out by

²⁷⁰ SWLA (n 267)

²⁷¹ EUFRA (n 147) 24

²⁷² ECCHR (n 261)

²⁷³ EUFRA (n 147) 26

²⁷⁴ Alagna (n 201); Stege (n 97)

²⁷⁵ Stege (n 97)

policy and legal experts, the *Maersk Etienne* case, involving the vessel *Mare Jonio* operated by MSH, shares the core causes of prosecution with all the other criminalisation cases but has one distinct element that complicates the defence; the alleged aggravating evidence of enrichment in aiding and abetting illegal immigration.²⁸¹ A lawyer for the Italian NGO reported that this is the first instance of its kind that has been ordered to go to trial, with previous attempts at prosecution stopped either during investigation or at preliminary hearings.²⁸²

In March 2021, the Ragusa Prosecutor charged four MSH crew members with "aiding and abetting illegal immigration" after rescuing 27 migrants from the *Maersk Etienne* in 2020,²⁸³ alleging they accepted a payment from the *Maersk Etienne* company for the transfer.²⁸⁴ By March 2023, charges were expanded to include seven crew members and the vessel's owner, with additional accusations of maritime regulation breaches.²⁸⁵ In May 2025, six were indicted for "aggravated aiding and abetting," with prosecutors framing a recorded donation as payment for profit-driven rescue.²⁸⁶ MSH rejected the charges as politically motivated.²⁸⁷

C) The Central Mediterranean: Malta (2018-2020)

Criminal proceedings in Malta have been far fewer and less severe than in Greece or Italy, with only one major case involving INGO rescue efforts. This is largely due to Malta's refusal to coordinate SAR operations since 2017, leading to few INGO rescues ending there.

A key case involved Captain Claus-Peter Reisch of the MV *Lifeline*, who rescued 234 people in 2018.²⁸⁸ After a political standoff, the ship was allowed to dock, but Reisch was

²⁸¹ Alagna (n 201); Gennari (n 204)

²⁸² *Italy puts NGO rescuers of migrants on Maersk Etienne on trial*, Maritime Executive (2025) <https://maritime-executive.com/article/italy-puts-ngo-rescuers-of-migrants-on-maersk-etienne-on-trial> accessed 28 June 2025

²⁸³ Ibid.

²⁸⁴ EUFRA (n 147) 18

²⁸⁵ Ibid.

²⁸⁶ Gennari (n 204)

²⁸⁷ *Mediterranea Saving Humans, 'Maersk Etienne case indictment: we respond with a new ship'* (29 May 2025) <https://mediterranearescue.org/en/news/maersk-etienne-case-indictment-we-respond-with-a-new-ship> accessed 27 June 2025

²⁸⁸ Edwina Brincat, 'MV Lifeline rescue ship captain wins appeal over €10,000 fine' (Times of Malta, 2020) <https://timesofmalta.com/article/mv-lifeline-rescue-ship-captain-wins-appeal-over-10000-fine.761502> accessed 27 June 2025

charged with operating an improperly registered vessel and lacking a commercial license.²⁸⁹ The initial court judgement, delivered on 14 May 2019, acquitted Reisch of the commercial use charge and rejected the prosecution's request for the confiscation of the MV *Lifeline*, noting that Reisch was not the legal owner of the vessel.²⁹⁰ However, he was found guilty on the charge of irregular registration and fined with 10,000€ for operating a ship that was not properly registered for rescue operations.²⁹¹ This verdict was subsequently appealed by the Captain and the Court of Criminal Appeal in Malta cleared Claus-Peter Reisch of all charges.²⁹²

Despite few INGO prosecutions, Malta has criminalised migrants themselves. In the *El Hiblu 3* case, three migrant minors who helped prevent a pushback to Libya were charged with terrorism.²⁹³ Amnesty International has criticised the ongoing case for serious human rights violations.²⁹⁴

3.2.3 Bureaucratic and Administrative Impediments (2016-2025)

Despite the impact of defamation and criminal charges, the main tools used to suppress INGO SAR activities in Greece, Malta, and Italy have been administrative and bureaucratic measures, often under existing regulations. As noted by Graffin et al, the complexity of maritime law gives states wide discretion to obstruct humanitarian efforts through health, safety, environmental, and registration rules, as well as port and ownership procedures.²⁹⁵

During the Covid-19 pandemic, public health rules added further obstacles. Besides, SAR coordination has also been affected, with practices like assigning distant ports and

²⁸⁹ European Council on Refugees and Exiles, *Malta: Judgment in case against Captain of MV Lifeline* (Asylum Law Database, 2019) <https://m.asylumlawdatabase.eu/en/content/malta-judgment-case-against-captain-mv-lifeline> accessed 5 June 2025

²⁹⁰ Aditus Foundation, 'We won, Captain Claus-Peter Reisch is a free man!' (2020) <https://aditus.org.mt/we-won-captain-claus-peter-reisch-is-a-free-man/> accessed 5 June 2025

²⁹¹ EUFRA (n 147) 32

²⁹² EUFRA (n 147) 32

²⁹³ Alagna (n 201)

²⁹⁴ Amnesty International, 'Malta: El Hiblu case "everything wrong with migration policies in the central Mediterranean"' (2025) <https://www.amnesty.org/en/latest/press-release/2025/01/malta-el-hiblu-case-everything-wrong-with-migration-policies-in-the-central-mediterranean/> accessed 23 June 2025

²⁹⁵ Graffin, Howard and Vincett (n 53) 24

limiting rescues per mission (Italy's 2023 Piantedosi Decree).²⁹⁶ Malta, in particular, has institutionalized legal ambiguity and non-coordination to avoid SAR responsibilities.²⁹⁷

The UN Inter-Agency Standing Committee for humanitarian action defines Bureaucratic and Administrative Impediments (BAI) as “administrative practices and policies which limit the ability of humanitarian organizations to reach people in need in a timely and unfettered manner”. Importantly, such practices “may be imposed intentionally or unintentionally, often simultaneously, by host governments at various levels, (...) or even humanitarian actors themselves”.²⁹⁸ Administrative proceedings (inspections, detentions, fines, port-state-control seizures, confiscations, flight bans, etc.) appeared first with the use of local and civil law against SAR organisations, and then with the formulation of repressive legislation directly targeting SAR INGOs, the case of Italy being paradigmatic (58 cases) next to a smaller number in Malta (5).²⁹⁹ The number of cases in Greece is unknown to this research.

BAI can function as powerful tools of civil action control, operating under the guise of legal and administrative governance, and effectively restricting the humanitarian legal framework governing maritime rescue operations.

A) The Eastern Mediterranean: Lesvos (2016-2020)

Drawing on empirical accounts from SAR workers, Graffin et al trace the emergence of BAI practices in Lesvos to approximately 2016.³⁰⁰ Together with criminal prosecution, the use of administrative and local legal measures designed to restrict the mobility and operational capacity of SAR actors were the main State repression strategy used in Lesvos until 2021.³⁰¹

A prominent example involves the administrative reclassification of foreign SAR vessels as “pleasure craft,” rendering them subject to discretionary port control regulations not applied to domestically flagged vessels. This reclassification enabled authorities to delay

²⁹⁶ Gil (n 186); Stege (n 97); Alagna (n 201)

²⁹⁷ Schäfer (n 186)

²⁹⁸ Inter-Agency Standing Committee, *Understanding and Addressing Bureaucratic and Administrative Impediments to Humanitarian Action: Framework for a System-Wide Approach* (IASC, January 2022) 2

²⁹⁹ EUFRA (n 147)

³⁰⁰ Graffin, Howard and Vincett (n 53) 2

³⁰¹ Binder (n 208)

or deny launch permissions under the pretext of regulatory compliance, significantly hampering SAR readiness during emergencies.³⁰² Interviewees reported that such denials often occurred without clear justification and became more frequent over time, particularly from 2018 onward.³⁰³

A former SAR coordinator in Lesvos described the early relationship with Greek authorities as one of "constrained cooperation," where SAR groups voluntarily limited their autonomy to maintain access and legitimacy, especially with the Coast Guard.³⁰⁴ Anticipating state resistance to independent actions, organizations adjusted their behavior to fit state expectations, often before being formally required to do so.³⁰⁵ Beyond self-imposed limits, formal barriers like mandatory memoranda of understanding with the Coast Guard further restricted operations. Groups that refused these terms often ended their missions.³⁰⁶

In Lesvos, SAR organisations faced heavy bureaucratic burdens, including local registration, permits, insurance, and daily reporting to the coastguard. Complex procedures like document translation and apostilling were common, with new demands often added unexpectedly.³⁰⁷ SAR workers regularly faced fines, ranging from unauthorised rescues to minor issues like picking up litter without a permit. Though often small, the cumulative effect was seen as a deliberate tactic to disrupt and discourage their work.³⁰⁸

In general, SAR activists in Lesvos described being subjected to "bureaucratic harassment".³⁰⁹ This included routine inspections by the Greek Ministry of Labour and the Ministry for Migration Policy,³¹⁰ focused on minor technical infractions, such as outdated navigation maps, improper labelling of lifejackets, and even the size and placement of curtains used for on-board privacy.³¹¹ Greek authorities also undertook extensive checks of fuel quality and scrutinised the expiry dates of pyrotechnics and

³⁰² Graffin, Howard and Vincett (n 53) 9–10

³⁰³ Ibid.

³⁰⁴ Binder (n 208)

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Graffin, Howard and Vincett (n 53) 10

³⁰⁸ Ibid.

³⁰⁹ Graffin, Howard and Vincett (n 53) 6

³¹⁰ Ibid.

³¹¹ Graffin, Howard and Vincett (n 53) 14–15

safety equipment.³¹² SAR workers widely perceived these checks as disproportionate and selectively enforced against humanitarian actors.

Graffin et al. highlight how Covid-19 intensified challenges for SAR organisations. In February 2020, Türkiye opened its border to pressure the EU, increasing migration through the Eastern Mediterranean. Greece responded by suspending asylum access and increasing pushbacks. By March, far-right hostility on Lesbos, border closures, and strict public health measures forced many INGOs to halt operations. Research participants noted that all SAR groups ceased activity on the island after March 2020.³¹³

Lesbos became a case study in how administrative law and local rules can be used to effectively block humanitarian aid. The last INGO vessel in the Aegean, *Mare Liberum*, ended operations in 2020 following a seizure by the Administrative Court of Hamburg.³¹⁴

B) The Central Mediterranean: Malta (2018-2025)

Since 2018, Malta has increasingly used bureaucratic and legal tools to obstruct SAR operations, mirroring trends in Italy but without formal legislative changes. Unlike Italy's overt legal approach, Malta has relied on silent, procedural tactics, delaying coordination, withholding rescue authorizations, and exploiting administrative discretion and legal ambiguity.³¹⁶

In July 2018, Malta detained two Sea-Eye vessels, *Seefuchs* and *Sea-Eye*, over questions about their Dutch registration, halting their humanitarian work until December. This marked one of the first uses of maritime administrative law to restrict civil SAR missions.³¹⁷

That same month, authorities grounded the *Moonbird* reconnaissance aircraft for three months, citing permit issues. Similar actions were taken against *Sea-Watch 3* and *Lifeline*,

³¹² Graffin, Howard and Vincett (n 53) 15

³¹³ Graffin, Howard and Vincett (n 53) 16

³¹⁴ Statewatch, *Mediterranean: Nine new legal proceedings against civil search and rescue ships since June 2020* (2020) <https://www.statewatch.org/news/2020/december/mediterranean-nine-new-legal-proceedings-against-civil-search-and-rescue-ships-since-june-2020/> accessed 7 June 2025

³¹⁶ Serena Zarinato (Lawyer, Programmes Officer at Lawyers for Justice in Libya; Legal Researcher at StraLi), personal interview, 22 May 2025; Gennari (n 204); Schäfer (n 186); INGO Board Member (n 186)

³¹⁷ EUFRA (n 147) 32

with the former detained and the latter impounded in the Reisch case. These incidents signalled the rise of a legal-administrative strategy to block SAR operations.³¹⁸

From 2018 onwards, Malta took a strategy of tactical non-coordination and non-establishment of a POS. This repeatedly pointed out at during the interviews with SAR actors in the Central Mediterranean. The Board Member of a SAR INGO shared that “it feels like Malta has basically completely stepped out of their responsibility to coordinate and to provide (...) safety for the rescued people”.³¹⁹ As highlighted by the Advocacy Manager of SOS Humanity, this abdication is carried out through bureaucracy and administrative deviations, which are often exceedingly crude:

"We ask Malta because it's in the Maltese search and rescue region, but Malta plays music or hangs up on us when they hear the name Humanity 1, one of our vessels..."³²⁰

A recent example of Malta's repeatedly delayed or failed to coordinate timely rescues within its assigned SRR is the Miskar gas platform case. On 1 March 2025, 32 individuals were reported stranded in this platform, located near the boundary of the Tunisian and Maltese SAR zones, after one person had already died at sea. The people had departed from Libya, on an unseaworthy rubber boat, and had been without food for days.³²¹ Alarm Phone, an emergency hotline, relayed the alerts to the Tunisian, Maltese, and Italian authorities, but none of them coordinated any SAR operation. On 4 March, the *Aurora*, operated by Sea-Watch, finally rescued the 32 people.³²²

Unlike Greece and Italy, Malta's main obstruction relies on legal silence and inaction. Besides, as of June 2025, no INGO vessels operate from or dock in Malta, after the unauthorised entry into port of Captain Claus Peter Reisch was criminally prosecuted in 2018.

³¹⁸ EUFRA (n 147) 33

³¹⁹ INGO Board Member (n 186)

³²⁰ Schäfer (n 186)

³²¹ SOS Humanity, 'Malta must rescue people' (2025) <https://sos-humanity.org/en/press/miskar-rescue/> accessed 25 June 2025

³²² Ibid.

C) The Central Mediterranean: Italy (2019-2025)

Italy has played a central role in the legal and administrative obstruction of maritime SAR operations in the Central Mediterranean, particularly since 2018, characterised by the strategic use of administrative law and Port State Control (PSC) inspections.³²³

PSCs allow countries to inspect foreign ships in their ports to ensure they meet international safety, environmental, and labour standards. It acts as a backup when flag states fail to enforce regulations, coordinated through regional agreements like the Paris and Tokyo MOUs.

Under international maritime law, the primary authority over a vessel rests with the flag state. Port states may only intervene under exceptional circumstances where safety or environmental protection is at risk. However, beginning in 2020, Italian authorities used PSCs citing technical deficiencies, to disproportionately target INGO vessels while overlooking commercial ships. Detentions were often based on alleged safety violations.³²⁴ Though framed as safety checks, PSC inspections often cited issues like limited toilets or outdated charts, despite vessels meeting flag state standards. SAR groups reported systematic inspections on arrival, unlike commercial or state ships, targeting minor or technical violations. MSF, Sea-Eye, and Sea-Watch condemned these as selective, punitive, and based on double standards not applied to other vessels.³²⁵

The vessel *Alan Kurdi*, operated by the German INGO Sea-Eye, was among the first detained under this justification.³²⁶ In May 2020 the vessel was subjected to an administrative seizure in Palermo (Sicily) due to technical irregularities related to maritime security. In June 2020 the Italian Coast Guard granted a single voyage authorisation to proceed to Spain to fix the issues.³²⁷

Until mid-2025, PSC inspections have stopped and detained rescue operations and diverted critical organizational resources of Open Arms, MSF, SOS Méditerranée, Salvamento Marítimo Humanitario (SMH), Mediterranea Saving Humans (MSH), Sea-

³²³ Stege (n 97)

³²⁴ Gil (n 186)

³²⁵ Stege (n 97)

³²⁶ Ibid.

³²⁷ EUFRA (n 147) 27

Watch and Sea-Eye in 16 instances.³²⁸ In the case of the 2023 PSC detention of the *Aurora* (Sea-Watch), a fine of 3,333€ was imposed.³²⁹ For the *Aita Mari* (SMH) PSC detention in 2023, the possibility of being fined is still pending.³³⁰

According to data from EUFRA, the average detention in these cases lasted for 70 days, with 4 instances of vessels detained longer than 3 months: *Ocean Viking* from SOS-Méditerranée (150 days), *Alan Kurdi* from Sea-Eye (150 days), *Sea-Watch 4* from Sea-Watch and MSF (180 days) and *Sea-Watch 3* (210 days). Furthermore, the last PSC detention of Sea-Watch in September 2022 ended with a Single Voyage Permission to a scrapyard in Belgium in April 2023, where it was demolished.³³¹ The practice of PSC detention was toned down following the CJEU Sea-Watch judgement, which will be analysed as part of the legal responses.³³²

Moreover, the SAR activity of aircraft *Seabird 1* and *Seabird 2* (Sea-Watch) was fined by the Italian Civil Aviation Authority in 2024 with 2,064€ for allegedly disregarding the requirement to depart from specific airports in Sicily, although the fine was later annulled by the Court of Agrigento.³³³ The aircraft *Moonbird*, operated jointly with “Humanitarian Pilots Initiative” had been previously grounded and detained for a month for “spending too many hours at sea and posing a risk of endangering ongoing SAR operations carried out by State actors” in 2020.³³⁴

Italy also made extensive use of Covid-19 regulations to inhibit SAR operations. In April 2020, the Italian government declared that its ports were no longer “places of safety” for migrants rescued by foreign-flagged vessels with the *Inter-ministerial Decree n. 150*, invoking public health grounds. Subsequently, migrants were quarantined on floating platforms, while SAR vessels faced additional health and safety compliance measures, further delaying operations. These policies, though framed as pandemic responses, were widely viewed by SAR actors as an opportunistic extension of existing deterrence strategies.³³⁵ The vessel *Aita Mari* (SMH) was detained in January 2022 after

³²⁸ EUFRA (n 147)

³²⁹ EUFRA (n 147) 22

³³⁰ EUFRA (n 147) 17

³³¹ EUFRA (n 147) 24

³³² EUFRA (n 147)

³³³ EUFRA (n 147) 23

³³⁴ EUFRA (n 147) 28

³³⁵ Graffin, Howard and Vincett (n 53) 16

disembarking 176 rescued migrants under a ten-day mandatory quarantine, despite all crew testing negative for Covid-19 and being fully vaccinated.³³⁶

Finally, a core element of Italy's administrative deterrence strategy involves the delayed or geographically distant assignment of POS, pointed out as one of the main problems by all the SAR actors interviewed. Unlike Malta, instead of not offering ports, SAR vessels are often instructed to disembark rescued persons in ports located in Northern or Central Italy, requiring days of additional navigation and significantly impeding operational capacity. This tactic intensified since December 2022 and SAR organisations perceived it as a deliberate attempt to remove vessels from the SAR zone for extended periods, thereby reducing their ability to conduct further rescues.³³⁷

According to data shared by SOS Humanity, their vessel Humanity 1 was assigned distant ports 26 times until 2025. This resulted in 100 additional days at sea and nearly 40,000 extra kilometres travelled. The INGO also shared that since December 2022, the impact on all INGO vessels present in the Central Mediterranean had been of 739 additional days at sea and over 300,000 extra kilometres travelled.³³⁸

Designed by Salvini, this practice was later revived by subsequent Interior Ministers and enacted by various directives of the interior minister. These decisions exploit ambiguities in maritime law to achieve strategic obstruction and, as Graffin et al. argue, exemplify how legal norms are opportunistically reinterpreted by state actors in ways that disrupt humanitarian action.³³⁹

3.2.4 Closed-ports policy and the externalisation of SAR (2017-2025)

In all the obstruction strategies of SAR efforts, possibly the most ruthless has been the denial of Places of Safety (POS) by effectively closing the access of INGO vessels to European ports in the Mediterranean. Since 2018, Malta and Italy have enacted practice and legislation restricting port access for SAR

³³⁶ EUFRA (n 147) 17

³³⁷ Schäfer (n 186), Gil (n 186)

³³⁸ Schäfer (n 186)

³³⁹ Graffin, Howard and Vincett (n 53) 11

vessels, a policy that raises critical issues under international human rights law, refugee law, maritime and domestic law.

At the heart of the legal debate is whether SAR INGO vessels have a lawful right to enter a coastal State's territorial sea and disembark rescued individuals. Under Article 98(1) of the 1982 UNCLOS all shipmasters, civilian or governmental, must assist persons in distress at sea. The 1979 SAR Convention further requires rescued individuals to be delivered to a POS, though it leaves the term undefined, leading to divergent national practices. Italy, citing IMO guidelines and SAR Convention amendments, argues the responsibility lies with the Maritime Rescue Coordination Centre of the relevant SAR region, while Malta emphasizes geographic proximity.³⁴⁰ INGOs contend that POS determinations must account for human rights and refugee law, particularly the principle of non-refoulement, which prohibits disembarkation in unsafe countries like Libya, Tunisia or Türkiye.³⁴¹

Greece, Malta, and Italy have redirected SAR efforts to third countries and alternative SRRs, obstructing civil SAR INGOs and violating obligations under international and domestic law, specifically the duty to assign a POS and the principle of non-refoulement. Reports since 2017 show that returns to Libya breach non-refoulement and may constitute international crimes, given Libya's documented abuses against migrants. Türkiye has seen a rise in illegal pushbacks from Greece since 2021, and Tunisia's new SAR role, backed by Italy, raises similar concerns due to insufficient migrant protections.

These redirection strategies, most visible in the Central Mediterranean and Aegean, expanded to the Adriatic in 2023. In a deadly example, the Greek Coast Guard towed the distressed vessel *Adriana* toward Italy, leading to its capsizing and over 500 deaths, highlighting the fatal cost of externalisation policies.³⁴²

International law requires States to cooperate in identifying a POS but does not obligate them to allow disembarkation within their territory. Under Article 25 of UNCLOS, coastal States may regulate access to their ports and deny entry based on "non-innocent

³⁴⁰ Schatz and MF (n 77) 775

³⁴¹ Gil (n 186)

³⁴² Amnesty International, 'Greece: One year on from the Pylos shipwreck, the Coast Guard's role must be investigated' (2024) <https://www.amnesty.org/en/latest/news/2024/06/greece-one-year-on-from-the-pylos-shipwreck-the-coast-guards-role-must-be-investigated/> accessed 25 June 2025

passage” under Article 19(2) (g). However, this position is contested, especially when denial impedes rescue obligations or risks exposing individuals to inhuman treatment, potentially violating human rights and refugee law obligations. While not inherently unlawful under maritime law, the “closed ports” policy’s legality hinges on compliance with international human rights and refugee law, and the specifics of each case.³⁴³

A) The Central Mediterranean: Italy (2018-2019)

Since mid-2018, Italy has implemented a de-facto closed-port policy by refusing to allow vessels carrying rescued migrants to disembark. The shift under Prime Minister Giuseppe Conte. On 10 June 2018, Italy denied the *Aquarius*, carrying 630 rescued individuals including children and pregnant women, access to its ports. This refusal extended not only to INGO ships but also to military and commercial vessels, including the Italian *Diciotti*.³⁴⁴

In March 2019, Salvini issued *Directive 14100/141*, instructing authorities to deny entry to vessels threatening public order and national security. The Directive states that, ultimately, civil rescue ships systematically resort to the instrumental use of international law provisions concerning SAR to transport irregular migrants rescued in the Mediterranean into the Italian territory.³⁴⁵

This practice raised serious legal concerns. Extended standoffs at sea subjected vulnerable individuals, including torture survivors and unaccompanied minors, to conditions that may amount to cruel and inhumane treatment.³⁴⁶ Moreover, commercial shipmasters faced legal ambiguity and delays.³⁴⁷

In parallel, Italy has bolstered cooperation with the LCG, effectively outsourcing migration control despite Libya being widely recognized as unsafe due to rampant human rights abuses.³⁴⁸ The turning point came in February 2017, when Italy and Libya signed a Memorandum of Understanding aimed at curbing irregular migration. The agreement

³⁴³ Schatz and MF (n 77) 778

³⁴⁴ Amnesty International, *Between the Devil and the Deep Blue Sea: Europe fails refugees and migrants in the Central Mediterranean* (8 August 2018) 7–8

³⁴⁵ Schatz and MF (n 77) 779

³⁴⁶ AI (n 344) 8

³⁴⁷ AI (n 344) 9

³⁴⁸ AI (n 344) 5-6

formalized Italy's support for the LCG, including the delivery of patrol vessels, technical training, and sustained financial and logistical backing. The MoU was renewed in 2023 for 3 years.³⁴⁹

Between August and December 2017, Libya, where the UN Fact-Finding mission found substantial grounds to believe” that migrants are victims of crimes against humanity, including torture, enslavement, and arbitrary detention,”³⁵⁰ unilaterally declared its own SRR. From 2018 onward, Italy increasingly coordinated rescues via the Libyan MRCC, effectively outsourcing rescue authority. By 2024, more than 132,000 people have been unlawfully intercepted and returned there.³⁵¹

In July 2023, Tunisia established its own SRR backed by the EU and Italy, raising concerns due to its record of abandoning migrants at borders and restricting asylum access. A coalition of INGOs and UN bodies has warned that Tunisia is not a safe place for disembarkation, citing systematic abuses, racial discrimination, desert expulsions, and the absence of a function asylum system.³⁵²

B) The Central Mediterranean: Malta (2018-2025)

Malta's role in the central Mediterranean crisis is marked by legal divergence and operational conflict with Italy. Disagreements over the scope and responsibility of SRR, particularly Malta's reluctance to accept disembarkation from its vast SAR region, have led to standoffs, such as in the *Aquarius* case in 2018 where both Italy and Malta refused docking.³⁵³

The European Council on Refugees and Exiles (ECRE) identifies the beginning of this state policy in July 2018, when, based on the claim that the authorities necessitated

³⁴⁹ Euro-Med Human Rights Monitor, *Italy–Libya Memorandum of Understanding: An affront to the fundamental human rights of migrants, refugees, and asylum seekers* (2023) <https://euromedmonitor.org/en/article/5561/Italy-Libya-Memorandum-of-Understanding:-An-affront-to-the-fundamental-human-rights-of-migrants,-refugees,-and-asylum-seekers> accessed 16 June 2025

³⁵⁰ United Nations, 'Libya: Crimes against humanity committed since 2016 – rights probe' (UN News, 2023) <https://news.un.org/en/story/2023/03/1135052> accessed 17 June 2025

³⁵¹ Human Rights Watch, 'Italy: Constitutional Court Hears Challenge to Law Penalizing Sea Rescue' (2025) <https://www.hrw.org/news/2025/05/20/italy-constitutional-court-hears-challenge-law-penalizing-sea-rescue> accessed 17 June 2025

³⁵² Amnesty International, *Joint Statement: Tunisia is Not a Place of Safety for People Rescued at Sea* (2024) <https://www.amnesty.org/en/latest/news/2024/10/joint-statement-tunisia-is-not-a-place-of-safety-for-people-rescued-at-sea/> accessed 16 June 2025

³⁵³ AI (n 344) 11–12

verification of whether the SAR operations conducted by rescue vessels complied with national and international regulations, the Maltese government decided to no longer permit INGO-operated ships to enter, depart from, or make use of its port facilities.³⁵⁴ Subsequently, during the Covid-19 pandemic, Prime Minister Robert Abela formally closed all Maltese ports on public health grounds.³⁵⁵

Malta has enforced its de facto closed-port policy primarily by exploiting legal and procedural gaps. It relies on UNCLOS provisions allowing port access restrictions for public health reasons and benefits from not having signed the 2004 SAR Convention amendments and related IMO guidelines, which stress the duty to ensure disembarkation in a place of safety.³⁵⁶

Malta has also engaged in push-backs and pull-backs to both Libya and Tunisia. In the 2018 *Sarost* case, the country refused disembarkation to rescued migrants in its SRR and redirected the vessel to Tunisia.³⁵⁷ In 2020, a former Maltese official admitted coordinating a pushback to Libya on orders from the Prime Minister's office, resulting in 12 deaths.³⁵⁸ As of 2025, Malta continues this strategy, frequently delaying or denying rescues, and instructing merchant ships not to aid or inform INGOs. In 2023 alone, 588 people were pushed back to Libya from Malta's SAR zone, some by the *Tareq Bin Zeyad* militia, and over 50 incidents of non-assistance were reported. The fate of more than 2,000 people remains unknown due to unaccounted vessels and lack of transparency.³⁵⁹

³⁵⁴ ECRE, *Malta intensifies crackdown on rescuing organisations, while deaths in the Mediterranean are on the rise* (2018) <https://ecre.org/malta-intensifies-crackdown-on-rescuing-organisations-while-deaths-in-the-mediterranean-are-on-the-rise/> accessed 10 July 2025

³⁵⁵ Karl Azzopardi, 'Decision to close ports based on keeping Malta's health as top priority – Robert Abela' (The Malta Independent, 2020) <https://www.independent.com.mt/articles/2020-04-12/local-news/Decision-to-close-ports-based-on-keeping-Malta-s-health-as-top-priority-Robert-Abela-6736221955> accessed 7 June 2025

³⁵⁶ Schäfer (n 186)

³⁵⁷ Kiri Santer, 'The case of the Sarost 5: black holes of responsibility in the central Mediterranean' (openDemocracy, 2018) <https://www.opendemocracy.net/en/can-europe-make-it/case-of-sarost-5-black-holes-of-responsibility-in-central-mediterrane/> accessed 24 June 2025

³⁵⁸ ECRE, 'Med: Former Maltese Official Admits Push-Back while another 62 People are Left Stranded' (2020) <https://ecre.org/med-former-maltese-official-admits-push-back-while-another-62-people-are-left-stranded/> accessed 7 June 2025

³⁵⁹ ECRE 'Access to the Territory and Push Backs – Malta' (Asylum Information Database, 2024) <https://asylumineurope.org/reports/country/malta/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/> accessed 5 June 2025

C) The Eastern Mediterranean: Greece (2018-2025)

Sheltering in the absence of international waters between Greece and Türkiye, Greek authorities have implemented systematic pushbacks of migrants and asylum seekers in a surprisingly aggressive and systematic way, forcing nearly 94,000 people aboard 3,415 boats back into Turkish waters, since 2018 according to data from Aegean Boat Report.³⁶⁰

Amnesty International described pushbacks during this period as Greece's "de facto border policy".³⁶¹ In 2023, MSF published multiple testimonies detailing "secret, illegal and often brutal deportations" from Lesbos and Samos, regularly carried out with uniformed or masked officers who strip possessions and leave people adrift.³⁶²

3.2.5 Development of repressive legislation targeting SAR INGOs (2017-2023)

After the phase of criminal prosecutions and BAI use, states adopted new strategies to block humanitarian efforts in the Central Mediterranean and Aegean. Before 2017, civil SAR operations were governed by general maritime laws, with no specific national regulations. Since then, Italy and Greece have introduced restrictive legal frameworks to control SAR activity, while Malta relied on administrative discretion.

In Greece, new laws enabled sweeping control over civil society actors in both SAR and refugee support. Italy became the leading example of repressive SAR legislation, enacting laws and decrees since 2018 specifically aimed at disabling INGO operations through tailored bureaucratic and legal obstacles.

The EU has echoed this shift, using external agreements, anti-facilitation rules, and deterrence policies, further reinforced by the upcoming Pact on Migration and Asylum, to externalize and securitize migration management.³⁶⁶

³⁶⁰ 'Aegean Boat Report Data Studio' (2025) https://lookerstudio.google.com/reporting/1CiKR1_R7-1UbMHKhZzE_Ji_cvqF7xlfH/page/A5Q0 accessed 27 June 2025

³⁶¹ Amnesty International, 'Greece: Pushbacks and violence against refugees and migrants are de facto border policy' (2021) <https://www.amnesty.org/en/latest/press-release/2021/06/greece-pushbacks-and-violence-against-refugees-and-migrants-are-de-facto-border-policy/> accessed 25 June 2025

³⁶² Médecins Sans Frontières, 'In Plain Sight: the human cost of migration policies and violent practices at Greek sea borders' (2023) <https://www.msf.org/plain-sight-migration-policies-greek-sea-borders> accessed 27 June 2025

³⁶⁶ EUFRA (n 147) 3

A) The Central Mediterranean: Italy (2018-2023)

Attempts to constrain the activities of SAR INGOs through legislative means began in Italy in 2018 and significantly expanded under the mandate of Interior Minister Matteo Salvini. However, this trend had a notable precedent in 2017, introduced by then Minister Marco Minniti: the *Code of Conduct for NGOs involved in Migrant Rescue Operations at Sea*,³⁶⁷ in line with the initial defamation strategy of the Italian government.

As pointed out by the MSF SAR Representative, the Code of Conduct functioned as a de facto policy instrument to stigmatize non-compliant INGOs and provide a pretext for further restrictions. MSF and many others explicitly refused to sign the code, emphasizing the duplicative nature of the requirements and the manipulative framing intended to isolate dissenting organizations.³⁶⁸ INGOs that refused to sign the Code risked being denied permission to disembark migrants in Italian ports. Compliance required avoiding Libyan waters, keeping tracking devices active, not using guiding lights, proving personnel and vessel preparedness, and maintaining constant communication with flag states and Italian rescue authorities. INGOs were also banned from transferring migrants between ships, had to share information on smugglers, collect abandoned boats and engines, and accept Italian police on board.³⁶⁹ In March 2017, the ship *Open Arms* was seized pre-trial in Pozzallo (Sicily) for allegedly violating the Code of Conduct and endangering the lives of migrants.³⁷⁰ Later, even organizations that did immediately adhere were investigated by Italian courts.³⁷¹

Salvini's Directive 14100/141 laid the foundations for *Decree-Law N. 53* and served as a basis for the formulation of the rules applicable to the entrance of foreign private ships engaged in rescue operations into the Italian territorial sea. Subsequent Directives targeted individual INGO requests for safe ports, implying that such operations constituted "non-innocent passage" and indirect cooperation with smugglers.³⁷² The legislative trajectory culminated in Decree-Law No. 53 of 14 June 2019 (subsequently converted into Law No. 77 of 8 August 2019), commonly referred to as *Salvini's Security*

³⁶⁷ Gil (n 186)

³⁶⁸ Ibid.

³⁶⁹ Alagna and Cusumano (n 231) 496

³⁷⁰ EUFRA (n 147) 16

³⁷¹ Alagna and Cusumano (n 231) 496

³⁷² Stege (n 97)

Decree bis, and marked a significant intensification of Italy's legal framework for controlling maritime migration.

Under Decree-Law N.53 and Law N.77, Italian authorities issued administrative orders primarily targeting civil rescue vessels, banning entry, transit, and anchoring in Italian territorial waters, citing repeated patterns suggesting the vessel's intent to bring migrants to Italy irregularly. Authorities also claimed the ship's activities constituted "non-innocent passage" under UNCLOS and raised vague security concerns, including terrorism risks due to passengers lacking documentation. However, no immigration law violations by the crews were documented, and the alleged threats appeared abstract and unsubstantiated.³⁷³

According to EUFRA, the implementation of Decree-Law N.53 and Law N.77 stopped INGO boats in Italy in 12 occasions between March 2019 and June 2025. In 2019 vessels *Alex-Mediterranea* (MSH) and *Eleonore* (Mission Lifeline), were detained in July and September for violating *Security-Decree Bis. Mare Jonio*, also from MSH was detained that same year under same changes detained and the Court of Agrigento imposed a fine of 300,000€ in the INGO.³⁷⁴ *Sea-Watch 3* was also detained for one month for failing to follow orders from the Italian authorities.³⁷⁵

Decree-Law No. 53 thus represented an expansion of the Ministry's discretionary power, extending and operationalizing competences regarding border control, public order and internal security. The decree effectively consolidated the Interior Ministry's control over maritime migration governance.³⁷⁶ Sanctions for violations were severe, including administrative fines of up to €1 million and the impoundment of vessels, thereby introducing a punitive legal architecture aimed at deterring civil society involvement in SAR activities.³⁷⁷

After the demise of Salvini, the new progressive cabinet maintained an ambivalent approach. From September 2019 to October 2022, Interior Minister Luciana Lamorgese

³⁷³ Ibid.

³⁷⁴ EUFRA (n 147) 18

³⁷⁵ Ibid.

³⁷⁶ Schatz and MF (n 77) 750

³⁷⁷ Alagna and Cusumano (n 231) 497

chose a discursive break from Salvini's hardline rhetoric while largely preserving his policy framework³⁷⁸.

In October 2022, upon assuming the role of Italian Interior Minister under Giorgia Meloni's government, Matteo Piantedosi adopted a stringent stance on migration, particularly targeting SAR INGOs. In his early months in office, Piantedosi implemented a confrontational approach to SAR NGOs, evidenced by the standoffs involving the *Geo Barents*, *Humanity 1*, and *Ocean Viking*.³⁷⁹

This attitude evolved into a more structured legal framework with *Decree-Law No. 1 of 2 January 2023*, commonly referred to as the Piantedosi Decree.³⁸⁰ This legislation increases the requirements on vessels carrying out rescue missions to enter or transit through Italian territorial waters. The new regulatory framework confirms the power of the Minister of the Interior to restrict or prohibit the transit and stationing of ships (other than military or on non-commercial government service) in the Italian territorial sea³⁸¹ if they do not comply with a mandatory immediate request for a POS after the first rescue operation, a ban on conducting multiple SAR missions without prior disembarkation and administrative sanctions (including vessel confiscation) for non-compliance, imposed by prefects directly subordinate to the Interior Ministry.³⁸²

The decree was complemented by a new POS Assignment Operational Protocol, which, although formally more responsive than previous administrations, deliberately designated distant ports, mainly in Northern and Central Italy, thus burdening INGOs with extended navigation times and operational costs³⁸³.

Under Decree-Law 1/2023, non-compliant ships face fines between 10,000 and 50,000€, with repeat offenses leading to seizure and confiscation. Criminal charges may also apply. The law reflects a ministerial directive prioritizing border control over international SAR obligations, framing irregular migration as a security threat and potential terrorism risk.

³⁷⁸ Alagna and Cusumano (n 231) 498

³⁷⁹ Alagna and Cusumano (n 231) 499

³⁸⁰ Paynter (n 55)

³⁸¹ Danish Refugee Council (DRC), 'Italy's attempt to restrict search and rescue, in line with EU legal frameworks?' (Note by ASGI with support of DRC Italy, March 2023) <https://drc.ngo/resources/documents/italy-s-attempt-to-restrict-search-and-rescue-in-line-with-eu-legal-frameworks/> accessed 23 June 2025

³⁸² Ibid.

³⁸³ Alagna and Cusumano (n 231) 500

Under government pressure, Decree-Law 1 was converted into Law N.15 in the Italian Parliament, significantly increasing penalties. It raises fines up to 1,000,000€, allows ship confiscation without repeat offenses, holds ship-owners jointly liable if the master is insolvent, and makes them cover custody costs. Seized vessels can be transferred to police, Coast Guard, or Navy for official use. The law also permits detention of the ship's master for violence or resistance against a warship.³⁸⁴

According to data shared by Sea-Eye, Sea-Watch and SOS Humanity, the *Piantadosi Decree* has led to the administrative detention of rescue vessels on 28 occasions, resulting in 680 days of blocked operations.³⁸⁵

The *Sea-Eye 4* was the first vessel to suffer a detention of 20 days and fine of 3,333€ under the Decree because of deviating slightly from its assigned course to respond to an unconfirmed distress call, followed by a second rescue.³⁸⁶ At the time of delivering this thesis, the *Sea-Eye 5* is detained in Pozzallo, facing charges of not following instructions from the Maritime Rescue Coordination Centre in Rome, delaying its request to disembark the rescued people, and not leaving the port promptly after disembarkation. Sea-Eye rejected the charges.³⁸⁷

In conjunction with the *Security Decree Bis*, INGO vessels were also be detained from 2023 for not following orders from the Libyan authorities and not requesting a POS in Libya. As highlighted by a consulted legal expert, this practice has been denounced as repressive and fundamentally erroneous, as it rules over the conduct of a foreign vessel in international waters, outside of the jurisdiction of Italy.³⁸⁸

In 2023 vessels *Aurora* (Sea-Watch), *Ocean Viking* (SOS-Méditerranée), *Humanity 1* (SOS-Humanity) and *Mare Jonio* (MSH) were detained for 20 days for not coordinating with the Libyan authorities nor seeking a POS there. SOS-Méditerranée was also fined with 3,300€. In 2024, *Open Arms* (Open Arms), *Humanity 1*, *Aurora* and *Louise Michel*

³⁸⁴ Schatz and MF (n 77) 752

³⁸⁵ Sea-Eye, '175,000 Lives Saved – A Decade of Civil Search and Rescue in the Central Mediterranean' (18 June 2025) <https://sea-eye.org/en/175000-lives-saved-a-decade-of-civil-search-and-rescue-in-the-central-mediterranean/> accessed 27 June 2025

³⁸⁶ EUFRA (n 147) 21

³⁸⁷ Sea-Eye, 'After Rescuing 65 People: SEA-EYE 5 Unlawfully Detained in Sicily' (2025) <https://sea-eye.org/en/after-rescuing-65-people-sea-eye-5-unlawfully-detained-in-sicily/> accessed 10 July 2025

³⁸⁸ Stege (n 97)

(MV Louise Michel) were detained again under same pretext. Open Arms was also fined³⁸⁹.

For MSF, the operational implications of *Law 15/23* have been profound. As shared by the MSF SAR Representative, the INGO has faced administrative detentions of its vessel, *Geo Barents*, including fines and the threat of confiscation. This regulation, paired with the frequent assignment of remote disembarkation ports, has drastically reduced MSF's capacity to conduct multiple rescues and extended its vessels' absence from SAR zones. The cumulative effect has been a stark underutilisation of MSF's rescue capacity and an increase in preventable deaths at sea. Furthermore, administrative sanctions have imposed significant operational delays. According to the representative, these detentions, often justified by alleged non-compliance with instructions from the Libyan Coast Guard (LCG), reflect deeper issues: Italy and the EU's legitimisation and funding of a Libyan actor widely documented for its human rights abuses. Because of this repression, MSF was forced to undertake a strategic operational pause at the end of 2023 to transition from the large-capacity *Geo Barents* to a smaller, faster, and more cost-effective vessel better suited to navigate the new hostile regulatory environment.³⁹⁰

Finally, it was highlighted during the interviews that the *Piantadosi decree* and subsequent *Law 15/23* have particularly deterred smaller SAR organizations (RESQSHIP, Louise Michel) from engaging in operations.³⁹¹ On 5 June 2025, the Nadir (operated by RESQSHIP), was detained in the port of Lampedusa after rescuing 112 people, accused of failing to promptly inform the responsible authorities and not following orders regarding the assigned port of safety.³⁹²

B) The Eastern Mediterranean: Greece (2019-2021)

In the same way, the Greek government began in 2019 to legislatively restrict the activities of INGOs in the areas of SAR and migrant support.

³⁸⁹ EUFRA (n 147)

³⁹⁰ Gil (n 186)

³⁹¹ Alagna and Cusumano (n 231) 501

³⁹² ECRE, 'Mediterranean: More deaths of people on the move — NGO blames Italian policies for hindering civilian search and rescue operations — Two NGO rescue vessels detained by Italian authorities' (2025) <https://ecre.org/mediterranean-more-deaths-of-people-on-the-move-%E2%80%95-ngo-blames-italian-policies-for-hindering-civilian-search-and-rescue-operations-%E2%80%95-two-ngo-rescue-vessels-detained-by-italian-authorit/> accessed 10 July 2025

With the approval in 2020 of the *Joint Ministerial Decision (JMD) No 3063* “On the operation of the Registry of Greek and foreign NGOs that operate in the areas of asylum, migration and social integration in Greece, and on the Registry of their members”, Greek authorities tightened up the requirements imposed on organisations and individuals to be able to operate in Greece.³⁹³ This JMD was criticized for being inconsistent with EU data protection laws and international norms on freedom of association, raising serious concerns regarding the restriction of civic space and the autonomy of INGOs working on migration and asylum.³⁹⁴ To comply with the regulation, organizations must provide extensive documentation and personal data, including for unpaid volunteers. Failure to update staff changes within 24 hours can result in automatic deregistration. The rules are especially burdensome for smaller INGOs and allow authorities broad discretion to reject applications based on vague criteria. Certification, required for funding and access to state-run facilities, increases the risk of undue state interference in INGO operations.³⁹⁵

The implementation of this JMD took place within the broader framework of recent legislative reforms to Greece’s asylum and migration regime, enacted in November 2019 and May 2020 during the first term of Prime Minister Kyriakos Mitsotakis. These reforms substantially curtailed the rights of asylum seekers and migrants, while also imposing new constraints on INGOs, particularly through the introduction of stringent registration requirements. Notably, Article 58 of the May 2020 legislation *Law No. 4686/2020*, which amends various provisions of immigration and asylum law and establishes registration as a fundamental prerequisite for all organizations operating in these sectors in Greece.³⁹⁶ As of 2025, *JMD No 3063/2020* and *Law No. 4686/2020* have been replaced by *JMD 10616/2020*, which maintains and reinforces the same restrictive approach.

Unlike Malta and Italy, the primary mixed-migration routes and areas requiring SAR operations involving Greece are situated within its territorial waters. This geographic configuration has afforded the Greek state substantially greater operational and legal leverage in comparison to the circumstances faced by the other two countries, where the principal migration routes traverse international waters that nonetheless fall within their respective SRRs. In 2021, deploying SAR vessels in maritime areas where the Greek

³⁹³ Amnesty International, *Punishing Compassion: Solidarity on Trial in Fortress Europe* (2020) 7

³⁹⁴ AI (n 393) 9

³⁹⁵ AI (n 393) 11-12-13

³⁹⁶ AI (n 393) 1

Coast Guard is responsible was made illegal without prior official authorisation through *Law No.4825/2021*. After its adoption, no civil-society organisation deployed any SAR assets anymore.³⁹⁷ Organizations operating without authorization may face fines of up to 6,000€, while individuals involved in such activities may be fined up to 1,000€ each. Additionally, they may be subject to imprisonment ranging from one to three years if their actions result in an accident, without prejudice to more severe penalties that may apply under other relevant provisions of Article 40 (endangering public safety, causing physical injury or death and environmental harm).³⁹⁸

³⁹⁷ EUFRA (n 147) 11

³⁹⁸ Ibid.

4. Responses to the State repression of SAR civil efforts in the Mediterranean

To date, the manner in which the legal and human rights communities are responding to the challenge of state repression in this domain requires further scholarly investigation. Although both Alagna and Cusumano,⁴¹⁷ and Graffin et al., have partially addressed the significance and potential impact of cases such as the Court of Justice of the European Union (CJEU) preliminary ruling on the Sea-Watch application,⁴¹⁸ a comprehensive overview of the legal response to this repression has not yet been compiled. This thesis therefore aims to contribute a novel perspective to the discourse on human rights in the context of Mediterranean migration and civil humanitarian action.

4.1 SAR INGOs positioning

As Cusumano argues, the way SAR INGOs respond to state repression is closely tied to how they interpret their SAR mandate and position themselves vis-à-vis state enforcement.⁴²¹ This stance is often shaped by material constraints and operational capacity. SAR organisations vary significantly in size and resources: while some are relatively well-funded with multiple vessels, aerial teams, and professional staff, others operate with limited finances, a single vessel, and minimal personnel. Most rely on volunteers and activists, with staffing often subject to frequent turnover.⁴²² Cusumano explains that some organisations adopt a more confrontational toward state authorities and inclined to view humanitarian work as a vehicle for advocacy, while others favour cooperation with governments to secure access to the humanitarian space.⁴²³

4.2 First responses and non-legal action

INGOs face major challenges in pursuing legal action against criminalisation and obstruction, including limited funding, institutional capacity, legal complexity, and language barriers. These issues stem from the transnational nature of SAR operations and

⁴¹⁷ Alagna and Cusumano (n 58) 123

⁴¹⁸ Graffin, Howard and Vincett (n 53)

⁴²¹ Cusumano (n 43) 8

⁴²² Graffin, Howard and Vincett (n 53) 4

⁴²³ Ibid.

working outside their home jurisdictions. As a result, INGOs often turn to alternative strategies before pursuing formal legal action.

As Alagna and Cusumano highlight, counternarratives are central to resisting the public smear and defamation campaigns portraying humanitarian sea rescue as complicit in irregular immigration. INGOs have largely prioritized political counternarratives over legal action, given the complexity of defamation cases, especially against state actors.⁴²⁴ These narratives seek to “desecuritize” migration and break the link between rescue work and criminality.⁴²⁵ Strategies include humanizing migrants through testimonies (e.g., *Voices from the Sea, Stories from the Sea*), debunking myths like the “pull factor” with academic research, increasing transparency by hosting journalists on board, and using high-profile prosecutions, such as Carola Rackete’s, to raise awareness and contest repressive policies.⁴²⁶

Other key responses identified by INGOs are public mobilization and alliances, viewed as essential for both operational sustainability and societal impact. Organizations like SOS Humanity engage in protests, petitions, and awareness campaigns to challenge restrictive policies and build support.⁴²⁷ Collaboration among SAR INGOs, legal groups, and activists enables resistance across legal, political, and social spheres. These networks provide legal and financial support, share resources, and operate informal coordination systems like a “civil MRCC” to fill gaps left by state withdrawal.

In response to prolonged standoffs, distant port assignments, and administrative obstacles, SAR INGOs have adapted operationally. This includes alternating bigger and smaller vessels (e.g., *Sea-Watch, Open Arms, MSF*),⁴²⁸ conducting joint missions (*Aquarius, Humanity I*), and adopting reflagging strategies under supportive states like Germany and Norway.⁴²⁹

SAR organizations have also used political pressure to counter state repression. In 2020, Sea-Eye redirected a vessel to Marseille after being denied entry to Italian ports, framing

⁴²⁴ Schäfer (n 186)

⁴²⁵ Alagna and Cusumano (n 58) 113

⁴²⁶ Alagna and Cusumano (n 58) 114

⁴²⁷ Schäfer (n 186)

⁴²⁸ Gil (n 186)

⁴²⁹ Alagna and Cusumano (n 58) 114

it as a Covid-19 public health issue.⁴³⁰ The move triggered diplomatic and civil society support, leading to disembarkation. Similarly, in 2018, after Italy and Malta blocked the Aquarius with 629 people on board, international pressure led Spain's new government to allow disembarkation.⁴³¹

4.3 Legal responses

After 2018, sea rescue organizations have increasingly turned to legal mobilization, using the judicial system as a platform for political contestation.⁴³² Over time, their approach has shifted from merely defending against legal charges to actively pursuing legal action. While many cases remain unresolved, an increasing number of organizations are adopting proactive legal strategies, including smaller actors, as recently illustrated by RESQSHIP's first appeal to a detention.⁴³³

These legal efforts span multiple jurisdictions (administrative, civil, juvenile, and criminal) and operate at various levels, including national, EU, and international courts. As shared by the MSF SAR representative, it was states that first criminalized humanitarian rescue activities and brought them into the courtroom. In response, INGOs initially chose to defend themselves in court. Over time, some began to go further, proactively filing lawsuits, including civil and criminal cases.

In Italy, this growing legal mobilization has been made possible thanks to the legal support of organizations such as the *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI)*, and the establishment of legal teams and legal support funds within organisations like Sea-Watch. In Malta, organizations such as the *Aditus Foundation* have played a decisive role in cases involving the criminalization of migrants and humanitarian workers. In Greece, campaigns like *Free Humanitarians* have combined advocacy efforts with fundraising to support the legal defence of individuals facing criminal charges.

⁴³⁰ Stege (n 97)

⁴³¹ La Moncloa – Presidencia del Gobierno, 'Sánchez anuncia que España recibirá al buque Aquarius' (11 2018) <https://www.lamoncloa.gob.es/presidente/actividades/Paginas/2018/110618-sanchezaquarius.aspx> accessed 10 July 2025

⁴³² Alagna and Cusumano (n 58) 117

⁴³³ RESQSHIP, Instagram post (2025) <https://www.instagram.com/resqship/p/DLsS5k3tfFw/> accessed 10 July 2025

4.3.1 Legal responses to criminal prosecution

The initial and most visible form of legal mobilization has been in response to criminal prosecution. Although, criminalization remains the most alarming and intimidating challenge faced by humanitarian actors, paradoxically, it is also, given the lack of substance in most of the accusations, the most feasible area for legal intervention and strategic challenge.

A) The Eastern Mediterranean: Greece

In the two Lesvos cases, the defences focused on challenging the factual inconsistencies in the accusations and on clarifying the humanitarian nature of the INGO activities, as well as their compliance with obligations arising under international law. The 2016 Proem-Aid and Team Humanity case the legal defence challenged the prosecution's charge of "attempted human trafficking" due to the complete absence of evidence, no migrants were assisted, no boat was encountered, and thus no act or intent of smuggling was established.⁴³⁴ Second, the alleged possession of "weapons" was refuted by demonstrating that the tools in question, such as cable-cutting pliers, were standard rescue equipment used in life-saving operations.⁴³⁵ The defence also highlighted serious procedural violations, including the arrest of volunteers without due process, access to legal support, or translation services.⁴³⁶ The court ultimately acquitted all defendants in May 2018, citing lack of evidence, criminal intent, or victims, and confirming that the rescue tools did not constitute illegal weapons.⁴³⁷

Similarly, the legal foundation of the defence of the ongoing felony case of Binder, Karakitso, Mardini and the other ERCI volunteers is that the organisation qualifies as a "bona fide humanitarian organization" and therefore is exempted under the EU Directive on Facilitating Unauthorized Entry.⁴³⁸ Further, the defendant Seán Binder emphasizes the

⁴³⁴ Refugee Support Aegean (RSA), 'Lesbos court ruling vindicates five aid workers: saving lives at sea is not a crime' (2024) <https://rsaagean.org/en/lesbos-court-ruling-vindicates-five-aid-workers-saving-lives-at-sea-is-not-a-crime/> accessed 10 July 2025

⁴³⁵ Ibid.

⁴³⁶ World Organisation Against Torture (OMCT), 'Ongoing crackdown on civil society providing humanitarian assistance to migrants and asylum seekers' (Urgent Intervention, 2025) <https://www.omct.org/en/resources/urgent-interventions/ongoing-crackdown-on-civil-society-providing-humanitarian-assistance-to-migrants-and-asylum-seekers> accessed 10 June 2025

⁴³⁷ Ibid.

⁴³⁸ Binder (n 208)

obligations under international conventions such as UNCLOS and the ECHR, arguing that their operations were consistent with these legal norms:

“we have a responsibility to provide assistance to people in distress out at sea... a small dinghy filled with overfilled with human lives [is], by definition, a vessel in distress.”⁴³⁹

The defence also rests heavily on factual rebuttals to the specific accusations, as according to the legal team representing the three humanitarians, the Greek authorities failed to produce concrete evidence in support. For example, the authorities cited the defendant emergency call to 112 as suspicious. However, “112 is the European Emergency Response number... and indeed, that night, (he) was calling the authorities because there was a woman in front of us who needed immediate emergency help.”⁴⁴⁰ The defendants deny any engagement with smugglers or direct facilitation of migrant crossings, and “can demonstrate that (they) communicated with the authorities” at all times. Regarding the charge of money laundering, the defence plans to use financial records to show that funding came from legitimate donations, as supported by “accounts... that can demonstrate the fact that the money (they) got was from donations and not from illicit activity.”⁴⁴¹

Following their acquittal in the misdemeanour case, the upcoming hearing before the Criminal Court of Mytilene in December 2025 will serve as a critical test of the strength and coherence of the defence’s arguments in the felony proceedings.

B) The Central Mediterranean: Malta

In the same line, the legal defence of Captain Claus-Peter Reisch in Malta grounded in humanitarian purpose, the absence of criminality and the refutation of factual claims. First, the defence emphasized the lack of *mens rea*, arguing that although Reisch entered Maltese waters irregularly after the rescue in 2018 he did so in “good faith” and without any criminal intent to contravene maritime regulations. In its January 2020 ruling, the

⁴³⁹ Binder (n 208)

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

Court of Criminal Appeal specifically stated that there was “no specific criminal intent” and therefore overturned the initial conviction and fine.⁴⁴⁵

Second, the court ruled the Netherlands was not the Flag State, placing the vessel outside Dutch jurisdiction. However, it was not deemed in breach of any law, as it was not registered or used as a commercial vessel.⁴⁴⁶

C) The Central Mediterranean: Italy

In Italy, the defences have likewise sought to factually dismantle the charges of smuggling facilitation, while also advocating for the primacy of international obligations and the protection of human life over the violation of national regulations and maritime protocols. The accusations against SAR workers and activists like the *Iuventa* crew or Carola Rackete are a severe attack on vital efforts by civil society actors to stand in solidarity with and defend the lives and fundamental rights of refugees and migrants.

Given the case’s far-reaching implications for the rights of people on the move and its broader significance for civil society engagement, preliminary hearings commenced in May 2022 against four members of the *Iuventa* crew, alongside 17 other individuals and three organizations (Save the Children, MSF), and the shipping company. In response, the ECCHR, Amnesty International and other human rights organizations, sought and applied for observer status to monitor the proceedings. The accused faced potential prison sentences of up to 20 years and fines amounting to several million euros.⁴⁴⁷

Already in 2019, the organization had submitted a communication to the United Nations SR on the Situation of Human Rights Defenders, urging her to intervene in response to developments in Italy. The ECCHR contended that the criminal investigations targeting the *Iuventa* crew, along with the subsequent smear campaign orchestrated by Italian authorities, constituted violations of both the UN Declaration on Human Rights Defenders and the ICCPR. In October 2020, Mary Lawlor, the SR, publicly condemned

⁴⁴⁵ ECRE ‘Sea Appeal: Court clears Lifeline captain of all charges, NGOs continue to rescue’ (2021) <https://ecre.org/seaappeal-court-clears-lifeline-captain-of-all-charges-ngos-continue-to-rescue> accessed 10 June 2025

⁴⁴⁶ ECRE (n 359)

⁴⁴⁷ ECCHR (n 261)

the Italian government's actions against the sea rescuers and called for the charges against them to be dropped.⁴⁴⁸

In May 2023, the court dismissed claims of prosecutorial misconduct in the *Iuventa* case. That same month, a constitutional complaint challenging the legal basis of the charges was rejected. A key shift came in February 2024 when the Trapani prosecutor requested case dismissal due to lack of evidence and damage to the seized vessel.⁴⁴⁹ In April, the judge agreed, and by May, the court confirmed there was no evidence of wrongdoing. It found the rescues were coordinated by the Italian MRCC and aligned with legal obligations, criticizing the investigation for relying on incomplete, biased evidence.⁴⁵⁰

Most criminal cases against SAR crews in Italy have ended in dropped or reduced charges. In the 2018 Open Arms case, Captain Marc Reig and coordinator Anabel Montes were accused of aiding illegal immigration for refusing to return rescued people to the Libyan coast guard. The judge released the vessel, ruling their actions were justified by Libya's human rights abuses. While charges of criminal association were dropped, the main investigation remains open.⁴⁵¹

In early 2019, the Tribunal of Catania ordered the release of the *Aquarius*, similarly having found no evidence of the alleged charges on criminal waste trafficking. The court rejected the premise that MSF and SOS Méditerranée had violated environmental law or endangered public health. Nonetheless, despite the vessel's release, legal proceedings against individual crew members continued, with the trial formally commencing before the Criminal Court of Catania in September 2023 and remaining pending as of June 2025.⁴⁵²

The criminal charges against Captain Rackete for refusing to obey a warship non-compliance with the prohibition to enter, transit or stop in Italian territorial waters and aiding and abetting illegal immigration were eventually dismissed. Already on 2 July

⁴⁴⁸ Ibid.

⁴⁴⁹ EUFRA (n 147) 26

⁴⁵⁰ Canestrini Lex, 'ONG "taxi del mare"? No, soccorritori – GUP Trapani, 12 June 2024' (2024) <https://canestrinilex.com/risorse/ong-taxi-del-mare-no-soccorritori-gup-trapani-12624> accessed 27 June 2025

⁴⁵¹ Liz Fekete, Frances Webber and Anya Edmond-Pettitt, *When Witnesses Won't Be Silenced: Citizens' Solidarity and Criminalisation* (Institute of Race Relations Briefing Paper No 13, 2019) 8

⁴⁵² EUFRA (n 147) 26

2019, the preliminary investigation judge declared the arrest to be inadmissible.⁴⁵³ The judge further rendered the house arrest of Rackete as a penal measure for resistance to a public official invalid, as the captain has acted in fulfilment of her duty to rescue lives at sea. Besides, the judge emphasised that the decision to disembark the rescued people in Lampedusa and not in Libya or Tunisia, was not instrumental but mandatory, given the fact that neither of the latter could be considered a POS.⁴⁵⁴

The prosecutor appealed the decision to exclude precautionary measures. On 17th January 2020, the *Corte di Cassazione*, rejected the appeal and thereby upheld the previous judgment.⁴⁵⁵ The Court ruled that the international obligation to rescue people in distress is not discharged until the rescued persons are disembarked in a POS, a concept that must incorporate human rights considerations.⁴⁵⁶ This was something that “no other court or other binding legislation had previously declared in such a clear and uncompromising manner”.⁴⁵⁷ Moreover, the judge articulated that prohibiting ships from entering territorial waters to prevent the disembarkation of rescued persons, as was done by Matteo Salvini, is contrary to domestic and international law.⁴⁵⁸

Although criminal charges against civilian SAR actors have diminished in intensity, they continue to exert a chilling effect on humanitarian operations. On 31 May 2024, three UN SRs issued a joint communication to the Italian government, expressing serious concern regarding its treatment of civilian SAR efforts.⁴⁶² The experts highlighted that practices such as the detention of rescue vessels and crews obstruct humanitarian assistance and may contravene both international maritime and human rights law. The Rapporteurs also raised due process concerns, noting that SAR crew members have been interrogated without legal representation, and that mission leaders were not granted access to transcripts of their statements. Such practices, they argue, undermine procedural fairness and contribute to the systemic criminalization of human rights defenders in Italy.⁴⁶³

⁴⁵³ EUFRA (n 147) 24

⁴⁵⁴ UNODC SHERLOC database, ‘Carola Rackete / Sea-Watch case’ (Italy, 2019)

https://sherloc.unodc.org/cld/es/case-law-doc/migrantsmugglingcrimetype/ita/2019/carola_racketesea_watch_case.html accessed 15 May 2025

⁴⁵⁵ EUFRA (n 147) 24

⁴⁵⁶ Ibid.

⁴⁵⁷ Gennari (n 204)

⁴⁵⁸ UNODC (n 454)

⁴⁶² UN Special Procedures, communication to Italy, Ref AL ITA 4/2024 (2024)

⁴⁶³ Ibid.

As of June 2025, the only remaining active prosecution involves the Italian organisation MSH, with six activists standing trial before the Court of Ragusa in connection with the *Maersk Etienne* case. This prosecution stems from the May 2025 disembarkation of migrants who had spent 38 days aboard the Danish tanker. The case is further complicated by the fact that *Maersk Tankers*, owner of the vessel, had made financial donations in support of the NGO operations, which the prosecution has sought to frame as incriminating.

Observers have described this case as the final and most emblematic example of Italy's criminalization strategy toward civil SAR actors. Notably, it is also the first case of its kind to proceed to full trial in Italy. Political analysts have interpreted the persistence of the prosecution as reflecting a punitive and exemplary approach by authorities, aimed particularly at MSH, the only Italian SAR NGO, which maintains a distinctly activist stance in opposition to Italy's migration and border control policies.⁴⁶⁴

4.3.2 Legal responses to BAI

The less overt nature of BAI measures, often shielded by existing legislation and manifested in diverse forms, has made legal challenges more complex. Nevertheless, there are significant instances of legal mobilization and success, exposing their deliberately repressive character and incompatibility with legal standards.

A) The Eastern Mediterranean: Greece

While no legal cases have directly challenged bureaucratic barriers to humanitarian action within Greece, a notable case involving *Mare Liberum*, an INGO vessel monitoring pushbacks in the Aegean, originated in Germany.⁴⁶⁸ In September 2020, after Greek police searched the vessel, German authorities detained it under newly amended safety regulations targeting humanitarian ships.⁴⁶⁹ *Mare Liberum* challenged the detention and, in October 2020, the Hamburg Administrative Court ruled in its favour.⁴⁷⁰ However,

⁴⁶⁴ Alagna (n 201)

⁴⁶⁸ Statewatch, 'Mediterranean: Nine new legal proceedings against civil search and rescue ships since June 2020' (2020) <https://www.statewatch.org/news/2020/december/mediterranean-nine-new-legal-proceedings-against-civil-search-and-rescue-ships-since-june-2020/> accessed 7 June 2025

⁴⁶⁹ SWLA (n 267)

⁴⁷⁰ Ibid.

Greece's Law No. 4825/2021 later ended civilian SAR operations in the region, effectively negating this legal victory.

B) The Central Mediterranean: Malta

Malta's consistent failure to respond to distress calls within its designated SAR zone reflects a systemic pattern that is particularly difficult to challenge through domestic legal means. The core issue lies in the reluctance of domestic actors to hold Malta accountable for its omissions and the absence of INGO strong networks in the island. The main responses to the conduct of Malta have been handled internationally.

In 2021, the UN HRCtee issued two interconnected decisions against Malta and Italy following a 2013 shipwreck near Lampedusa, killing more than 200 people. The claimants alleged that Malta and Italy failed to assist those in distress at sea, thus violating their international obligations. Moreover, the claimants argued Malta and Italy failed to carry out an effective investigation into the causes of and responsibilities for the shipwreck. Although the Committee considered that Italy failed to show it met its due diligence obligations to protect the right to life pursuant to Article 6(1) of the ICCPR, and that it failed to meet its duty to conduct a prompt investigation, the case against Malta was declared inadmissible due to the failure to exhaust domestic remedies by the applicant.⁴⁷¹

A significant development occurred on 4 March 2025, when the UN HRCtee issued binding interim measures in response to a case involving 32 migrants stranded on the *Miskar* oil platform within Malta's SAR zone. The Committee explicitly directed Malta to coordinate a rescue operation and ensure the individuals would not be disembarked in a location where they faced a risk of torture or ill-treatment.⁴⁷² Despite the legal force of this decision, Malta failed to take action.

The interim measures were issued following an urgent request submitted by UpRights, StraLi, and SOS Humanity. As highlighted during the interview with one of the StraLi researchers, on the rare occasions when Maltese authorities do respond to distress calls,

⁴⁷¹ UN HRCtee, *Views adopted by the Committee under article 5(4) of the Optional Protocol – A.S. et al. v. Italy* (CCPR/C/131/D/3042/2017, 27 January 2021) and *A.S. et al. v. Malta* (CCPR/C/131/D/3043/2017, 27 January 2021)

⁴⁷² UN HRCtee, *Views adopted by the Committee under article 5(4) of the Optional Protocol – H.A. et al. v. Malta* (CCPR/C/139/D/3044/2017, 4 March 2025)

they frequently shift responsibility to the LCG, even when the vessels are located within Malta's SAR zone.⁴⁷³

The HRCtee measures implicitly acknowledge that such actions constitute a serious breach of Malta's obligations under international maritime law, including SAR Convention and UNCLOS, both of which require coastal states to coordinate and ensure the rescue of persons in distress within their designated SAR zones.⁴⁷⁴

While this case highlights Malta's continued breach of binding international obligations and sets a precedent affirming the authority of UN treaty bodies in maritime humanitarian contexts, the persistent lack of enforcement remains a major barrier to ensuring accountability.

C) The Central Mediterranean: Italy

As highlighted in the analysis of BAI repression, PSC inspections have been the core repressive tactic of the Italian government since 2019, intensifying around 2020. SAR INGO vessels have been disproportionately targeted under the pretext of safety violations, even when certified by their flag states. Given their significant impact and the relatively clear legal grounds for contestation, PSC-associated detentions have also been the most consistently and systematically challenged in court.

According to a legal expert affiliated with Sea-Eye, the principal legal argument underpinning these responses is intrinsically connected to the technical and juridical debate surrounding the definition of "deficiency."⁴⁷⁵ It is argued that imposing specific structural or operational requirements on rescue vessels is problematic when such requirements conflict with higher obligations under international maritime and human rights law. These obligations, particularly those arising in emergency situations, are characterized by significant unpredictability, rescue operations cannot reliably anticipate the number of individuals to be saved, nor the corresponding need for facilities such as toilets, medical personnel, or waste management systems.⁴⁷⁶ In this context, Sea-Eye has

⁴⁷³ Zarinato (n 316)

⁴⁷⁴ SOS Humanity (n 321)

⁴⁷⁵ Stege (n 97)

⁴⁷⁶ Ibid.

emerged as a prominent actor in contesting the imposition of such regulatory standards, emphasizing the primacy of international legal norms over rigid technical criteria.

The first PSC-related detention involving Sea-Eye occurred in 2020 in the port of Olbia to the vessel *Alan Kurdi*. Italian authorities claimed the ship was unsafe due to technical issues, such as insufficient sanitary facilities for rescued individuals. However, Sea-Eye contested the legitimacy of these claims, arguing that the vessel was compliant with German flag-state certifications, and that port states should not overstep their authority unless there is a clear and immediate safety threat, the original intent of PSC inspections.⁴⁷⁷

Sea-Eye initiated administrative legal proceedings against these detentions in Italian courts. After an initially unsatisfactory ruling from the Sardinian administrative court, which avoided directly addressing the legality of the detention, the case was escalated to the *Consiglio di Stato*. In 2023, this court ruled in Sea-Eye's favour, affirming that PSC measures cannot impose technical standards that conflict with a vessel's obligation under international law to conduct rescues. The court emphasized that unpredictable rescue scenarios make it unreasonable to require rigid technical configurations like fixed capacities for medical or sanitary services.⁴⁷⁸

The administrative appeals were not always successful in ensuring a prompt release of the vessel from PSC detentions. Identical detentions and similar appeals were seen by *Sea-Watch 3* and *4*, the *Ocean Viking*, and the *Aita Mari* that year, with irregular results.⁴⁷⁹ In May 2020, SMH challenged the detention of the *Aita Mari* in Palermo but the vessel was released two months later.⁴⁸⁰ Open Arms faced a similar scenario in April 2021 when the *Open Arms* vessel was seized in Pozzallo (Sicily) after a PSC identified "technical irregularities linked to maritime security." Shortly after, the INGO filed an appeal at the Court of Massa Carrara to challenge the seizure, but the boat remained seized for over two months.⁴⁸¹

⁴⁷⁷ Stege (n 197)

⁴⁷⁸ Ibid.

⁴⁷⁹ Sea-Eye, 'After four years of litigation: Sea-Eye wins another case against Italy' (2025) <https://sea-eye.org/en/after-four-years-of-litigation-sea-eye-wins-another-case-against-italy/> accessed 17 June 2025

⁴⁸⁰ EUFRA (n 147) 17

⁴⁸¹ EUFRA (n 147) 17

Following the growing number of appeals, the *Tribunale Amministrativo Regionale* of Sicily lodged a preliminary ruling request before the CJEU on 8 January 2021, after Sea-Watch had consistently challenged the detentions of its vessels under PSC. In August 2022, the ruling granted a robust legal critique of Italy's conduct.⁴⁸²

Central to the argument is the claim that the PSC inspections and subsequent detentions of the Sea-Watch 3 and Sea-Watch 4 by Italian authorities in 2020 lacked a valid legal basis under EU Directive 2009/16/EC and the Paris Memorandum of Understanding on PSC. The Court affirmed that PSC can apply, but must be balanced against the duty to rescue those in distress at sea. Inspections may only occur post-disembarkation and require serious, evidenced risks to health, safety, or the environment.⁴⁸³ The ruling emphasised the principle of proportionality, stipulating that inspections must be justified by serious indications of risk and not impede the fundamental duty to rescue those in distress at sea.⁴⁸⁴

PSC inspections are bound by strict procedural and legal criteria, with “overriding” and “unexpected” factors providing limited and exhaustively defined grounds for more detailed inspections beyond periodic checks. In the Sea-Watch and Sea-Eye cases, Italian inspectors had cited as justification the vessels' involvement in SAR operations without appropriate certification.⁴⁸⁵ Nevertheless, the CJEU asserted that neither international maritime law nor EU regulation authorizes a Port State to independently assess the "intended service" of a vessel if it complies with its Flag State's certification. The attempt by Italian PSC authorities to reclassify the activities of the Sea-Watch vessels was therefore *ultra vires*, or beyond their legal powers.

This clarification helped INGOs' appeals against “technical” detentions, as in the case of the *Ocean Viking*, operated by SOS Méditerranée. In July 2023, following a seven-hour inspection at Civitavecchia (Lacio), the vessel was detained due to technical and administrative deficiencies. Thanks to an appeal by the INGO, the detention was revoked within ten days after port authorities acknowledged that the ship met applicable

⁴⁸² *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti and Others* (Joined Cases C-14/21 and C-15/21, Court of Justice of the European Union, Grand Chamber, 1 August 2022) ECLI:EU:C:2022:604

⁴⁸³ Graffin, Howard and Vincett (n 53) 13

⁴⁸⁴ CJEU (n 482)

⁴⁸⁵ *Ibid.*

regulations.⁴⁸⁶ In September 2024, the *Geo Barents* (MSF), was detained in the port of Genova following a port state control inspection citing technical deficiencies. The vessel was released after 19 days, but the INGO challenged the legality of the administrative detention through the Civil Court of Genova, seeking also the suspension of a parallel 60-day detention order. This case is pending.⁴⁸⁷

Following these decisions, the practice of detaining vessels under PSC has declined, while other administrative measures, such as the assignment of distant ports, have increased drastically. SOS Humanity, Mission Lifeline, and Sea-Eye have brought appeals before the Civil Court of Rome challenging the assignment of POS in northern and central Italy.⁴⁸⁸

The INGOs contend that this practice contravenes the “minimum deviation” requirement under the IMO 2004 amendments to the SAR Convention and undermines the purpose of the POS, endangering the physical and psychological health of rescued individuals. This measure significantly delays disembarkation and exposes survivors to prolonged periods on board under inadequate conditions, including overcrowding, medical emergencies, psychological stress, and shortages of basic necessities like food and water. Furthermore, they denounce the measure is arbitrary, fails to consider individual rescue circumstances, and exceeds Italy’s administrative discretion, obstructing humanitarian operations, and constitutes an illegitimate administrative practice lacking legal proportionality.⁴⁸⁹ They further assert that the policy breaches Italy’s constitutional and EU obligations by undermining the rights and safety of migrants and impeding the effectiveness of civil sea rescue efforts.⁴⁹⁰ The cases remain pending.⁴⁹¹

The ongoing practice of assigning distant ports for the disembarkation of rescued persons has been condemned by the UN SRs in their joint communication to the Italian government.⁴⁹² The communication warns that the imposed delays may breach obligations under international frameworks including UNCLOS, SOLAS, and the ICCPR. The experts urge Italy to reconsider these practices and ensure compliance with

⁴⁸⁶ Alagna and Cusumano (n 58) 16

⁴⁸⁷ Alagna and Cusumano (n 58) 13

⁴⁸⁸ Alagna and Cusumano (n 58) 17

⁴⁸⁹ Schäfer (n 186)

⁴⁹⁰ *Ibid.*

⁴⁹¹ Alagna and Cusumano (n 58) 17

⁴⁹² UN SPs (n 462)

its legal duties to protect life and uphold humanitarian principles at sea.⁴⁹³ Growing litigation by INGOs is expected in this sense.

4.3.3 Legal responses to the closed-ports policy and the externalisation of SAR

A) *The Central Mediterranean: Italy and Malta*

In 2018–2019, Sea-Watch and Open Arms faced blockades due to Salvini's decrees banning rescue ships from Italian waters. Sea-Watch's legal challenges failed, with courts prioritizing security over humanitarian concerns.⁴⁹⁴ In contrast, Open Arms won interim relief in August 2019, allowing disembarkation on humanitarian grounds.⁴⁹⁵

Separately, the 2018 *Diciotti* case, though not involving INGOs, led to a key ruling affirming the right to disembark under international law.⁴⁹⁶ After a 10-day standoff, the *Corte di Cassazione* found the government had violated international obligations.⁴⁹⁷ The court confirmed that a POS must allow for asylum requests, affirming that only land, not ships, meets this standard.⁴⁹⁸

After limited legal success in Italy, INGOs turned to the ECtHR for interim measures under Rule 39. In January 2019, Sea-Watch 3, anchored off Syracuse with 47 rescued individuals (including 15 unaccompanied minors), sought a safe port in Italy. On 29 January, the Court ordered Italy to provide essential care and legal assistance, especially for minors, though it stopped short of requiring disembarkation. The ruling highlighted states' obligations to protect fundamental rights, offering a new legal path to challenge port blockades.⁴⁹⁹

In June 2019, Captain Carola Rackete again invoked Rule 39 during a standoff near Lampedusa. The Court, maintaining its cautious stance on port access, found no imminent

⁴⁹³ UN SPs (n 462)

⁴⁹⁴ Stege (n 97)

⁴⁹⁵ Alagna and Cusumano (n 58) 117

⁴⁹⁶ Verfassungsblog, 'The Diciotti Affair: Beyond the Populist Farce' (28 August 2018)

<https://verfassungsblog.de/the-diciotti-affair-beyond-the-populist-farce/> accessed 23 June 2025

⁴⁹⁷ Ibid.

⁴⁹⁸ Gennari (n 204)

⁴⁹⁹ ECtHR, 'ECHR grants an interim measure in case concerning Sea-Watch 3 vessel' (2019)

<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6315038-8248463&filename=ECHR+grants+an+interim+measure+in+case+concerning+SeaWatch+3+vessel.pdf> accessed 10 July 2025

risk of irreparable harm but instructed Italy to provide humanitarian aid to those on board.⁵⁰⁰

As shared during the interviews, in the last five years INGOs in Italy have creatively resorted to national legal mechanisms centred on the protection of specific vulnerable groups on board, particularly unaccompanied minors and individuals with medical conditions, in order to secure prompt disembarkation in Italy. In December 2024, the Juvenile Court of Catanzaro issued a decision concerning the vessel *SOS Humanity 1*; however, in that instance, the minors had already been disembarked prior to the ruling. In other cases, decisions by juvenile courts have directly influenced the timing and coordination of disembarkations. For example, following an order from the Juvenile Court of Palermo, SOS Méditerranée was authorized to proceed to *Porto Empedocle* for the disembarkation of unaccompanied minors in May 2025.⁵⁰¹ As evidenced in the interviews, similar legal strategies have been adopted by *Sea-Watch*.⁵⁰²

INGOs have also attempted to involve flag states via trans-shipment memoranda to transfer individuals under their jurisdiction. However, interviewees noted that security screening procedures have effectively halted this approach.⁵⁰³

Finally, Italy's closed-port policy under Salvini has also been challenged on legal grounds with the argument that prolonged stand-offs at sea amounted to a form of unlawful detention. In this context, Open Arms participated in the infamous criminal case against Matteo Salvini, who was charged with kidnapping and abuse of office by the *Tribunale di Palermo*.⁵⁰⁴

Prosecutors argued that keeping rescued migrants at sea unlawfully deprived them of liberty, violating Italian and international law, including Article 5 of the ECHR.⁵⁰⁵ After a three-year trial, Salvini was acquitted. The court found Spain primarily responsible, as

⁵⁰⁰ Ibid.

⁵⁰¹ SOS Méditerranée International, post on X (formerly Twitter) (2024) <https://x.com/SOSMedIntl/status/1927283864252096714> accessed 28 June 2025

⁵⁰² Schäfer (n 186)

⁵⁰³ Stege (n 97)

⁵⁰⁴ Open Arms, 'The preliminary hearing against Salvini' (2021) <https://www.openarms.es/en/current-events/news/the-preliminary-hearing-against-salvini> accessed 10 July 2025

⁵⁰⁵ Angela Giuffrida, 'Italian deputy PM acquitted of charges over refusal to let migrant ship dock' (The Guardian, 2024) <https://www.theguardian.com/world/2024/dec/20/italian-deputy-pm-acquitted-of-charges-over-refusal-to-let-migrant-ship-dock> accessed 10 July 2025

Open Arms flew a Spanish flag and first contacted Spanish authorities.⁵⁰⁶ It also noted that current maritime conventions do not clearly address INGO-led rescues.⁵⁰⁷

The ruling missed the chance to link obstruction of rescue operations to state obligations, highlighting ongoing legal and accountability gaps that let states hinder INGOs with little consequence.

Domestic courts have been key in affirming the supremacy of international law in Italy against push-back and pull-back practices. In the *Vos Triton* case, the Civil Court of Rome held Italy accountable for coordinating a rescue that led to a pushback to Libya via the LCG, ruling it an unlawful delegation of state responsibility.⁵⁰⁸ The applicant was granted a humanitarian visa, and the shipping company was found complicit.⁵⁰⁹

INGO litigation has also made gains: on 26 June 2024, the Civil Court in Crotona ruled the detention of *Humanity 1* unlawful and declared that Libya's RCC and Coast Guard are not legitimate SAR actors.⁵¹⁰ SOS Humanity's lawyer said the decision exposes years of misinformation and unjust criminalisation of rescue INGOs.⁵¹¹

The ECtHR has addressed push-backs mainly under Article 4 of Protocol No. 4, which prohibits collective expulsions. In *Hirsi Jamaa v. Italy*, the Court affirmed the Convention's extraterritorial reach, holding Italy responsible for returning migrants to Libya without individual assessment. In *Sharifi v. Italy and Greece*, it found that automatic returns by ferry captains also violated this provision.⁵¹²

⁵⁰⁶ Daniel Verdú, 'Los jueces que absolvieron a Salvini en el caso Open Arms alegan que España y no Italia debió acoger a los migrantes' (El País, 2025) <https://elpais.com/internacional/2025-06-19/los-jueces-que-absolvieron-a-salvini-en-el-caso-open-arms-alegan-que-espana-y-no-italia-debio-acoger-a-los-migrantes.html> accessed 22 June 2025

⁵⁰⁷ Tamsin Paternoster, 'Italy's deputy PM Matteo Salvini found not guilty in Open Arms migrants case' (Euronews, 20 December 2024) <https://www.euronews.com/my-europe/2024/12/20/italys-deputy-pm-matteo-salvini-found-not-guilty-in-open-arms-migrants-case> accessed 10 July 2025

⁵⁰⁸ Gennari (n 204)

⁵⁰⁹ Sea-Watch e.V., 'Shipping Company Vroon Complicit in Forced Return: the Vos Triton Returns 170 People to Libya in an Illegal Push-Back by Proxy' (2021) <https://sea-watch.org/en/shipping-company-vroon-complicit-in-forced-return/> accessed 2 June 2025

⁵¹⁰ *Humanity 1*'s rescue operation was disrupted by the LCG in March 2024, yet the vessel was later detained by Italian authorities for allegedly ignoring Libyan instructions.

⁵¹¹ SOS Humanity, 'Final court decision: Detention of Humanity 1 was unlawful!' (2024) <https://sos-humanity.org/en/press/final-court-decision/> accessed 10 July 2025

⁵¹² Jonatán Cruz Angeles, 'Litigation Strategies in the Mediterranean Sea: Analysis of Cases on Search and Rescue Joint Operations before the International Courts' (2022) 11 *Maritime Safety and Security Law Journal* 40, 50–54

However, in *S.S. and Others v. Italy*, the Court dealt a major setback by declaring the 2025 application inadmissible, ruling that Italy lacked jurisdiction under Article 1 ECHR.⁵¹³ The case involved a 2017 pullback where the Libyan Coast Guard, allegedly supported by Italy, intercepted a migrant vessel, resulting in 20 deaths and the forced return of 47 survivors to Libya. Despite evidence of Italy's coordination and support under the 2017 Memorandum with Libya, and third-party interventions by HRW and Amnesty arguing for a "functional" jurisdiction, the Court rejected this interpretation.⁵¹⁴ The ruling marks a turning point, weakening legal efforts to hold states accountable for cooperative interdiction at sea.

Malta has come under growing legal scrutiny for its handling of migrants in its SRR, though no convictions have been issued. In April 2020, about 50 migrants filed a constitutional case after being intercepted and returned to Libya despite spending 39 hours in Malta's SRR. They allege violations of Maltese, ECHR, and EU law. The case is still pending retrial.⁵¹⁵

Legal challenges to Malta's closed-port policy have had little success. Disembarkation has occurred only in exceptional cases, typically involving vulnerable individuals after diplomatic or humanitarian pressure. In 2023, a few critically ill survivors were allowed to disembark after lengthy negotiations;⁵¹⁶ similarly, in August 2021, Malta evacuated a sick Libyan minor and relatives from *Sea-Watch 3*.⁵¹⁷

Besides, the March 2025 HRCtee decision on Malta highlighted the State obligation "to ensure that migrants are not disembarked in a place where they will be at risk of torture and other forms of ill-treatment or risk to their life".⁵¹⁸

⁵¹³ Hertie School, 'Visiting Professor Violeta Moreno-Lax responds to ECHR judgement on Italy-Libya "pull back" deal' (2025) <https://www.hertie-school.org/en/news/detail/content/visiting-professor-violeta-moreno-lax-responds-to-echr-judgement-on-italy-libya-pull-back-deal> accessed 10 July 2025

⁵¹⁴ Ibid.

⁵¹⁵ Edwina Brincat, 'Migrants demand payment of damages after pushback to Libya' (Times of Malta, 2 October 2020) <https://timesofmalta.com/article/migrants-demand-payment-of-damages-after-pushback-to-libya.829552> accessed 18 June 2025

⁵¹⁶ INGO Board Member (n 186)

⁵¹⁷ National Catholic Reporter, 'Hundreds of migrants are in limbo on rescue boats in the Mediterranean' (2021) <https://www.ncronline.org/news/justice/hundreds-migrants-are-limbo-rescue-boats-mediterranean> accessed 10 July 2025

⁵¹⁸ SOS Humanity (n 321)

In a ground-breaking move, international legal efforts have extended to the International Criminal Court (ICC). In 2019, lawyers Omer Shatz and Juan Branco submitted a communication alleging that EU and Member State migration policies amounted to crimes against humanity under Article 7 of the Rome Statute.⁵¹⁹ The complaint targeted the shift from Italy's Mare Nostrum to Operation Triton, the criminalization of SAR INGOs, and EU cooperation with the LCG.⁵²⁰

They argued that over 40,000 people were forcibly returned to Libya between 2016 and 2018, despite known risks of torture, rape, and enslavement.⁵²¹ The EU's support for the LCG, through training, equipment, and logistics, was cited as enabling these abuses.⁵²² In 2020, the ICC Prosecutor found the case admissible, and as of mid-2025, the investigation remains ongoing, examining both Libyan actions and EU involvement.⁵²³

B) The Eastern Mediterranean: Greece

Legal responses to the externalisation of SAR activities vary significantly between the Central and Eastern Mediterranean. In the Central Med, accountability relies on functional jurisdiction, often tied to flag states or Italy's support for Libya. In the Eastern Med, push-backs occur in Greek waters, making state responsibility clearer under established legal frameworks.

This way, the ECtHR has seen more success in addressing pushbacks at the Greece–Türkiye border. In a landmark January 2025 ruling, the Court found in *A.R.E. v. Greece* that Greece expelled a Turkish national without assessing risks and held her in conditions amounting to enforced disappearance. However, in *G.R.J. v. Greece*, involving an Afghan minor, the case was dismissed for lack of evidence, highlighting the challenges victims face.⁵²⁴

⁵¹⁹ Cruz (512) 47

⁵²⁰ Cruz (512) 46

⁵²¹ Cruz (512) 50

⁵²² Cruz (512) 49

⁵²³ Teresa Quadt, 'Standards of Delivery on the OTP's Continuing Questionable Complementarity Standards in the Situation in Libya for Crimes Against Migrants' (Opinio Juris, 2024) <https://opiniojuris.org/2024/10/15/standards-of-delivery-on-the-otps-continuing-questionable-complementarity-standards-in-the-situation-in-libya-for-crimes-against-migrants> accessed 27 June 2025

⁵²⁴ Isabel Kienzle and Melina Riemer, 'Pushbacks, the ECHR, and the Greece–Türkiye Border' (Verfassungsblog, 2025) <https://verfassungsblog.de/pushbacks-echr-greece-turkiye> accessed 7 July 2025

To date, no Greek criminal or administrative court has issued a final judgment finding Greek state agents responsible for pushbacks to Türkiye.⁵²⁵ Domestic investigations are often dropped, and groups like ECCHR and Pro-Asyl report that secrecy and lack of documentation hinder accountability and enable impunity.⁵²⁶

4.3.4 Legal responses to the development of repressive legislation

A) *The Eastern Mediterranean: Greece*

In Greece, due partially to the dismantling of the presence and operational networks of SAR organizations, with none currently active in the country, there have been no legal challenges to the repressive provisions on SAR introduced by *Law No. 4825/2021*. However, Greek civil society as a whole has undertaken legal mobilization against the other main repressive legislation, *JMD 10616/2020*, which established a doctrine of securitization and a mandatory registration regime for all entities operating in the fields of migration and asylum. Its implementation has also been subject to significant criticism by national oversight bodies and international institutions, including the Greek Ombudsman, the Council of Europe, and the European Commission. These actors have highlighted the measure's chilling effect on civil society organizations and its broader implications for the rule of law and fundamental rights protection.⁵²⁹

In response, the NGOs HIAS Greece, Equal Rights Beyond Borders and Refugee Support Aegean (RSA), submitted an application for annulment before the *Hellenic Council of State* (Συμβούλιο της Επικρατείας), the Supreme Administrative Court. The petition contests the legality and constitutionality of *JMD 10616/2020*, arguing that it imposes disproportionate and non-transparent obligations, burdensome certification requirements, and restrictions on access to public funding and legal representation.⁵³⁰

⁵²⁵ Ibid.

⁵²⁶ Ibid.

⁵²⁹ European Commission, *2021 Rule of Law Report: Country Chapter on the rule of law situation in Greece* SWD(2021) 525 final (2021) https://commission.europa.eu/document/download/10bc40c8-b6f5-4ad4-8bde-b2ee4df33680_en?filename=21_1_52575_coun_chap_greece_en.pdf accessed 10 July 2025

⁵³⁰ Elli Kriona Saranti, 'Can Strategic Litigation Backfire?' (2024) *German Law Journal* 25, 6: *Strategic Litigation in EU Law*, 1002, 1005

The case was heard by the Plenary of the *Council of State* on 2 December 2022, yet as of mid-2025, the judgment remains pending, more than three years after the initial filing.⁵³¹

B) The Central Mediterranean: Italy

In Italy, the use of administrative courts as venues to challenge governmental measures has notably increased after 2020, however, it yielded limited long-term impact. A prominent example is MSF appeal against the POS Operational Protocol introduced by Matteo Piantedosi. The *Lazio Regional Administrative Court* ultimately rejected MSF's challenge in 2024, decision that may have signalled the limitations of administrative litigation in such contexts and, in turn, encouraged INGOs to redirect their legal strategies toward civil jurisdictions.⁵³²

In contrast, civil courts have recently emerged as more favourable arenas for such challenges. Notably, in a case brought by the NGO SOS Humanity, joined by 35 individuals who had been rescued at sea but denied disembarkation in November 2022, the Civil Court of Catania found the Law No. 15 of 2023 (based on the Piantedosi Decree) to be unlawful.⁵³³

This is, at present, the main piece of repressive legislation in force in Italy, and has been consistently condemned both nationally and internationally. Notably, it was challenged in the AL ITA 4/2024 letter by the UN Special Rapporteurs (SRs), who raised serious humanitarian and legal concerns on the application of this law, which they argue has been misused to detain more than 20 SAR vessels since its enactment. The detentions are often justified by alleged failures to follow instructions from Italian and Libyan authorities, but the SRs contend that these measures effectively criminalize SAR operators and restrict the freedom of association as well as the right to promote and protect human rights.⁵³⁴

Sea-Eye, the first INGO to have a vessel detained under the Piantedosi Decree in May 2023, was also the first to challenge it in court. After a detention in Ortona, the INGO appealed both the detention and fine, encountering immediate jurisdictional confusion:

⁵³¹ Ibid.

⁵³² Alagna and Cusumano (n 58) 117

⁵³³ Ibid.

⁵³⁴ UN SPs (n 462)

the civil court disclaimed competence, suggesting the matter fell under the *Giudice di Pace*, highlighting the procedural uncertainty caused by the broad powers granted to the Minister of the Interior under this regime. Arguing that such minor courts lack independence and expertise, the team escalated the issue to the *Corte di Cassazione*, which ultimately affirmed the civil court's jurisdiction, sending the case back for a full hearing on the merits.⁵³⁵

In October 2023, a court in Salerno dismissed Sea-Eye's appeal on procedural grounds, deeming the case moot due to the expiration of the detention. This overlooked the recurring nature of such sanctions, leading Sea-Eye to file another *Corte di Cassazione* appeal, arguing the issue holds lasting legal relevance. According to a legal expert linked to the INGO, the broader aim is to challenge the constitutionality of the Piantedosi Decree, asserting it violates international law and exceeds coastal state jurisdiction, particularly when applied to foreign-flagged vessels operating in international waters.⁵³⁶

In this line, the most significant challenge has come from the Italian Constitutional judiciary. In October 2024, the Court of Brindisi referred three questions to the Constitutional Court concerning the Law No. 15/2023. Judge Roberta Marra submitted the decree for constitutional review questioning the legitimacy of the legislation, particularly its designation of Libya as a "safe port" for the disembarkation of rescued migrants. She emphasized that this assumption is contradicted by both factual evidence and national legal standards, pointing out that Libya has not ratified the Refugee Convention and that numerous reports have documented inhumane and degrading conditions in its migrant detention centres.⁵³⁷

This referral came after the February 2024 seizure of the vessel *Ocean Viking* from SOS Méditerranée, which appealed to the court and prompted Judge Marra to specifically ask the Constitutional Court to assess the decree's compatibility with Articles 3, 11, 25, 27, and 117 of the Italian Constitution, which collectively safeguard principles of equality,

⁵³⁵ Stege (n 97)

⁵³⁶ Ibid.

⁵³⁷ InfoMigrants, 'Judge sends migration decree to top court to assess its legitimacy' (2024) <https://www.infomigrants.net/fr/post/60562/judge-sends-migration-decree-to-top-court-to-assess-its-legitimacy> accessed 25 June 2025

international cooperation, due process, the presumption of innocence, and the division of legislative authority.⁵³⁸

Lawyers representing SOS Méditerranée and members of ASGI criticized the decree for imposing automatic sanctions, such as 20-day vessel seizures, without individual assessment, thereby violating principles of proportionality and due process.⁵³⁹ In separate amicus briefs accepted by the Court, HRW and the ECHR argued that obligating rescue ships to follow orders from the LCG risks breaching the principle of non-refoulement. They contended that requiring compliance with Libyan authorities Law No. 15/2023 violates Italy's international obligations, including the duty to avoid exposing individuals to torture or inhuman treatment and to ensure disembarkation in a place of safety. The briefs further warned that such policies may facilitate crimes against humanity, including enslavement.⁵⁴⁰ As a result, on May 21, 2025, Italy's Constitutional Court examined, for the first time, the constitutional legitimacy of a law imposing sanctions on sea rescue organisations. The ruling remains pending at the time of submission of this thesis.

Finally, as shared by the MSF SAR Representative, a legal challenge to Law No. 15/2023 is likely to emerge before the European Court of Human Rights (ECtHR). As part of the multi-pronged defence strategy, cases have been brought before Italian civil courts, and after the extenuation of local remedies, the organisation is now advancing towards escalating the matter to the ECtHR invoking Article 11 (freedom of association) and Article 6 (right to a fair trial) of the European Convention on Human Rights. In parallel, MSF contests the procedural misuse of civil jurisdiction over complex maritime and administrative law issues, arguing that judges are often unequipped to adjudicate such specialized matters, which strategically disadvantages humanitarian actors.⁵⁴¹

4.4 From legal responses to strategic litigation

For the last decade, legal mobilization has served SAR INGOs as both defence and offense, and their legal responses to State action have been described as “counter-repression,” reflecting a reactive turn in the political posture of humanitarian actors

⁵³⁸ Ibid.

⁵³⁹ Ibid.

⁵⁴⁰ ECHR, ‘Challenge to Law Penalizing Sea Rescue’ (2025) <https://www.ecchr.eu/en/press-release/challenge-to-law-penalizing-sea-rescue/> accessed 10 July 2025

⁵⁴¹ Gil (n 186)

confronted with criminalization, administrative obstruction, and restrictive legislation to secure their operational space.⁵⁴²

Yet, some INGOs have decided not to stop there. Beyond reactive litigation, they have built upon the legal responses developed in recent years, informed by a political vision of the Mediterranean as a continuous space of rights, increasingly engaging in strategic legal action not directly tied to their own cases with the perspective that European civil society is seen as having a moral obligation to defend the dignity and rights of migrants.⁵⁴³ As the Board Member of an INGO notes, organizations have engaged in third-party interventions before European courts to shape jurisprudence beyond their direct interests, reflecting this broader commitment to solidarity and systemic defence, and recognizing that legal precedents and policy shifts in one case can impact the operating environment for all.⁵⁴⁴

These efforts aim to strategically contest the erosion of principles like non-refoulement or the right to life, amid growing disregard, externalization and cooperation with unlawful actors like the LCG. In this spirit, for example, the organisations Emergency, Louise Michel, MSH, Sea-Watch, SOS Humanity, and SOS Mediterranee announced in March 2025 their participation in the criminal trial related to the *Cutro* shipwreck as civil parties.⁵⁴⁵

⁵⁴² Alagna (n 201)

⁵⁴³ Schäfer (n 186)

⁵⁴⁴ INGO Board Member (n 186)

⁵⁴⁵ SOS Humanity, 'Cutro shipwreck' (Press Release, 2025) <https://sos-humanity.org/en/press/cutro-shipwreck/> accessed 18 June 2025

5. Conclusions:

This thesis explores how Greek, Maltese, Italian, and European authorities obstruct humanitarian and civil SAR efforts, framing these actions as State repression. It also examines the legal strategies used by SAR INGOs and civil society to resist restrictive migration policies. The study reveals a core disconnect between States' legal obligations and their actual migration control practices. Drawing on the analysis of the legal framework, in-depth case studies, and the examination of legal responses through interviews, case law, and documentary sources, the following conclusions have been reached.

5.1 A contested humanitarian space in the Mediterranean

International maritime law provides a global framework for protecting life at sea, obligating ships to assist those in distress and requiring coastal states to coordinate SAR efforts and ensure disembarkation at a POS. Defined by IMO Guidelines, UNHCR interpretations, and European and domestic case law, a POS must guarantee safety, basic needs, and access to asylum. These duties, reinforced by the principle of non-refoulement, apply across all maritime zones, including the high seas, creating a shared legal responsibility for humanitarian action.

The Mediterranean is thus normatively framed as a humanitarian space, though this becomes contested in territorial waters, especially between Greece and Türkiye, where sovereignty complicates operations. While some view the sea as a space of legal void for migrants, international law upholds protections supporting civil SAR efforts and the rights of volunteers defending migrant lives and dignity.⁵⁴⁶

However, these legal obligations clash with the securitized and externalized border policies of Greece, Malta, Italy, and the EU. Authorities often reject civil SAR, citing alleged ties to smuggling or claims they encourage irregular migration.⁵⁴⁷ Many SAR actors report that states see their presence, and their ability to expose illegal pushbacks and failures to assist, as a threat, prompting efforts to curtail their activities.⁵⁴⁸

⁵⁴⁶ Mann (n 69)

⁵⁴⁷ Cusumano and Pattison (n 47)

⁵⁴⁸ Gordon and Larsen (n 54)

5.2 A consistent pattern of State repression of civil SAR

Building on prior research and interview testimonies,⁵⁴⁹ this thesis categorizes the obstruction of civil SAR as deliberate state repression. It examines how law, policy, rhetoric, and judicial tools have been used punitively to suppress and deter humanitarian action in the Mediterranean.

Since 2015, and especially after 2017, Greece, Malta, and Italy have not only abdicated maritime obligations but actively worked to exclude civil actors from SAR operations. Early tactics included public smear campaigns: Greek officials framed SAR NGOs as criminal in the ERCI case, while Italian and Maltese authorities accused them of collusion with traffickers, branding rescue ships as “migrant taxis.”⁵⁵⁰ These narratives fueled public hostility and paved the way for prosecutions based on vague laws with little humanitarian exemption. Charges, such as espionage in Greece’s ERCI case or prolonged investigation in Italy’s *Iuventa* case, reflect a broader trend of criminalizing civil SAR, often without solid legal basis.

Administrative and bureaucratic barriers were also widely used to obstruct operations, often on selective or technical grounds. Malta, in particular, relied heavily on these tactics. Closed-port policies and externalization further compounded repression: Italy denied disembarkation in 2018–2019, while Malta and Greece redirected rescued persons to unsafe third countries, violating international maritime and human rights obligations.

Restrictive national laws have since entrenched these practices. *Italy’s Security Decree bis* and *Piantadosi Decree*, along with Greece’s own legal reforms, formalized obstacles to civil SAR. At the EU level, the lack of a binding humanitarian exemption in Directive 2002/90/EC continues to expose SAR actors to prosecution for life-saving work.

5.3 A growth in successful INGO legal mobilization

SAR INGOs and civil society have resisted state repression in the Mediterranean through legal, political, and strategic action, defending humanitarian operations and challenging

⁵⁴⁹ Alagna and Cusumano (n 58)

⁵⁵⁰ Floris and Bagnoli (n 227)

European border injustices. Over the past five years, legal mobilization has expanded through increased collaboration and accumulated experience.

Within this period, SOS Humanity successfully overturned two detentions in Italian courts, with rulings affirming the illegitimacy of Libyan SAR authorities and declaring the actions unlawful. Sea-Eye and Sea-Watch secured landmark decisions from Italy's Council of State and the CJEU condemning the arbitrary PSCs used to seize rescue ships. The acquittal of criminally prosecuted and investigated SAR workers in Greece, Malta and Italy based on the humanitarian imperative guiding their actions and their pursuit of international law obligations set a precedent and a limit to repressive state action. In Italy, INGOs have recently succeeded in triggering the referral of a constitutional question to challenge repressive legislation such as the *Piantadosi Decree*. Civil society has engaged international human rights bodies, securing landmark rulings, most notably the 2025 UN HRCtee decision compelling Malta to conduct search and rescue in its SAR zone. This has pushed states to adjust strategies, as tactics like criminalization and PSC have been steadily undermined through sustained legal action. Individual and state SAR obligations under international law have been central to all these defences, clarifying both criminal and civil-administrative contexts.

INGOs and civil society have used creative legal strategies, from turning to juvenile courts to break port blockades, to ICC appeals over EU cooperation with the LCG. These efforts have steadily weakened tactics like criminalization and politically motivated port closures. Civil society's role in strategic litigation, including participation in the *Cutro* shipwreck trial, reflects growing momentum.

Not all efforts have yielded positive outcomes. Major setbacks include the 2024 acquittal of Matteo Salvini on kidnapping charges over prolonged sea stand-offs, the Maersk Etienne case proceeding to trial against MSH, and the ECtHR's recent refusal to assert jurisdiction in *S.S. and Others v. Italy*. The road to securing state accountability and protecting humanitarian space at sea remains long and difficult. Yet, the steadfast commitment of SAR INGOs, the work of Italian, Greek, and Maltese lawyers and judges upholding international law standards within national systems, and the resilience of a mobilized civil society across Europe continue to shine as a hopeful light amid the darkness of the Mediterranean. The role, evolution, and significance of legal responses to state repression of civil SAR merit far greater academic attention and in-depth study. As

this field continues to grow, the coming years will reveal the extent of its impact in defending dignity and fundamental rights at sea.

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7. Annex:

7.1 Interview material

Interview questionnaire template

1. Introduction: “I would like to hear more about you and your professional engagement with this particular topic. What is your role, the organization you work for, any other detail you want to share?”

2. Legal perspective: “From an international law perspective, what do you think is the role of SAR organizations operating in the Mediterranean?”

3. State Obstruction: “I have identified several areas of obstruction... Could you give me more information, examples, or trends regarding administrative measures, criminalization, repressive legislation or others?”

4. Case, legal decisions, procedural, etc. clarifications: for instance, “I have identified two cases involving the INGO X, were they both brought up under X legislation? “You mentioned this was the Civil Court of X... has the X government appealed that?”

5. Further incidents (2024–2025): “Were there any other cases of obstruction, detention, or repression directly affecting the INGO in the second half of 2024 or first half of 2025?”

6. Strategic responses: “How did the INGO challenge this situation—not only legal measures but broader strategies?”

7. Legal strategy and jurisdictions: “How does the INGO legally respond or legally challenge these administrative measures? Which jurisdictions are involved?”

8. Trends in legal mobilization: “How would you explain the consistent growth in legal mobilization among SAR INGOs? What’s the rationale behind this?”

9. Effectiveness of legal strategies: “Would you say overall that these legal mobilization initiatives have proved effective or positive?”

10. Suggestions for further research and final remarks: “Are there any other people, contacts, cases, reports, or databases I should look into?” “Any concluding remarks or anything you'd like to share that I didn't ask about?”

INFORMATION LETTER

The Global Campus of Human Rights is the world's largest network for postgraduate education in human rights and democratization, with eight regional programmes delivered by over 100 prestigious universities.

The European Master's Programme in Human Rights and Democratisation (EMA) is an interdisciplinary programme that provides a practice and policy-oriented approach to learning that combines legal, political, historical, anthropological, and philosophical perspectives of human rights and democratisation with skill-building activities and a field trip exercise. Established in 1997, it is the longest running master's programme in the Global Campus and a unique example of inter-university cooperation. The Diploma (60 ECTS credits) is jointly conferred by 7 EMA member universities located in Austria, Germany, Italy, Slovenia and Spain. The second semester is conceived as a European exchange: students relocate to one of the 43 EMA participating universities to follow courses in an area of specialisation of their choice and to undertake personal supervised research finalised in the writing of the master's thesis.

The thesis **“Legal Responses to State Repression of SAR Humanitarian Efforts in the Mediterranean: Current Challenges and Future Possibilities”** (provisional title), by the student Miguel de la Huerga Rojo, is being written in the University of Vienna (Austria) under the supervision of Professor Anuscheh Farahat. It seeks to explore obstruction and interference actions by EU Member States authorities against SAR humanitarian civil actors operations, as well as the legal mechanisms present at national, supranational and international levels to challenge them, paying attention to the legal arguments already developed and the potential of new arguments. The methodology followed combines doctrinal and descriptive legal analysis, empirical research by the means of interviews with key informants (SAR actors, legal experts and political analysts), comparative cases studies, analysis of litigation efforts, and review of relevant bibliography.

The interviews will be used to inform the empirical research and included in the thesis as primary sources. The information and opinions obtained in the interviews will be quoted in the thesis under the interviewees basic personal data (full name, country, organisation) when the consent is given. Otherwise, the quote will be anonymised. The recordings, transcript and basic interviewees personal data will be kept by the interviewer solely for academic purposes and not transferred to any other part than the required academic institutions (Global Campus of Human Rights and University of Vienna). The thesis will be published and made available online under the normative framework of the Global Campus of Human Rights.

CONSENT FORM

- I have read carefully the information presented in the Information Letter about the Master Thesis research.
- Research subject and research goals were clearly explained and I fully understood the purpose of my participation.
- I understand all issues regarding my personal data, their treatment and processing activities.
- I understand that if I agree to participate in this research, I may withdraw at any time with no consequences and further obligations.
- I understand that my answers along with my personal data will be transferred by the researcher in the countries of the academic institutions (Italy, Austria) only for the research purposes as stated above.
- I understand that at any stage of the project, I have the right of access to the data, as well as right to rectify or ask for erasure of my personal data.
- I understand that my interview will be audio recorded and transcribed.
- I agree to participate in the research.

Specified Consent Issues:

**** Choose one of the options***

1 - I agree the transcripts of this interview to be used in the elaboration of the EMA Master's thesis research:

- under my personal data***
- anonymized***

2 - I agree the transcripts of this interview to be used in/for preparation and publication of potential further research by the same author, under the form of articles, reports, chapter or other documents:

- under my personal data***
- anonymized***

3 - I agree the transcripts of this interview to be used for the quotation of fragments that might contain opinions, reflections or other information relevant to the study:

- under my personal data***
- anonymized***

Participant

(Full Name)

Contact details

(Signature)

Master Thesis Researcher

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(Signature)



Date & Place
