

Bachelor's Degree Final Thesis

Executive summary

Challenging the Criminalization of Solidarity: Legal and Ethical Dilemmas in European Maritime Rescue Operations

Addressing the gap between international law and national realities in Europe's response to maritime migrant crisis

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In recent years, human rights defenders and civil society organizations that have supported refugees and migrants have faced several criminal prosecutions and excessive limitations on their operations among Europe. By rescuing refugees and migrants in danger at sea, human rights defenders have become the target of the authorities. Although this oppression is not new, its prominence has grown significantly since the 2015 migration crisis, which brought more attention by European countries to the Mediterranean Sea, seen as a deadly route (Fekete, 2018). However, the current legal framework for assisting migrants in distress at sea is inadequate, with significant tensions between international maritime law and national laws (Coppens, 2010). Hence, in light with the literature review, the hypothesis of the thesis arises as follows: “the international protection afforded to Non-Governmental Organizations (NGOs) against the criminalization of solidarity enforced by national legislation within the domain of maritime rescue of refugees, is limited and does not effectively resolve the challenges faced by these organizations”.

To confirm or deny this hypothesis throughout the work, constructivism is set to serve as the theoretical framework, with particular emphasis on critical security studies. This perspective allows to explore how standard security measures such as border control impact on humanitarian assistance and treatment of refugees. Thus, this theory critiques the securitization of migration in International Relations (Peoples and Vaughan-Williams, 2020). Regarding the methodology, this study employs a qualitative analysis to explore the gaps in the legal international framework that includes the examination of primary legal sources, the analysis of scholar articles and the case study of Open Arms in 2019 as secondary sources. Furthermore, a semi-structured interview is carried out with Fèlix Capella, a member of Open Arms, serving as a primary source.

To arrive at robust conclusions, the study navigates into both, the international perspective, examining the international legal framework and its deficiencies, and the national perspective, with the aim of identifying any inconsistencies therein.

The rescue of persons in distress at sea is regulated by several international treaties, including the United Nations Convention on the Law of the Sea (UNCLOS), the

Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Maritime Search and Rescue (SAR Convention). These international agreements delineate, inter alia, the obligation to rescue lives at sea, as spelled out in Article 98 of UNCLOS. “Every State shall [...] (a) render assistance to any person found at sea in danger of being lost; (b) proceed with all possible speed to the rescue of persons in distress [...]” (United Nations, 1982: Article 98). However, there is evidence of shortcomings that contribute to the insufficient protection of NGOs engaged in rescue operations. The principal gap that the international framework is facing lies on the lack of clear rules for disembarkation (Barnes, 2004). The deficiency of binding agreements to regulate the situation sometimes leads many states to hesitate in accepting rescue vessels in its harbour.

From an alternate standpoint, coastal states that criminalize maritime rescue NGOs for seeking access to their territorial waters usually adhere to the securitization discourse, a process by which state actors transform certain subjects from regular political issues into matters of security, even if they are not. However, this discourse against migrant arrivals is dismantled upon examination of data, when seeing that countries experiencing higher levels of immigration often are the most successful economically (Artiles, 2004: 706-709). Moreover, considering the recent low unemployment rate in Europe and the labour shortage resulting from the aging of population due to the low fertility rate, an influx of migrants would improve this situation (Colliac, 2023). Hence, considering the points raised previously, it can be deduced that the realist narrative used by some states is merely a rhetorical construct. As expressed by authors such as Max Weber and Nicos Poulantzas, “contemporary demagoguery uses spoken discourse” (Max Weber, 1921: 889). Discourse is not simply a passive reflection of power relations, but an active tool that can be used to legitimize and naturalize certain forms of domination (Poulantzas, 1969: 284-289). Thus, this discourse is used by the political right as a tool for mass mobilization aimed at garnering additional voters, perpetuating then its power through the legitimization of oppression.

To encapsulate the findings of this thesis, it is evident that, as the hypothesis suggests, the international protection afforded to NGOs against the criminalization of solidarity enforced by national legislation within the domain of maritime rescue

of refugees is limited and does not effectively resolve the challenges faced by these organizations. Hence, to reduce the legal gap concerning the international safeguarding of maritime rescue operations, a set of suggestions has been put forth to enhance the present-day situation. These ones include the establishment of a proper binding instrument to regulate the process of disembarkation, the interpretation of the existing legislation as favourable for those in vulnerable situations, the redefinition of the concept of distress to broaden its applicability and the implementation of jurisprudence (Barnes, 2004; Van Berckel Smit, 2020). However, despite considering these suggestions, the fact that this conflict between nations and the international community is primarily rooted in structural issues must not be overlooked (Capella, 2024). Henceforth, it becomes evident that the problem goes beyond the lack of international protection for NGOs against state reprisals, as there exists an ethical obligation that is not being fulfilled. To eradicate these inaccuracies, the problem should be addressed from a structural perspective.

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