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Article

Criminalisation and Control: Mediterranean Maritime Search and Rescue Workers' Perceptions of Uses of Law

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ABSTRACT

This article, based on qualitative research of 22 search and rescue (SAR) activists who save migrant lives at sea, examines perceptions of these activists on measures used to criminalise and control them and their organisations. Recognising the law in this area as contested between the impressions of civic society humanitarian activists and state authorities, it analyses how SAR activists perceive how the law is used to disrupt their work. This article examines not only how the law is developed by government, but it will be argued, utilising the theory of critical legal pluralism, that state officials create law in their encounters with SAR activists and their vessels. This article is therefore significant in demonstrating how state officials can create law for nefarious purposes, which has relevance not only to immigration and maritime law, but to other areas of controversial or contested activity.

KEYWORDS: immigration; asylum; search and rescue; criminalisation; human rights; critical legal pluralism

1. INTRODUCTION

Through a socio-legal, empirical, qualitative study, this article examines perceptions of state control and criminalisation[1] of maritime search and rescue (SAR) activists who save the lives

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[1]　Much of the critical literature concerning how SAR organisations are controlled by state authorities examines the issue of criminalisation of SAR activists. This may include where SAR activists are prosecuted by criminal authorities. However, the term 'criminalisation' is often used as shorthand for other forms of legal control. A distinction will be drawn here between criminalisation and other forms of legal control (which will be termed as 'control') resulting from the use of the civil or administrative law.

of migrants[2] making dangerous crossings in Europe. This article will discuss how different forms of criminalisation and control have emerged in response to states seeking to disrupt SAR work. In doing so, it considers how new legal norms are created when states encounter SAR activists in their work.

We can empirically observe how the law is created across legal systems. Most obviously, we can observe how the law is developed through institutions of government, by legislative reform or judicial precedent, written into official records. A shift in enforcement and application practices can also significantly alter the law.[3] Critical legal pluralism (CLP) also asserts that the law can be created from the bottom-up, 'as a practice engaged in by human societies, rather than as a mere determinative limit to action or a set of rules or principles'.[4] CLP recognises that law is developed horizontally, from social and other material interactions. It characterises law as 'open-ended, interpretable, in flux, formed by everyday relations, and contextual … it occurs subjectively, intersubjectivity, and interculturally'.[5] CLP therefore recognises individuals as law-inventing, rather than merely just law-abiding.[6] CLP stresses that law can emerge from *any* encounter and is composed and performed by plural subjects.[7]

This article will discuss how vertically, the law is created by government. With respect to Italy, for example, Italian Ministers have set the direction of travel in terms of how criminalisation and control is undertaken.[8] Applying the theoretical framework of CLP, this article also examines where the law is created horizontally when state officials, including coastguards, port state control officials, or other governmental or local authority officials, interact with SAR activists and their vessels.[9] For instance, SAR activists claim in this research that laws created to prevent accidents at sea or pollution, as well as regulations relating to registration or licensing, have been instrumentalised by various state officials in a myriad of different ways to disrupt their work. This article demonstrates that law is contingent on the experience and resources of these state officials as they seek to find methods to control SAR work. Whereas, as noted, CLP recognises that law can be created from any encounter, this work will focus on how state agents have, in the perception of SAR activists, exploited existing law and regulation to disrupt their work. In this article, we witness how a complex and 'porous' law is exploited for nefarious purposes by state officials exercising their power, often in a manner in which it has previously not been used or been designed for.

In examining the punitive use of law, we can also see its highly politicised nature, as connected to the wishes of various states within Europe, to control migration at the expense of saving lives. In the perception of activists, the law has only operated like this in the last 5–10 years—humanitarian NGOs were not always subjected to this range of measures. Therefore, what participants describe throughout their interviews, as identified in each of the key areas, is a perceived progression of the use of different legal measures which, over time, have become more extensive and rigorous.

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[2] The term 'migrant' is being used in this research as a short-hand term for all those making dangerous crossings across the Mediterranean. This may include refugees, those seeking humanitarian protection, or other transit migrants.

[3] M. Ravid & A. Schneider, "Legal Concepts in Flux: the Social Construction of Legal Meaning", in *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge, 2019, 244–259, 244.

[4] M. Davies, *Law Unlimited: Materialism, Pluralism and Legal Theory*, Routledge, 2017, 34.

[5] *Ibid.*

[6] M.M. Kleinhans & R.A. Macdonald, "What is a Critical Legal Pluralism?", *Canadian Journal of Law and Society*, 12(02), 1997, 25–46.

[7] Davies, *Law Unlimited*, 118.

[8] F. Alagna & E. Cusumano, "Varieties of Criminalization: Italy's Evolving Approach to Policing Sea Rescue NGOs" *Contemporary Italian Politics*, 15(4), 2023, 494–503.

[9] See Davies, *Law Unlimited*; N. Choudhury, "Revisiting *Critical* Legal Pluralism: Normative Contestations in the Afghan Courtroom", *Asian Journal of Law and Society*, 4(1), 2017, 229.

The article begins by describing the methodological approach taken by the research team. Following this, the article will look at relevant literature with respect to criminalisation and control and it will be discussed why SAR participants in this research considered they were subject to control. The key areas relating to the question of how SAR activists perceive methods of control and criminalisation will then be discussed.

2. METHODOLOGY

The research team[10] interviewed 22 SAR activists working in different SAR organisations across Europe.[11] These interviews lasted between 45 and 60 minutes and were semi-structured. For the most part, interviews were conducted one-to-one, but some of the early interviews had two interviewers present—this was to gain an understanding between the team of the style of questioning to be adopted. All interviews were audio-recorded and transcribed externally.

The interviews were conducted with the view to understanding SAR activists' legal knowledge and perceptions of the law, alongside their motivations for volunteering and acting within the humanitarian space.'[12] As part of this research, the team also sought to get a deeper understanding of the lived experiences of the interviewees and their encounters with state authorities, as well as perceptions of control and criminalisation of their work. This will be the focus of this article.

The study was set in 2020–2021, during the Covid-19 pandemic which meant the interviewers could not conduct face to face interviews—all interviews were conducted via video conferencing, and audio-recorded. However, this gave the team flexibility in interviewing often very busy individuals across multiple sites in Europe, where they were sometimes on SAR missions and/or at sea. Individuals were purposively recruited[13] through personal contacts, an invitation to a mailing list, and postings on closed social media groups of different SAR organisations, accessed through gatekeepers. Some SAR organisations were contacted directly through their websites. Snowballing techniques were used where the participants recommended other SAR activists to interview or provided introductions to other organisations.[14] The interviewees were very open and honest about their experiences, allowing for rich data to be gained.

Participants were sought from across a range of different areas within the Mediterranean. In particular, the largest transit routes between Türkiye and Greece, specifically Lesvos, as well as from Libya to Italy. As the research was taking place outside of the Mediterranean, the English Channel became increasingly established as a transit route for migrants travelling between France and England, so the team interviewed individuals with experience of working on this route. The decision was made not to provide detailed personal information regarding participants in this article, due to the small SAR community, and the need to retain their anonymity. However, the vast majority of participants interviewed were boatmasters or crew in SAR operations who had been actively involved in operations at sea. A small number of participants were involved in 'spotting' from land—that is, watching from the shore to see

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[10]   The research team consisted of two socio-legal academics and an academic in education from three UK-based universities. The initial team included a principal investigator, co-investigator, and research assistant. The research assistant became an additional co-investigator during the duration of the research.

[11]   All ethical issues were assessed by the Human Research Ethics (HREC) committee at The Open University, and approval was obtained (HREC/3565).

[12]   This research was supported through a British Academy/Leverhulme grant. Grant number SRG20\200630.

[13]   H. Suri, "Purposeful Sampling in Qualitative Research Synthesis", *Qualitative Research Journal* 11(2), 2011, 63–75.

[14]   C. Parker, S. Scott & A. Geddes. "Snowball Sampling", in *SAGE Research Methods Foundations*, SAGE, 2019.

if any boats were at sea. Other interviewees worked on 'stage 2' operations, that is, on land helping migrants when they reached shore.[15]

The participants ranged from people who worked on SAR operations before or during when the refugee crisis was at its peak in 2015–2016, or shortly afterwards, to present-day operatives. It was evident in discussions that the organisation, the time, and place in which a person worked on SAR operations affected their perceptions. This will be discussed in more detail in the next section. SAR organisations range in size and have different levels of resources/operational capacity. While some organisations are reasonably well-funded, others have limited financial resources. Some organisations have several vessels, an aerial team, or professional persons supporting them. Other organisations may only have one vessel, some staff, and the support of a small executive board. SAR organisations rely on activists, and although some persons may be employed on a permanent basis, staffing arrangements change regularly.

SAR NGOs also display different role conceptions, which affect their relationship with authority, and their perception of border enforcement policies. Cusumano, referencing the distinction drawn by Stoddard,[16] asserts that two main roles can be identified with respect to SAR NGOs. As he argues, 'Dunantist organizations are more confrontational towards governments and keener on seeing humanitarian work as a platform for advocacy. Wilsonian organizations, by contrast, tend to develop a more cooperative relationship with state authorities in order to gain access to the humanitarian space'.[17] Stierl has also examined the differences between humanitarian actors and has found stark differences in the levels of political dissent from each, where some organisations depoliticise their work within the humanitarian field, asserting neutrality, or work with state power.[18] However, although experiences varied widely across organisations, and the culture of each was different, key themes were identified on how control and criminalisation is taking place. Indeed, early in the research, there was a clear impression that similarities and patterns across accounts were present.

The research team used (reflexive) thematic analysis[19] to examine the data on the basis that it enables the identification of themes from rich and varied accounts of participants' experiences. NVivo was used to support analyses, which is qualitative data analysis software. An initial period of coding took place with all researchers present in order to gain an understanding of method and to ensure a consistent approach to coding. The researchers then built upon the coding by revisiting the data and taking iterative coding steps separately. This instinctive and integrated analysis in the midst of data collection was also supported by ongoing open coding. The research team then convened to identify key themes emerging from the codes. The sample enabled the data set to reach 'saturation', that is, the absence of new themes in the data.[20]

3. CRIMINALISATION AND CONTROL

The legal obligation for vessels to conduct SAR operations is contained within the UN Convention on the Law of the Sea (UNCLOS) 1982[21] and further detailed in the

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[15] This might involve administering medical care and providing hydration and other sustenance to migrants.

[16] A. Stoddard, *Humanitarian NGOs: Challenges and Trends*. HPG Briefing, 12. Overseas Development Institute, 2003, available at: https://www.files.ethz.ch/isn/90825/hpgbrief_12.pdf (last visited 2 Aug. 2024).

[17] E. Cusumano, "Humanitarians at sea: Selective Emulation across Migrant Rescue NGOs in the Mediterranean Sea", *Contemporary Security Policy*, 40(2), 2019, 239–262.

[18] M. Stierl, "A fleet of Mediterranean border humanitarians", *Antipode* 50(3), 2018, 704–724.

[19] V. Braun & V. Clarke "Using thematic Analysis in Psychology" *Qualitative Research in Psychology*, 3(77), 2007, 77–101.

[20] B.G. Glaser & A.L. *Discovery of Grounded Theory: Strategies for Qualitative Research*, Routledge, 2017.

[21] UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982 (entry into force: 16 Nov. 1994).

International Convention on Maritime Search and Rescue (SAR Convention) 1979[22] (later amended) and the Safety of Life at Sea (SOLAS Convention) 1974.[23] The obligation to rescue persons in distress applies to everyone, regardless of their nationality or legal status.[24] Article 98(2) of UNCLOS and Chapter V of the SOLAS Convention, as well as the SAR Convention, provide that state parties are required to ensure that arrangements are in place for distress communication and coordination. The SAR Convention provides for international cooperation in SAR by specifying the establishment of SAR zones. Despite the law regarding SAR and the establishment of SAR zones, the Missing Migrants Project states that 67,851 migrants have gone missing travelling on the Mediterranean Sea since 2014,[25] indicating that SAR in Europe is inadequate. It has been argued that this is because the migration of people from outside of Europe is treated as a problem which needs to be controlled, resulting in the securitisation of borders,[26] violence at internal and external borders, and at sea.[27]

There are differences in how the Italian Government operate with respect to the Central Mediterranean and with respect to how Greece has responded to SAR organisations operating in the Eastern Mediterranean, although there are also similarities. Both countries, for example, have arrested activists. In Lesvos, in 2016, several activists were arrested across two humanitarian organisations—Team Humanity and PROEM-AID—and were charged with attempted migrant smuggling from Türkiye to Greece. They were later acquitted in 2018, after almost two and a half years. In this case, the unprecedented prosecution produced wider chilling effects on various volunteers operating in Greece and elsewhere.[28] Another recent high-profile case from Lesvos concerns Seán Binder and Sarah Mardini who were arrested for espionage.[29] In January 2023, a court on Lesvos rejected their charges on procedural grounds and asked the case to be returned to the prosecution for refiling.

In a direct example of criminalisation with respect to Italy, in a case which was to come before the European Court of Human Rights,[30] Carola Rackete, captain of Sea Watch 3, had requested an interim measure under Rule 39 of the Court[31] that her rescued passengers and crew be authorised to disembark in Lampedusa, Italy. Interim measures apply only where there is an imminent risk of irreparable harm.[32] In this case, illustrating the Court's reluctance to intervene in matters regarding port entry, it considered that there was no such

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[22] International Maritime Organization (IMO), *International Convention on Maritime Search and Rescue*, 27 Apr. 1979, 1403 UNTS (entry into force: 22 Jun. 1985).

[23] International Maritime Organization (IMO), *International Convention for the Safety of Life At Sea*, 1 Nov. 1974, 1184 UNTS 3 (entry into force: 25 May 1980).

[24] SAR Convention, Art 2.1.10.

[25] International Organization for Migration (IOM), *Missing Migrants Project*, IOM, 2024, available at: International Organization for Migration (iom.int) (last visited 21 Aug. 2024).

[26] L. Fekete, "Migrants, Borders and the Criminalisation of Solidarity in the EU", *Race & Class*, 59(4), 2018, 65–83, 65; N. Yuval-Davis, G. Wemyss, & K. Cassidy, *Bordering*, Chichester, John Wiley & Sons, 2019.

[27] D. Bigo, "The (In) Securitization Practices of the Three Universes of EU Border Control: Military/Navy–Border Guards/Police–Database Analysts", *Security dialogue*, 45(3), 2014, 209–225, 209; C. Heller & L. Pezzani, *Blaming the Rescuers. Criminalising Solidarity, Re-enforcing Deterrence*, Forensic Architecture, 2023, available at 2017_Report_Blaming-The-Rescuers.pdf (forensic-architecture.org) (last visited 8 Jan. 2023); D. Dadusc & P. Mudu "Care without Control: The Humanitarian Industrial Complex and the Criminalisation of Solidarity", *Geopolitics*, 27(4), 2022, 1205–1230.

[28] J. Allsopp, L. Vosyliū, & S. Smialowski "Picking 'Low-Hanging Fruit' While the Orchard Burns: The Costs of Policing Humanitarian Actors in Italy and Greece as a Strategy to Prevent Migrant Smuggling", *European Journal on Criminal Policy and Research*, 27(1), 2021, 65–88.

[29] See H. Smith, "On Trial for Saving Lives: The Young Refugee Activist facing a Greek Court', *The Guardian*, 14 November 2021, available at: On trial for saving lives: the young refugee activist facing a Greek court | Greece | The Guardian (last visited 9 Jan. 2024).

[30] European Court of Human Rights (ECtHR), *Rackete and Others v. Italy*, Request for an Interim Measure, Appl. No. 32969/1925, June 2019.

[31] European Court of Human Rights, Registry of the Court, Rules of Court, 20 March 2023, Rule 39.

[32] European Court of Human Rights (ECtHR), *Mamatkulov and Askarov v. Türkiye*, Judgment, Appl. No. 46827/99, 4 Feb. 2005.

risk but ordered Italy to provide necessary assistance to those persons on board Sea Watch 3. Citing the desperate situation on board, Rackete started to guide the vessel into port. She was subsequently arrested. Later, the Italian Supreme Court, evoking a more humanitarian response than the European Court, held that she was rightly exercising her duty to save lives. The charges against Rackete were eventually dropped.

Prior to the Sea Watch incident, a divisive shift had occurred in Italy in how maritime SAR organisations were to be treated. Hitherto, there had been a culture of co-operation that existed between SAR organisations and state authorities.[33] However, in the summer of 2018, then Italian Minister Matteo Salvini had attacked SAR organisations by declaring Italian ports closed to their ships, threatening criminal prosecutions, and large fines for those entering Italian waters.[34] Direct and indirect criminalisation discourses became prevalent in the media, for example, holding SAR operations responsible for deaths at sea, legitimising the notion of SAR work being a 'pull factor' for migrants deciding to make dangerous journeys, and by using metaphors coined by Italian politicians of NGOs being 'taxis', 'cruise ships' or 'pirates'.[35]

Following Rackete's arrest and subsequent release, support for Sea Watch galvanised. In the view of Alagna, this heralded a new approach in Italy, where administrative sanctions and late place of safety (POS) assignments became more commonplace.[36] The administrative seizure policy happens where ships are subject to inspections and confiscated if they do not meet port state control requirements.[37] This will be discussed under Section 4.2. The late POS policy delays the assignment of a POS for vessels with migrants on board. Designed by Salvini, it was later revived by subsequent Interior Ministers and enacted by various directives of the interior minister.[38] This will be discussed under Sections 4.1 and 4.3. Alagna and Cusumano argue that 'this indirect approach is ultimately more viable in hindering NGOs' activities than other, overly blatant forms of criminalization'.[39]

On Lesvos, it is also clear that the law is utilised indirectly. For example, bureaucratic registration requirements have also been described as part of the framework for controlling NGOs. The 'transparency registry' was proposed in November 2019 and approved via Ministerial Decree in February 2020.[40] This followed registration practices which were already introduced by the Greek Ministry of Labour and the Ministry for Migration Policy.[41] As will be discussed in this article in Section 4.4, registration requirements were a substantial obstacle for NGOs—they also became viewed as a method of surveillance. It is also evident that other forms of control were used on Lesvos, as this research will attest to, including what might be termed as 'bureaucratic harassment', controlling or denying permission to launch, the use of local laws against NGOs, surveillance, as well as fining organisations for various perceived infringements of the law. These will be discussed under Sections 4.1, 4.4, and 4.5.

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[33] F. Alagna & E. Cusumano, "Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean" *The ANNALS of the American Academy of Political and Social Science*, 709(1), 2023, 105–123, 105–106.

[34] Alagna & Cusumano, "Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean", 105–106.

[35] E. Cusumano & F. Bell, "Guilt by Association? The Criminalisation of Sea Rescue NGOs in Italian Media", *Journal of Ethnic and Migration Studies*, 47(19), 2021, 4285–4307, 4299.

[36] F. Alagna, "The Continuation of Criminalization by Other Means: The Role of Judicial Agency in the Italian Policing of Humanitarian Assistance at Sea", *Mediterranean Politics*, 29(2), 2024, 235–259.

[37] Alagna and Cusumano, "Varieties of Criminalization: Italy's Evolving Approach to Policing Sea Rescue NGOs", 501.

[38] Alagna & Cusumano "Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean", 110.

[39] Alagna and Cusumano, "Varieties of Criminalization: Italy's Evolving Approach to Policing Sea Rescue NGOs", 501.

[40] J. Allsopp, L. Vosyliū, & S. Smialowski "Picking 'Low-Hanging Fruit' While the Orchard Burns: the Costs of Policing Humanitarian Actors in Italy and Greece as a Strategy to Prevent Migrant Smuggling", *European Journal on Criminal Policy and Research*, 27(1) 2021, 65–88.

[41] *Ibid.*

Other mechanisms of control detailed elsewhere, but not discussed by our participants, include the Italian Government's 2017 code of conduct aimed at intimidating and indirectly restricting the CSO's activities in the Mediterranean Sea, which amongst other things implied that SAR organisations were facilitating undocumented migration.[42] It also includes several decrees created by Interior Ministers Salvini, Lamorgese, and Piantedosi in Italy, which enabled, *inter alia*, the interior minister to substantially fine SAR vessels entering Italian territorial waters without permission, as well as the ability to confiscate ships.[43] While some participants in Greece discussed fining in this research (Section 4.4), this was not discussed with respect to Italy.

3.1 Reasons for criminalisation

The main argument used to criminalise and control SAR operations is that they constitute a 'pull factor' – encouraging migrants to embark on dangerous crossings.[44] This has largely been debunked. For example, Cusumano and Villa have conducted an analysis where they estimate daily departures from Libya by combining multiple datasets from the UNHCR and the International Organization for Migration (IOM), and then track every NGO mission. They consider that if NGO operations close to the Libyan coast serve as a pull factor, their presence or absence should affect the number of departures. In their analysis, rather than presence of NGOs being a significant pull factor, the number of departures aligned with weather conditions and the level of political stability in Libya. They found that not only was presence of NGOs inconsequential, but the effect in itself was a negative.[45] SAR activists in this research also reflected on why they are controlled and criminalised. The idea that there was a 'pull factor' was notably absent in discussions.

Rather than SAR NGOs acting as a 'pull factor', Gordon and Larsen argue that criminalisation functions to decrease the flow of migrants crossing the Mediterranean, reduce the scope of actors able to intervene, and control the discourse on migration.[46] Predominantly, and in accordance with the view of Gorden and Larsen, SAR activists in this research felt that they were being controlled and criminalised because they bear witness and report on what is happening in the Mediterranean and interfere in 'pushbacks'—this refers to states using often dangerous methods to push migrants back to the territorial waters of Türkiye and Libya. Therefore, 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, whilst, as one participant commented 'produc[ing] new form of narratives to help a new truth or different truth to emerge'[47] is key to understanding why SAR activists and organisations are controlled. European states wish to control their borders, control the narrative in what they are doing to achieve this aim, and that takes precedence over saving lives. As one experienced activist working in the Central Mediterranean commented:

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[42] Alagna & Cusumano "Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean".

[43] *Ibid.*

[44] L. Mavelli, "Governing Populations through the Humanitarian Government of Refugees: Biopolitical Care and Racism in the European Refugee Crisis", *Review of International Studies*, 43(5), 2017, 809–832, 824; A. Smith, "Uncertainty, Alert and Distress: The Precarious Position of NGO Search and Rescue Operations in the Central Mediterranean", *Paix et Sécurité Internationales*, 5, 2017, 29–70, 37.

[45] Alagna, "The Continuation of Criminalization by Other Means: The Role of Judicial Agency in the Italian Policing of Humanitarian Assistance at Sea"; Alagna and Cusumano, "Varieties of Criminalization: Italy's Evolving Approach to Policing Sea Rescue NGOs", 501.

[46] E. Gordon & H. K. Larsen, "'Sea of blood': the Intended and Unintended Effects of Criminalising Humanitarian Volunteers Assisting Migrants in Distress at Sea", *Disasters*, 46(3), 2022, 4.

[47] Interview 18.

They grounded the civil surveillance aircraft, precisely because they're the ones that are calling out the fact that there's been a shipwreck, there's been a pushback, there's been a body drifting on this dinghy for 15 days and nobody's recovering this person. Otherwise, the Central Mediterranean is a black hole, so to speak, of information.[48]

For the participants researched here, therefore, the reason for control and criminalisation is to reduce the scope of actors to be able to intervene, report human rights issues, and to allow authorities to control the discourse on migration.

3.2 Control of SAR organisations as a dynamic process

Control of SAR organisations has evolved over time. Participants reflected on the fluctuating conditions in which they work, which might be connected to good/bad relations between the authorities, caused by the rise of anti-migrant sentiment, as well as the furtherance of state control of SAR work. A small number of participants discussed not having felt there was any kind of oppressive atmosphere when undertaking SAR work, depending on the time they worked. For example, one participant discussed having worked in the Central Mediterranean up until 2018, and during that time there was no threat of criminalisation or intimidation, referencing how that changed in 2019 with the arrest of Carola Rackete.[49] On Lesvos, participants discussed fluctuating relations with the authorities, indicating that in 2017 relations worsened, before improving, to then worsening again in 2020.[50]

The nature of SAR work was also framed as being situatedness-dependent. There was a distinction drawn between the Central Mediterranean route and Lesvos. On Lesvos, more local issues were highlighted. The issues arose from politics and state control over ports and rescue services. In Italy, issues discussed included late assignments of POS, and port state control (PSC) inspections. One activist who had worked in both areas described the difference regarding each:

When you're in Central Med, basically you're very far away from everything. You take people [rescue them], then you have to fight, to find a POS … . You lose … a lot of this chain of violence and unfair system that occurs in Lesvos … I found it easier to deal with this in Central Med than in Lesbos … . It's a bit diluted in Central Med because you may have 30 crew members … . But in Lesbos, the crew … [was much smaller than this].[51]

In Lesvos, it was not just the political situation which was causing issues. Activists discussed the mobilisation of far-right groups, as well as how local people were being drawn into the anti-migrant/anti-NGO discourse,[52] and described the high levels of violence present, including the use of guns and other weapons.[53] One activist discussed having to stop operations as a result of these actions, out of concern for the safety of volunteers.[54]

In our interviews, we witness the fluctuating use of the law used to criminalise and control across different times and spaces and the contingency of the production of law within social (and materially mediated) encounters. At times, SAR activists reported not being controlled by the state, or there was limited intervention. We can witness the law in flux—legal interventions increase, in response to political changes.

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[48] Interview 6.
[49] Interview 9.
[50] Interviews 1 and 2.
[51] Interview 12.
[52] Interviews 1 and 2.
[53] Interview 1.
[54] Interview 3.

4. PERCEPTIONS OF METHODS OF CRIMININALISATION AND CONTROL

There are five key areas emerging from this research with respect to criminalisation and control, which includes a wide range of state behaviours designed to deter and disrupt SAR work. These include: (1) requirements imposed for SAR vessels to launch and/or disembark (2) detaining vessels for inspection (3) the impact of Covid-19 (4) subjecting SAR organisations to adhering to bureaucratic requirements and local use of the civil law; and (5) actual criminalisation. In each of the sections, relevant legal contexts will be discussed, before considering the findings from the empirical research. This section will demonstrate that the law is used in a variety of ways to criminalise and control, but in addition to it being hierarchically instituted, as Alagna and Cusumano highlight, it emerges from different actors and forms of social and material relations.

4.1 Requirements imposed for SAR vessels to launch and/or disembark

Not being able to launch, or having to ask for permission to do so, was discussed as a common method of control by authorities, impinging on SAR vessels' ability to operate. In Greece, coastguards appear to have had a more direct role in permitting departure from ports. As discussed above, with respect to Italy, not permitting or delaying POS is dictated by ministerial decree. In both denying departure and preventing disembarkation, we witness the law created by both institutional actors in government, but also persons working on the ground. Before discussing the participants' views on being able to launch or disembark, it is necessary to explain relevant maritime law which regulates departure from and entry into ports.

Article 17 of UNCLOS permits departure from internal waters or ports. Article 18(1)(b) means 'proceeding … from internal waters or a call at such roadstead of port facility'. Article 21(1) provides that the state may adopt laws 'in conformity with the provisions of this Convention and other rules of international law' for the safety of navigation and the regulation of maritime traffic'[55] and for 'the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State'.[56] This means that the state can adopt laws to regulate traffic within their internal waters.

The question whether there is a duty to open specific ports for disembarkation of foreign-flagged SAR vessels is unclear. Whereas UNCLOS and the SAR Convention indicate that a disembarkation must occur,[57] it does not specify where. States have sought to use this legal loophole to deny entry of migrants to their ports and have suggested that, for example, in the case of Italy, ships should be returned to North African countries.[58] However, under international law, migrants should not be returned to their destination of origin to prevent a violation of their right against collective expulsion, as well as the principle of non-refoulement for refugees.[59]

The International Maritime Organization (IMO) recommends that the preferred destination of a ship should be considered for disembarkation. They also stipulate that where disembarkation from the rescuing ship cannot be arranged, the government responsible for the SAR zone should accept the disembarkation of the persons rescued to a port within their

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[55] Art 21(1)(a).
[56] Art 21(1)(h).
[57] UNCLOS, Chapter V, Regulation 33; SAR Convention, Chapter 3, para. 3.1.9.
[58] V.J. Schatz & M. Fantinato, "Post-Rescue Innocent Passage by Non-Governmental Search and Rescue Vessels in the Mediterranean", *The International Journal of Marine and Coastal Law*, 35(4), 2020, 740–771, 749.
[59] The amended Annex to the SAR Convention stipulates that SAR operations must terminate in the 'most appropriate place(s)'. Also see the case of *Hirsi* above.

territory.[60] Therefore, the non-binding guidelines should be considered. However, this still does not mean that a specific state *has* to open its ports to migrant ships or open up specific ports. The law is sufficiently porous to enable Italy, for example, to assign POS significant distances away—causing serious disruption to SAR organisations.

In Greece, SAR vessels, as discussed by several participants, were denied access to depart because of local regulations which prevented foreign 'pleasure' vessels (this is how foreign SAR vessels are classed) from travelling without clearance, but this did not apply to local vessels.[61] This was viewed as a mechanism to control SAR vessels. One experienced SAR activist in Greece commented:

> [T]he biggest control measure that they put in, which really impinged on our ability to do some really good work and launch in good time to pre-empt what we knew was going to be or was a developing situation, was they had to give us permission to launch. Without that, we just stood there and waited … On more occasions than most, we didn't get that permission to launch, but when we did, we were grateful.[62]

It was also discussed that over time it became more difficult to obtain permission to launch or faced being fined. Some participants discussed how the ability to conduct exercises at sea was increasingly curtailed, and capacity to operate was reduced to them not being able to launch at all. This is likely to be in response to the changing politics on Lesvos,[63] and the change of Greek Government. One SAR activist in the Eastern Mediterranean commented:

> The situation in my first mission in 2018, the situation was kind of equilibrium with the coastguards and then '19, '20 it ended with a completely 'no go'. We were not able to do anything. The coastguards were trying to stop us from doing things, not calling us, even when we were at scene, trying to avoid us … even when the situation was very, very risky.[64]

Why foreign SAR vessels are classed as 'pleasure vessels' is unclear but, in practice, it appears it allows authorities to control vessels more so than if they had a different classification. One activist noted how 'confusing' this was for them, stating 'another pleasure vessel, doing the exact same job as you, with a Hellenic flag, could leave'.[65] Although directed by a central authority, and certainly influenced by politics, through the lens of CLP we can see state agents create law horizontally through denying and sometimes permitting SAR vessels permission to launch, to respond to dangerous situations. We witness state agents using power, obtained through administrative discretion, to control and disrupt activities of SAR vessels. Participants explained that coastguards drew on the help of SAR organisations when they felt they needed it, but on other occasions they wished them to be out of sight, e.g., if they wanted to perform a pushback. Their response could be informed by their social understanding of SAR organisations as reporters of human rights issues, where they may not want their own operations observed.

[60] IMO Circular 194/2009 'Principles Relating to Administrative Procedures for Disembarking People Rescued at Sea', para. 3.

[61] The need for clearance is related to the immigration regulations of the state: Entry and exit formalities | boating abroad | RYA

[62] Interview 2.

[63] TRT World, "How the Greek island of Lesbos became a Hub of Right-Wing Activism", *TRT World*, March 2020, available at: https://www.trtworld.com/magazine/how-the-greek-island-of-lesbos-became-a-hub-of-right-wing-activism-36275 (last visited 31 Jul. 2024).

[64] Interview 12.

[65] Interview 2.

Permission to find a POS for rescued migrants was not discussed as much of an issue in Greece (although one activist discussed how their organisation was fined in the Eastern Mediterranean for taking an 'older lady who was dying' to a port 'without [the Hellenic coastguard] knowing'[66]) but was described as being particularly challenging in the Central Mediterranean. This was, as noted above, a product of ministerial decree and has more recently taken the form of vessels being assigned POS in locations far away in Central and Northern Italy.[67] When denied a place to disembark, vessels may have to sit out at sea with migrants on board for prolonged periods. This can be hugely problematic, as this activist based in the Central Mediterranean discussed:

> We were basically being held in a state of limbo for an extended period of time. We started to run out of water, started to run out of food. It became increasingly difficult on the ship to keep things calm because people were obviously very scared about the fact that they think maybe they're going to get taken back to Libya. And so, they're threatening to jump into the water because they'd rather die. And all the while, we're sending emails to Maritime authorities, asking for a POS in order that we can disembark … [68]

Another activist in the Central Mediterranean, who was also a medical doctor, referenced that individuals held on boats for long periods began to self-harm and in some cases attempted to commit suicide.[69] This, they explained, was exacerbated by being able to see the country they wished to go to, 'leading to unnecessary stress'.

For participants, being denied permission to launch or disembark creates huge operational difficulties. It is clear that by having to ask and await permission to launch or disembark, they are not performing SAR to an optimum. For some individuals, the incongruous nature of having to work in a system where they cannot just go out and rescue people is difficult for them. Coupled with criminalisation, it did not accord with what was familiar to them. One activist who had previously worked in SAR in the own country stated 'I didn't really have eyes open to it at that point … I was someone … working within search and rescue, so how can this possibly be criminalised? How?'[70] Activists perceive it as a mechanism to control SAR vessels, to slow operations down, to control them from what they are legally allowed to do.

Through late assignment, or assigning POS far away, we witness the state create law in their material interactions with SAR missions. Assigning ports far away *only* serves to disrupt SAR organisations in performing life-saving work—it does not fulfil any other purpose (e.g., such as regulating immigration under Article 21(1) of UNLCOS), as migrants will eventually be permitted to enter the country anyway. It has a disproportionate effect on smaller organisations who may not be able to pay the fuel costs.[71] The law on disembarkation was not designed to disrupt SAR activities. Drawing on CLP, we can argue that Italian Ministers are creating new legal norms by opportunistically exploiting the porous nature of maritime law. Its provisions on 'recommending' ports of safety allow states to manipulate provisions to create very clear operational difficulties for SAR organisations. We witness the law very clearly *only* being used for nefarious purposes. Without tighter SAR provisions in international law, this opportunism could likely continue.

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[66] Interview 7.
[67] Alagna and Cusumano, 'Varieties of Criminalization: Italy's Evolving Approach to Policing Sea Rescue NGOs', 2023, 500.
[68] Interview 6
[69] Interview 8.
[70] Interview 20.
[71] *Ibid.*

The next section will consider another mechanism that participants perceive as being designed to slow their operations down—detaining vessels for inspection.

4.2 Detaining vessels for inspections

In the last five years, the use of PSC, as highlighted by Alagna and Cusumano, is a predominant mode of control.[72] In this research, SAR activists discussed how they increasingly fear their vessels being seized or detained by PSC, and the effect this has on disrupting SAR operations. They considered that they are subjected to more inspections than other types of vessels and that PSC officials are penalising them for minor infringements of law. As this section will discuss, the timing and rigour of these inspections takes place on the ground, where PSC officials use their discretion to disrupt SAR work through the imaginative use of regulation.

Maritime safety and marine environmental protection pertaining to vessels are promoted through a large international legal framework. It is very complex, as much will depend on the type of vessel and its range of activity. Some of this will be summarised here to provide an illustration of how legal regulations apply or can be contested in this space. This section will also examine the recent conjoined case of *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti (C-14/21 and C-15/21), Capitaneria di Porto di Palermo (C-14/21), Capitaneria di Porto Empedocle (C-15/21)* [hereafter *Sea Watch eV*].[73] It is worthwhile considering this case in some detail, as it is illustrative of the types of issues that participants discussed in the research. This is a very recent case—it was decided after the qualitative research in this project took place, so its ensuing effects have not been assessed.

The legal framework regarding maritime safety and marine environmental protection includes such instruments as UNCLOS 1982 and several conventions adopted under the International Maritime Organisation (IMO). A full list of Conventions under the IMO can be found on their website.[74] All vessels must legally be registered under the law of a state, have an established link to that state, and fly their flag under Article 92 of UNCLOS. SAR vessels are registered under various flag states.[75] These vessels are subject to the law of their flag state and are deemed foreign ships in other ports of entry. Flag states are primarily responsible for ensuring that vessels comply with international standards. This includes safeguarding against substandard ships which are unsafe or could pollute the environment.[76]

PSC also provides a mechanism to control vessels.[77] The Paris Memorandum of Understanding (MOU) seeks to promote the elimination of substandard shipping, including setting out inspection commitments and selection of vessels for inspections. All EU Member States with maritime ports, as well as Canada, UK, Russia, Iceland, and Norway, are

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[72]   Ibid.

[73]   Court of Justice of the European Union (CJEU), *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti, Capitaneria di Porto di Palermo, Capitaneria di Porto Empedocle*, Joined cases C-14/21 and C-15/21, C-14/21 C-15/21, Grand Chamber, 1 Aug. 2022.

[74]   Key IMO Conventions include the International Convention for the Safety of Life at Sea 1974 (SOLAS), the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 and by the Protocol of 1997 (MARPOL), and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978. There are numerous other Conventions under the auspices of the IMO, covering aspects of seafaring such as preventing collisions at sea, facilitating maritime traffic, or those relating to oil pollution casualties or dumping of waste. A full list of Conventions can be found at: https://www.imo.org/ (last visited 1 Aug. 2024).

[75]   In a list compiled by the European Union Agency for Fundamental Rights (EUFRA) in 2022, flag states of humanitarian SAR vessels operating in the Mediterranean include: Germany, the UK, Norway, Sweden, Spain, Switzerland, France, Italy, and the Netherlands (European Union Agency for Fundamental Rights (EUFRA), *June 2022 Update—Search and Rescue (SAR) operations in the Mediterranean and fundamental rights*, EUFRA, 2022, available at: June 2022 Update—Search and Rescue (SAR) operations in the Mediterranean and fundamental rights | European Union Agency for Fundamental Rights (europa.eu) (last visited 8 Jan. 2024)).

[76]   Art. 94(5) UNCLOS.

[77]   Ibid., 201.

signatories. The Paris MOU provides an international inspection regime for foreign ships and applies to commercial vessels—pleasure vessels not engaged in trade are not subject to inspection, but may be subject to inspection under the domestic law of the State. In the 1980s and 1990s, the European Commission adopted a number of directives which made PSC mandatory for all members of the EU.[78] In 2023, EU directive 2009/16/EC[79] was extended to fishing vessels.

SAR vessels operating in the Mediterranean are varied in terms of their classifications and fly under several flags.[80] The question arose before the Court of Justice of the European Union (ECJ) in *Sea Watch eV* as to whether PSC controls should be subjected to vessels performing SAR. In this case, the humanitarian organisation Sea Watch brought actions following inspections undertaken in 2020 in Sicily. The harbour masters contended, *inter alia*, that the vessel was not certified to conduct SAR,[81] it had taken on greater numbers than it was able to accommodate,[82] and there were technical deficiencies giving rise to a risk to health and safety and the environment, making detention of the ships necessary.[83] Sea Watch claimed that the harbour masters had exceeded their powers, as derived from Directive 2009/16/EC, in detaining the ship for inspection.[84]

In deciding the case, the ECJ held that PSC can apply to any ship, including humanitarian SAR vessels.[85] However, the Court also found that this requirement must be interpreted by considering the fundamental duty to render assistance to persons or vessels in danger or distress at sea.[86] It then held the duty to render assistance when persons are being rescued supersedes states using their powers to inspect ships.[87] However, once the distressed persons have disembarked, the port state has the power to subject the vessel to an inspection.[88] But the Court also specified that to do so, the port state must demonstrate that there are serious indications of a danger to health and safety, on-board working conditions, or the environment.[89] The port state has the power to adopt corrective measures, e.g., such as detaining a vessel for issues to be rectified, but these measures must be suitable, necessary, and proportionate.[90] However, as this article will demonstrate, the types of issues highlighted are often not serious, which questions whether the detention of vessels can be a proportionate response.

The *Sea-Watch* case highlights a tension which exists for many SAR organisations with PSC. But first, it is worth noting that many humanitarian vessels were not designed for SAR, particularly with respect to rescuing large numbers of people. Many vessels have previously operated for commercial purposes and are many years old.[91] However, it is perceived by

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[78] Council of the European Union, 1995. Directive 95/21/EC of 19 June 1995 Concerning the Enforcement, in Respect of Shipping Using Community Ports and Sailing in the Waters under the Jurisdiction of the Member States, of International Standards for Ship Safety, Pollution Prevention.

[79] European Parliament and the Council, 2009. Directive 2009/16/EC of the European Parliament and of the Council of 23 Apr. 2009 on Port State Control Strasbourg, France.

[80] The EU Agency for Fundamental Rights periodically update a list for SAR vessels operating in the Mediterranean—it is from this last that the following data is taken; rather than our participant list, which remains anonymous.

[81] *Sea Watch eV*, para. 48.

[82] *Ibid.*, para. 49.

[83] *Ibid.*, para. 48.

[84] *Ibid.*, para. 50.

[85] *Ibid.*, para. 80.

[86] *Ibid.*, paras. 89–92.

[87] *Ibid.*, para 108.

[88] See, e.g., *Ibid.*, para. 125.

[89] *Ibid.*, para. 126.

[90] *Ibid.*, para. 153.

[91] The Sea-Watch 3, e.g., which Carola Rackete captained is described by Marine Traffic as a supply vessel built in 1973. The Sea Eye 4 is described as an Offshore Supply Ship, built in 1972. The Alan Kurdi is also described as an Offshore Supply Ship built in 1951. The Aquarius Dignitas is a Research/Survey vessel built in 1977 (These data have been taken from the Marine Traffic database: MarineTraffic: Global Ship Tracking Intelligence | AIS Marine Traffic (last visited 5 Jan. 2024)).

participants that they are operating in a space which calls for emergency measures, and rather than there being recognition of this, they are being asked to comply with additional requirements which go above what other vessels have to comply with. For example, one activist who had worked in the Central Mediterranean stated:

> [N]o other ship that perform or should perform rescues like Italian coast guard, Maltese coast guard, Spanish coast guard, military ships, nobody is being requested about this …
> I mean when you rescue people on the sea, everyone assumes that that's an emergency situation and since you are not a ferry or anything like this, you shouldn't comply with all that stuff.[92]

Second, while participants in this research did not question the validity of PSC inspections, they perceived that inspections were being conducted routinely, regardless of need. The *Sea Watch eV* case helpfully clarifies that indications of serious problems should be the basis for inspection, but it was highlighted that inspections seemed to happen to their SAR vessels 'systematically', but that did not happen for commercial vessels. One activist in the Central Mediterranean commented:

> It's systematic for us to have PSC when we disembark people in Italy. And this kind of control by the state never happens each time the commercial ships touch the ground in any country of the world. When I navigate [a commercial ship] as a seafarer, I did not expect and fear PSC each time I go on port … the regulations seem to be the same for everyone, but for us [SAR vessels] it's really, really more.[93]

Third, participants described that PSC was fixated on highlighting minor indiscretions, which could lead to SAR vessels being detained for many hours or days: ' … We know that this vessel is going to be gone over with an absolute fine-toothed comb to try and find even the smallest thing'.[94] While *Sea-Watch eV* holds the need for corrective measures on inspection and detention to be suitable, necessary, and proportionate, it was discussed that vessels are being detained for inspection for long periods of time, and because of this the authorities will 'inevitably find issues of non-compliance'.[95]

Examples of non-compliance discussed included authorities finding that items on vessels were out-of-date: this included, in the Central Mediterranean, maps (in one example by a week where the map was of lighthouses—that is, structures unlikely to require the regular updating of maps),[96] and physical copies of navigation charts (where up-to-date digital charts were being used anyway).[97] Other issues of non-compliance included stickers not being on items on vessels, or 'having *too many* life jackets on board … . So, really, just completely ridiculous'.[98] Another issue highlighted in the Central Mediterranean was the size of curtains in a room in a vessel, where it was argued that they did not guarantee adequate privacy: 'now we have really good curtains'.[99] Activists in the Central Mediterranean also referenced boats being detained for not disposing of rubbish properly.[100]

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[92]   Interview 15.
[93]   Interview 14.
[94]   Interview 20
[95]   Interview 16.
[96]   Interview 15
[97]   *Ibid.*
[98]   Interview 6; emphasis added.
[99]   Interview 18.
[100] Interviews 8 and 20.

In the Eastern Mediterranean, it was discussed how the authorities would examine personal protection equipment to ensure it was up to was up to standard, and would check that pyrotechnics and fire extinguishers to make sure they were in-date.[101] One activist in the Eastern Mediterranean also discussed how authorities would detain vessels to undertake chemical analyses of fuel where the petrol company had already provided a certified sealed bottle.[102] In addition to checking the vessels, activists were asked to present their own personal papers, including passports or volunteer registration documents.[103] This list is non-exhaustive; the impression was given that authorities were imaginative in what they would consider a breach of regulations, many of which do not appear to be serious.

Issues of non-compliance also included those relating to health and sanitary arrangements on boats, which are covered under various maritime regulations. Having the correct sewerage facilities was discussed by one participant with respect to their work in the Central Mediterranean:

> They were concerned about the wellbeing of rescued people in terms of sewerage facilities … We are talking about people who were rescuing from the imminent risk of drowning. Then you held these people at sea for almost two weeks after the event. And now, you're concerned, that when they're on board, maybe they won't have sufficient hygiene facilities? The level of hypocrisy, it just blows your mind.[104]

Another activist was more charitable on this issue, suggesting that there was a need to comply with the International Convention for the Prevention of Pollution from Ships (MARPOL), stating that many SAR vessels are old and not designed for the work that they are undertaking, and you have to 'give people dignity' when it comes to adequate hygiene facilities.[105] However, the same participant also stated that because it is very costly to comply with this legislation, the authorities use this to their advantage, describing how they heavily enforce environmental legislation 'with the knowledge that most NGOs don't have the money to make the modifications. And because of that they say their hands are tied and you get detained'. He explained that SAR organisations may then need to fundraise to pay for modifications.

In addition to this, authorities may fine organisations. In 2018, Italy seized the Medicins san Frontiere (MSF) ship *Aquarius* because of 'HIV contaminated clothes', also claiming that they could be contaminated by meningitis and tuberculosis. It was alleged that the ship's crew had illegally labelled the clothing as 'special waste' rather than 'toxic waste'. In this case, Sicilian prosecutors fined MSF a total of €460,000 and froze some of its bank accounts based in Italy.[106]

Again, these issues seem to indicate that PSC is being used in an unnecessary or disproportionate way. This does not happen, in the perception of SAR activists, to other seafaring vessels. Through the lens of CLP, it can be recognised that the law is being created horizontally by state officials—they are creating new norms of law through an over-rigid or highly imaginative use of PSC powers and regulation, through material interactions with vessels at port. Whereas government sets the framework, PSC officials in detaining SAR

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[101]   Interview 2.
[102]   Interview 13.
[103]   Interview 12.
[104]   Interview 6.
[105]   Interview 13.
[106]   L. Tondo, "Italy orders seizure of migrant rescue ship over 'HIV-contaminated clothes'", *The Guardian*, available at: https://www.theguardian.com/world/2018/nov/20/italy-orders-seizure-aquarius-migrant-rescue-ship-hiv-clothes, 20. Nov. 2018 (last visited 8 Jan. 2023).

vessels more regularly than other vessels, and in using their administrative discretion to inspect vessels and find minor indiscretions, are creating new legal norms. In doing this, they are using malleable laws to their benefit, where there is significant scope for abuse due to the large regulatory framework for health, safety, and environmental protection at sea. They are, in the perception of SAR activists, doing this only to disrupt and deter their work. Whether the *Sea Watch eV* case will impact on this is unclear. What is clear, however, is that SAR activists now have the capacity to legally contest what might be considered to be a serious, suitable, necessary, or proportionate corrective measure.

4.3 The impact of Covid-19

The third key theme to emerge from the research concerns how public health interventions have been used to control SAR organisations with respect to Covid-19. In Lesvos, in addition to other political issues, it led to NGOs leaving the island. In the Central Mediterranean, there were quarantine restrictions, and vessels were required to comply with additional health-related measures. In this section, it will be demonstrated how under the guise of needing to safeguard public health during the pandemic, the Italian government was able to control SAR vessels in a manner which they had not previously been, and beyond that which other vessels were controlled.

In February 2020, the Turkish Government 'opened' its border in Evros to exert pressure upon the EU and Greece by allowing migrants to attempt to cross the Eastern Mediterranean transit route. In response, the Greek Government, in contravention to refugee law, suspended the right to asylum.[107] In practice, the denial of access to asylum led to increased pushbacks in the Aegean.[108] Against a further growing backdrop of right-wing hostility on Lesvos,[109] the Covid-19 virus was spreading across the world. Due to the increased tension and operational issues caused by the pandemic and the right-wing upheaval on the Greek islands, many NGOs suspended or stopped their services.[110] On Lesvos, as reported by participants in this research, all search and rescue NGOs stopped operating. However, as the withdrawal of NGOs on Lesvos was as much to do with the right-wing upheaval in Greece,[111] this section will focus only on the Italian experience.

In 2020, the Italian Government introduced two measures aimed at blocking migrant arrivals by sea.[112] These included the closure of ports to SAR vessels and the use of ships to quarantine migrants. In April, Inter-ministerial Decree n. 150 of 7 April 2020[113] (largely in contravention to maritime and refugee law) designated that 'Italian ports do not meet the

[107] P. Pallister-Wilkins, A. Anastasiadou & E.Papataxiarchis, *Protection in Lesvos during Covid—19: A Crucial Failure*, 2020, available at: https://admigov.eu/upload/Pallister-Wilkins_Anastasiadou_Papataxiarchis_Interim_Report.pdf (last visited 1 Aug. 2024).
[108] Legal Centre Lesvos and Feminist Autonomous Centre for research, *A Pandemic of Abuses: How Greece Dismantled the Right to Asylum and Normalised the Violation of Migrants' Rights throughout the COVID-19 Pandemic in Lesvos*, 2023, available at: https://legalcentrelesvos.org/2023/08/23/new-report-a-pandemic-of-abuses/ (last visited 1 Aug. 2024), 17.
Conditions in camps like Moria also severely deteriorated, but this will not be covered here.
[109] Associated Press, "Police and Protesters Clash on Greek islands over New Migrant Camps", *The Guardian*, 25 Feb. 2020, available at: https://www.theguardian.com/world/2020/feb/25/police-and-protesters-clash-on-greek-islands-over-new-migrant-camps (last visited 25 Feb. 2020).
[110] G. Farrell, "The Impact of COVID-19 on the Inhabitants of Greek Camps—Refugee Rights Europe", Refugee Rights Europe, available at: https://refugee-rights.eu/2020/04/06/the-impact-of-covid-19-on-the-inhabitants-of-greek-camps/ (last visited 1 Aug. 2024).
[111] J. Bennett & P.R. Betran "Humanitarian Search and Rescue in the Aegean Sea: Stuck Between Two Crises", COMPAS, available at: https://www.compas.ox.ac.uk/article/humanitarian-search-and-rescue-in-the-aegean-sea-stuck-between-two-crises (last visited 1 Aug. 2024).
[112] N. Montagna, "Quarantine Ships as Spaces of Bordering: The Securitization of Migration Policy in Italy During the COVID-19 Pandemic", *International Migration Review*, 58(2), 2024, 499–521, 507.
[113] Il Ministro delle infrastrutture e dei trasporti di concerto con Il Ministro degli affari esteri e della cooperaxione internazionale de concerto con Il Minstro dell'interno e Il Ministro della salute, Decreto n. 150, del 7 Aprile 2020.

necessary requirements for the classification and definition of 'place of safety' under the defi-
nition of the Hamburg Convention on SAR for cases of rescue carried out by naval units fly-
ing a foreign flag outside the Italian SAR area'. A few days later the Italian Government
decreed that migrants would be held in accommodation on land and, if this could not be
achieved, they would be isolated in ships.[114]

Interventions to safeguard sites against pathogenic threats are common in the context of
migrants moving into Europe,[115] but quarantining itself has often taken place to control.
Foucault discusses how the quarantine was used as a form of political control in the 18th
century, arguing 'the plague implies an always finer approximation of power to individuals,
an ever more constant and insistent observation'.[116] Bashford argues that the practice of
quarantining was entangled with the shipping and maritime world from the start, observing
that quarantine stations, in the early modern period, increasingly appeared in coastal
regions.[117] Mawani and Stedler argue that, 'These stations operated as a *cordon sanitaire*, cre-
ating an inside and an outside that was ostensibly aimed at protecting port cities and empire
states from threats of contagion from without'.[118] Prior to the Covid-19 pandemic,
quarantining had already been witnessed with respect to the resurgence of tuberculosis
(TB), the HIV/AIDS pandemic, and SARS.[119]

Douglas,[120] Scott and von Unger argue that 'risk' is an 'important cultural/symbolic con-
struct that serves to define threats to a nation's health. In epidemiological health reporting,
the threat of TB contagion and the hazards of vulnerability to TB were attributed to people
and social groups considered the 'other'.[121] Mawani and Stedler highlight that it is Black and
colonised bodies who are framed as epidemiological or foreign threats—despite long histo-
ries of Europeans bringing disease to the countries they are colonising.[122] This reinforces
the view that somehow migrants are 'vectors of disease', which 'feeds into anxieties about
the threat of 'stranger danger' by emphasising contagion through casual exposure'.[123] The
Covid-19 pandemic provided a means to reinforce this message, whilst allowing states to ex-
ercise power over migrants as well as SAR organisations.

Participants discussed health securitisation frequently. Separate from the discussion on
Covid-19, one activist who had worked in the Central Mediterranean referred to public
health othering with respect to scabies, describing how people diagnosed with the condition
were required to wear a different band:

> It can easily be treated … I do think that it became such a tool of 'othering' … they're the
> ones coming here with scabies and lice and all these things … And then, they're taken out
> and separated and hosed down and their clothes are thrown away.[124]

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[114]   Dipartimento della Protezione Civile, Decreto del Capo Dipartimento n. 1287 del 12 Aprile 2020.
[115]   A. Warren, "(Re) locating the Border: Pre-entry Tuberculosis (TB) Screening of Migrants to the UK", *Geoforum*, 48,
2013, 156–164.
[116]   M. Foucault, *Abnormal: Lectures at the Collège de France 1974–1975* (trans. G. Burchell), Verso, 2003, 46.
[117]   A. Bashford, "Maritime Quarantine: Linking Old World and New World Histories", in A. Bashford (ed.), *Quarantine:
Local and Global Histories London: Palgrave Macmillan*, Bloomsbury Publishing, 2016, 1–12.
[118]   R. Mawani & M. Stelder, "The Pandemic and Two Ships", in C. F. Stychin (ed.), *Law, Humanities and the COVID
Crisis*, University of London Press, 2023, 162.
[119]   P. Scott & H. von Unger, "Discourses on Im/migrants, Ethnic Minorities, and Infectious Disease: Fifty Years of
Tuberculosis Reporting in the United Kingdom", *History of the Human Sciences*, 35(1), 2022, 189.
[120]   M. Douglas, *Purity and danger: An analysis of concept of pollution and taboo*, Routledge, 2002.
[121]   Scott & von Unger, "Discourses on Im/migrants, Ethnic Minorities, and Infectious Disease: Fifty Years of
Tuberculosis Reporting in the United Kingdom", *History of the Human Sciences*, 185–215, 206.
[122]   Mawani & Stelder, "The Pandemic and Two Ships", 163.
[123]   G.M. Craig, "'Nation', 'migration' and tuberculosis", *Social Theory & Health*, 5, 2007, 267–284, 273.
[124]   Interview 21.

Referencing the case of the Aquarius, one participant's discussion of the imagery of keeping Europe safe from disease from migrants is connected to the discourse that they pose a threat to Europeans. Covid-19, they argued, tied in with this agenda:

> The COVID thing, to put it in the most cynical way, was just a gift to them in terms of how to rebrand existing migration policy as being in the interests of public health. Basically, you're able to legitimise pretty much anything because the bottom line is about keeping people safe. There's so much of the way that migration has been positioned goes back to this idea of there being a threat or something to be managed or mitigated. And with the whole rigmarole around, for example, decontaminating the ship, this type of imagery is perfect. People wearing masks, people hosing things down wearing hazmat suits … [125].

Whereas the Covid-19 pandemic created the conditions that anyone from outside the home could be considered a potential contagious threat, it also led the authorities to control NGO vessels. As one activist with experience in the Central Mediterranean commented:

> It was one small piece in a big puzzle to make things more complicated and difficult [for SAR vessels].[126]

Several participants referenced being held in quarantine along with migrants on board (n = 8) and some highlighted the unnecessary length of time they were held, indicating that it was 'well over the two-week quarantine'[127] or 'upwards of a month without necessarily being able to contact friends, relatives, to let them know that they were safe'.[128] One participant suggested that 'merchant vessels that rescue people and disembark them in Italy don't have this quarantine obligation'[129] indicating that this only happened to SAR vessels. One participant reflected that it simply became impossible to be able to crew ships because they rely on international activists, and they were unable, or did not wish to travel due to Covid-19 restrictions[130]—another, unintended, means of rendering SAR vessels inoperative.

During the pandemic, states created laws and regulations on a rapid basis. In the UK, for example (where the researchers reside), hundreds of laws were made.[131] It is not surprising that there would be lockdown restrictions for SAR vessels, as there were for other vessels—cruise ships were particularly in focus at the time.[132] However, SAR participants argued that laws were being abused—quarantining restrictions were being exploited to hold migrant ships for longer periods of time than other vessels. The law, being easier to exploit in a time of 'state of exception'[133] against the backdrop of public health rhetoric and fear of the 'migrant other', enabled state authorities to further control SAR vessels. It also allowed them to reinforce a public health message, through exploitation of the law, that migrants were to be treated differently. Drawing on CLP, we can argue that the law is being created

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[125]   Interview 6.
[126]   Interview 8.
[127]   Interview 3.
[128]   Interview 6.
[129]   Interview 11.
[130]   Interview 13.
[131]   S. Barber, "Coronavirus: A History of 'Lockdown Laws' in England", House of Commons Library No. 9068, 2021, available at: https://researchbriefings.files.parliament.uk/documents/CBP-9068/CBP-9068.pdf (last visited 5 Aug. 2024).
[132]   eg see: H. Ito, S. Hanaoka & T. Kawasaki, "The Cruise Industry and the COVID-19 Outbreak", *Transportation Research Interdisciplinary Perspectives*, 5, 2020, 100136; A. Tirrell & E. Mendenhall, "Cruise ships, COVID-19, and port/flag state obligations", *Ocean Development & International Law*, 52(3), 2021, 225–238.
[133]   G. Agamben, "The Invention of the Epidemic", *Quodlibet*, 26 February 2020, available at: https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia (last visited 5 Aug. 2020).

horizontally. What we witness is state officials creating new norms of law through their material encounters with vessels seeking to find a POS, by creating additional restrictions for SAR vessels. What we also see is the manipulation of regulation to further a discourse of difference, feeding racist tropes.

4.4 Bureaucracy and local use of the civil law

The fourth key theme to emerge from the research was the use of bureaucracy and local law as a mechanism of control. This was primarily discussed in this research with respect to Lesvos, where NGOs were localised to the area. Whereas much of this is instituted at a governmental level, many mechanisms of control also take place on the ground and are the product of the use of law and administrative discretion by state agents.

Bureaucracy is ubiquitous in the modern world and with it, as Graeber (2015) argues, always carries the threat of violence.[134] Weber describes modern bureaucratic administration as that of 'precision, speed … reduction of friction' and 'without regard for persons'.[135] Participants in this research regarded bureaucracy in a different way. They viewed it as aimed to slow them down, to make them less precise in meeting their primary humanitarian aims, and to increase operational difficulties. Excessive bureaucracy is a recognised facet of humanitarian work. The UN Inter-Agency Standing Committee (IASC) recently published a report which recognises 'administrative practices and policies which limit the ability of humanitarian organisations to reach people in need in a timely and unfettered manner'[136] were 'a significant and growing barrier to humanitarian operations'.[137]

On Lesvos, the types of bureaucratic tasks that SAR organisations faced included[138] registering their NGO with the local Mayor, obtaining licenses and permits, getting insurance, and making daily and incident reports to the coastguard.[139] It also included onerous registration requirements with authorities (including having to have documents translated by an official translator and having these stamped, and apostilled). It was described that when the registration form had been filled out as required, another list of requests arose.[140] Although these may appear to be innocuous requests, and may be necessary in some cases, the jobs were described by participants as always being present and new tasks established regularly. As one experienced SAR activist in the Eastern Mediterranean commented:

> We very quickly came to the realisation that when one piece of bureaucracy wasn't working that they changed the goal posts.[141]

In addition to these time- and resource-consuming jobs, participants discussed the difficulties they faced complying with local laws. On Lesvos, participants described having to pay fines regularly for various infringements of the law. The issuance of fines may have been linked to SAR work, such as conducting aspects of SAR operations without direct authorisation from the coastguard, or could be unrelated, such as fines for *picking up* litter. These fines

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[134]   D. Graeber, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy*, Melville House, 2015, 32.
[135]   M. Weber, *Economy and Society (G. Roth, C. Wittich, Eds., G. Roth, & C. Wittich, Trans.)*, New York, Bedminster Press, 1921/1968), 973.
[136]   United Nations Inter-Agency Standing Committee (IASC), *Understanding and Addressing Bureaucratic and Administrative Impediments to Humanitarian Action: Framework for System-Wide Approach*, IASC, 2022, available at: IASC Guidance Understanding and Addressing Bureaucratic and Administrative Impediments to Humanitarian Action_Framework for a System-wide Approach.pdf (interagencystandingcommittee.org) (last visited 8 Jan. 2024), 4.
[137]   *Ibid.*, 3.
[138]   Interview 4.
[139]   Interviews 2 and 4.
[140]   Interview 4.
[141]   Interview 1.

were discussed as being linked to deterrence and disruption of SAR work, which this activist sums up:

> So, beach clean fines, removing litter from the beach without having a licence to do so, and then various petty stuff, which probably wasn't fair, because they weren't true. Navigating without lights on, they'd accuse us of certain stuff like that, and we did have lights on … They were trying to deter us from doing what we were doing by imposing fines on us … they would find … minor infringements that would just be … financially costly once they add up over a period of time.[142]

In a sense, what SAR activists perceived was bureaucratic harassment—unnecessary, but required, time-consuming administrative tasks. Much of this was intended, in their view, to disrupt their work. States may contend that SAR organisations are subject to the same laws as everyone else, but it is clear that they were asked to jump through unnecessary and often unfair hoops—such as paying fines for cleaning up the beach. Registering with authorities and getting documents translated by an official translator, stamped, and then apostilled was not, as described by participants, easy. It was unnecessarily cumbersome and resource draining. The point of registration itself being that the state could have more in control of the organisations. Again, we can see law affected situationally by different actors to disrupt SAR organisations—by state officials in governmental departments, by council officials, and the coastguard. We see laws designed for other purposes used to damage operations and to control SAR activists and their organisations. We witness the law being created on different levels, both in regulation at a governmental level, and through everyday relations between, for example, coastguards or the police, and SAR activists.

4.5 Criminalisation

SAR work by its very nature is traumatic.[143] There is an ever-present danger of vicarious trauma for SAR activists due to witnessing people dying, in distress, dead bodies in the water, or incidents on board vessels. However, SAR work is made more difficult, as our participants attested to, by actions (or omissions) of state authorities, which takes place in a participant-reported atmosphere of intimidation and fear of criminalisation. As this section will discuss, direct use of the criminal law has diminished as a method to control SAR organisations, but its punitive use casts a shadow over those who work in the field.

States can be imaginative in their use of the criminal law against SAR activists. For example, they can be prosecuted for people smuggling, espionage (as in the case of Binder and Mardini), breaking a naval blockade (as in the case of Carola Rackete), or money laundering. Primarily, people smuggling is the major concern for SAR activists. Articles 5 and 6 of the Protocol to Prevent Trafficking and the Protocol against Smuggling, require contracting states to adopt legislation to establish criminal offences of people trafficking and people smuggling for financial or material benefit. States have used the law to argue that SAR activists are facilitating people smuggling. However, any international law regarding human trafficking and smuggling must be read alongside the relevant law on search and rescue. The UN Human Rights Committee (UNHRC) has stated that 'It is logical to conclude that the domestic and regional laws and practices […] which criminalize or suppress those who render assistance to those at risk of losing their lives at sea clearly contravene the international

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[142]   Interview 2.

[143]   P. Argentero amd I. Settie "Engagement and Vicarious Traumatization in Rescue Workers", *International Archives of Occupational and Environmental Health*, 84(1), 2011, 67–75.

legal regime which recognizes a general duty to render assistance at sea'.[144] This has also been affirmed by the European Union Agency for Fundamental Rights (EUFRA) which has, 'underlined that actions against migrant smuggling must not result in punishing people who support migrants on the move for humanitarian considerations, including persons working for NGOs saving lives during search and rescue operations'.[145] Despite this, criminalisation, as documented throughout this research, takes place.[146]

Criminalisation, including fear of being criminalised, was ever-present in discussions. The participants were cognisant of the wider political culture in which they operate and knew of incidents of criminalisation. As one activist in the Eastern Mediterranean commented 'the bigger picture is that criminalisation was coming from some fairly heavy politicians, in my opinion, and government leaders, and we weren't invincible if they decided to crack down on us'.[147] SAR activists were most concerned about being arrested for people smuggling/human trafficking, as that appears to be the predominant mode of criminalisation. One participant, who worked in the Eastern Mediterranean, mentioned that they might be arrested for spying, as well as for money laundering, because accusations had historically been made against SAR organisations.[148] Participants spoke of people being arrested within their or other organisations and how that led to a feeling of fear amongst activists. For example, one participant in the Eastern Mediterranean described an activist being arrested for people smuggling and how 'that was an ever-present fear among us all at the time'.[149] Another activist described having colleagues arrested and then released as they had been in the vicinity of an alleged smuggler vessel when their vessel had reached a coastline.[150] High-profile cases were discussed, such as that of Seán Binder and Sarah Mardini, and Carola Rackete, but also smaller incidents which have not been in the news.

It was evident from the research that fear of criminalisation leads some SAR activists to act with deference towards the law, always seeking to comply with what the state asks of them. Activists from one organisation, for example, repeatedly referred to the need to ensure that they did not come into conflict with the coastguard and obey every regulation laid down. They also spoke of the need to exercise caution in reporting human rights abuses, which could draw them into conflict with the authorities. This, it was implied, was because of a fear of the state authorities in how they could use the law against them.

SAR activists, when discussing criminalisation, were also aware of another form of control (separately discussed by Alagna and Cusumano)[151]—surveillance. One participant discussed the feeling that the state and intelligence services were always watching them,[152] whereas another participant described always being watched in what they do by the coastguard,[153] and another suggested the police would arrive during 'spotting shifts' and would try to make things uncomfortable for activists.

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[144] UN Human Rights Council (2019) Human Rights and International Solidarity. Report of the Independent Expert on human rights and international solidarity to the Human Rights Council. A/HRC/41/44, para. 27.

[145] European Union for Fundamental Rights (EUFRA), *Fundamental Rights Considerations: NGO Ships Involved in Search and Rescue in the Mediterranean and Criminal Investigations—2018*, EUFRA, 2018, para. 5. Available at: Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations—2018 | European Union Agency for Fundamental Rights (europa.eu) (last visited 8 Jan. 2024).

[146] T. Basaran, "Saving Lives at Sea: Security, Law and Adverse Effects", 16(3), 2014, 365–387, 379.

[147] Interview 2.

[148] Interview 4.

[149] Interview 1.

[150] Interview 5.

[151] Alagna & Cusumano, "Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean", 106.

[152] Interview 18.

[153] Interview 5.

Despite the pronouncements by the UNHRC and EUFRA against criminalisation, states still have the capacity to prosecute SAR activists. While these are solid pronouncements in theory, a porous law which prohibits trafficking provides a mechanism for states to contest the legality of SAR missions on the ground. Traffickers facilitate dangerous migrant journeys. Engagement with these vessels, or being seen in the vicinity of people smugglers (as in the example above), can lead to allegations of complicity. Undoubtedly encouraged by government officials, it is state officials who enforce this law. Using the lens of CLP, it can be argued that in their encounters with SAR workers, state officials—e.g., the police and prosecutors—seek to abuse their executive function to control or deter SAR activists from their activities, through the creation of new legal norms designed to intimidate SAR activists or suppress their work. By prosecuting SAR activists, state officials not only create new forms of law, ironically misusing existing laws designed to protect people from exploitation, but delegitimise their work in the eyes of the public, through the stigma of criminal prosecution.

The punitive use of the law in prosecuting of SAR activities, if diminished at present, continues to affect SAR activists, and may act as a deterrent. The capacity for states to use the law to control SAR NGOs, in a manner completely unintended from its purpose, is something participants found difficult to deal with. One activist who had worked in the Eastern Mediterranean commented:

‘You're pulling babies out of rubber boats, how is this the illegal, wrong thing to do, in the eyes of the law … ?'[154]

The hostile atmosphere created by state officials against SAR work through the punitive use of a porous law—and the worry about criminalisation—was one that clearly has a lasting impact. Part of this may arise from perceived inconsistent application of the relevant legal frameworks by authorities that shapes new law and contributes to the cultivation of fear. One volunteer spoke of becoming aware over a period of time of the issues regarding criminalisation (witnessing friends being arrested) and the difficult political situation they found themselves in—this was something they described as 'scary' and 'nerve-wracking' and ultimately led to them leaving SAR humanitarian work.[155] It was also evident from several of the participants who had worked across both major migrant transit routes[156] that SAR work had led to issues of burnout, which in some cases had led some of them to leave the work for extended periods of time, or completely. One activist commented that this work is 'very draining … in a context where you're constantly up against a level of animosity … It really chips away at you after a while'.[157] Much more could be done to create mechanisms to support SAR workers with their mental health when faced by the punitive effects of the law—this is an area of research which requires further development.

5. CONCLUSION

This article examined SAR activists' perceptions of the different methods of control used against them and their organisations, outlining that control of NGO humanitarian work in this field involves a complex use of the law imposed in a myriad of ways. This includes requirements imposed on SAR vessels to launch and/or disembark, detaining vessels for inspection, requirements emanating from the Covid-19 pandemic, subjecting SAR

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[154] Interview 20.
[155] Interview 5.
[156] Interviews 1, 2, and 6.
[157] Interview 2.

organisations to adhere to bureaucratic requirements and local use of the civil law, and criminalisation.

In developing a myriad of responses to countering the work that SAR organisations do, we see national and international law exploited, in a manner not perceived in its original design. We witness law created in response to a perceived need to control SAR organisations—so that they will not interfere with the hostile migration policies of states, disrupt pushbacks, and report on human rights violations. We see this happening at both an institutional level, as a result of direct governmental interference and, as the article has demonstrated through its CLP framework, by plural actors through social and material encounters.

This article argued through the lens of CLP, with respect to requirements imposed on SAR vessels to launch in Greece, that the coastguard created law horizontally through permitting or preventing SAR vessels to leave dock, depending on the situation. Drawing on CLP, this article also argued that Italian Ministers and port authorities, in only permitting late assignment for SAR vessels to enter ports, or allocating POS significant distances away, create new legal norms through exploitation of the porous nature of maritime law in its provisions on 'recommending' POS, allowing them to create significant operational difficulties for SAR organisations.

This article examined PSC inspections, and it was argued that in the perspective of SAR activists, inspections were being carried out more often than for other vessels, and that PSC officials were detaining vessels because of minor issues. It was argued that PSC officials are creating new norms of law through the overly rigid and imaginative use of maritime regulations, where there is significant scope to do this due to a large regulatory framework. This article also argued that, with respect to the Covid-19 pandemic, quarantining restrictions were being exploited by state officials to detain vessels for significant periods of time, against a backdrop of public health rhetoric.

This article also examined how SAR activists considered that they were subject to bureaucratic harassment and that local laws have been instrumentalised by state officials to control or disrupt their work. It was argued that law is being created at different levels—both at regulatory and governmental level—and through material interactions between coastguards, the police, and other public officials, for the purpose of control and disruption of SAR work.

In relation to criminalisation, it was discussed how the use of punitive law can have a lasting effect on SAR activists. It was argued that the inconsistent application of relevant legal frameworks helps to shape new law and contributes to the cultivation of fear of being arrested. Through this, state officials—including the police and prosecutors—abuse their executive function to control and intimidate SAR activists, using laws not designed to disrupt SAR work.

SAR NGOs will continue to have to challenge the nefarious use of law in their interactions with state authorities. This article has demonstrated that porous and complex law can be exploited by state agents, on various levels. The scale of the abuse of different forms of law is extensive and includes, for instance, maritime law and its regulations with respect to health, safety, or pollution; international laws with respect to people smuggling; maritime law with respect to assigning POS; and local regulations and laws in the areas that SAR organisations work. Therefore, there is no single solution to combatting these forms of control, and states have shown themselves imaginative in changing the goalposts. However, we have witnessed effective counterstrategies, and although some of these have been outside of this scope to examine (but have been discussed in the work of Alagna and Cusumano)[158] this article has shown how cases like *Sea-Watch eV* may potentially have an impact on

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[158] Alagna & Cusumano "Against the Tide: The Counter-Repression Strategies of Sea Rescue Organizations in the Mediterranean", 105–123, 105–106.

countering forms of control, in this case the overly timely and imaginative application of PSC regulations. Further examination of the impact of this judgment is welcome.

How the legal and human rights community continues to respond to the challenge of combatting the abuse of law by state agents with respect to SAR work is the subject of much needed further research. As states continue to change the goalposts, SAR activists will have to continue to respond to new paradigms of control as they emerge. What this research demonstrates is that when states and their agents wish to control people or organisations, laws at different levels can be created and instrumentalised for these purposes. This not only has relevance to the subject matter of this article, but is significant in other areas of controversial or contested activity.