

**Dissecting Policy-Induced Obstacles: The Impact of European
Anti-Migration Policies on the Humanitarian Space in the
Mediterranean Region**

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Abstract

This research examines the impact of policy-induced obstacles on the humanitarian space, with a particular focus on the Mediterranean region. Following the termination of search and rescue (SAR) operations by EU Member States in the Mediterranean, non-governmental organizations (NGOs) have stepped in to fill the void. The high influx of migrants, coupled with an EU-wide impasse on addressing this issue, has resulted in various anti-migration policies. This research explores how these anti-migration policies and the obstacles they generate affect the humanitarian space in which NGOs operate. Through the analysis of primary documents and in-depth interviews, this research provides a comprehensive understanding of the experiences of NGOs. The findings reveal distinct categories of obstacles resulting from anti-migration policies, each contributing differently to the deterioration of the humanitarian space. Additionally, the research highlights how contradictions in policy create uncertainties for NGOs, further impacting their operational environment and deteriorating the humanitarian space.

Keywords: EU policy, humanitarian space, migrant crisis, NGOs, search and rescue

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This research is dedicated to all those who perished in the Mediterranean crossings.

List of abbreviations

Central med	Central Mediterranean
EU	European Union
FRA	European Union Agency for Fundamental Rights
Frontex	Frontières Extérieures
IMO	International Maritime Organization
MOAS	Migrant Offshore Aid Station
MRCC	Maritime Rescue Coordination Centre
MSF	Médecins Sans Frontières
NGOs	Non-governmental organizations
Operation Sophia	EUNAVFOR MED Operation Sophia
SAR	Search and rescue
SARC	Convention on Maritime Search and Rescue
SOLAS	International Convention for the Safety of Life at Sea
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees

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1. Introduction

This chapter first presents an introduction to anti-migration policy and humanitarian aid in the Mediterranean region. Subsequently, the problem statement, the purpose of this research, the research question and the relevance of the research are discussed. Finally, a short reading guide follows.

1.1 Migration in the Mediterranean

In September 2015, newspapers worldwide published a photo of a stranded Syrian toddler. The toddler turned out to be two-year-old Alan who, together with his family, tried to flee to Europe but did not survive the crossing across the Mediterranean Sea due to drowning. The photo became a symbol of refugee problems in the Mediterranean region and the associated dangerous crossings to Europe (Ibrahim, 2018). Figures kept by the United Nations High Commissioner for Refugees (UNHCR) show that Alan was among more than a million other refugees trying to reach Europe in 2015. More than three thousand five hundred of them have died or are still missing (UNHCR, 2015).

The increasing influx of migrants required EU-wide political action. The EU Member States and institutions came to a consensus that joint action is necessary to solve the problem, which has now been dubbed a crisis (European Commission, 2015). However, due to differing interests, it became apparent that there was no consensus on how to resolve this crisis among the Member States, resulting in collective action being absent (Panebianco, 2020). Italy conducted search and rescue (SAR) operations from 2013 until the end of 2014 under Operation Mare Nostrum, but when this operation was stopped, there were no more state-led SAR operations in the Mediterranean (Janner Torrens, 2020). The end of this operation created a void, as there were no longer any states conducting SAR activities in the Mediterranean region. Since then, NGOs stepped in to fill this void by organizing their own SAR missions and rescuing migrants at sea.

Initially, these NGO-led SAR operations were welcomed by Member States. However, the narrative shifted when reports, including one of Frontex, emerged portraying NGOs as pull factors and facilitators of irregular migration and facilitators of human smugglers (Cusumano

& Villa, 2020). As a result, Member States implemented various policies to reduce the influx of migrants through NGO-led SAR activities (Irrera, 2016; Cusumano, 2017b).

1.2 Problem statement

Several European Member States have thus implemented anti-migration policies to limit the influx of migrants through NGO-led SAR operations. These policies affect the way NGOs conduct their operations and therefore potentially impact NGOs' humanitarian space. The humanitarian space in which NGOs operate is both a physical and symbolic contested space in which humanitarian actors provide assistance to those in need, while adhering to humanitarian principles such as humanity, neutrality and impartiality (Cusumano, 2017a).

The deterioration of humanitarian space impacts humanitarian principles. Compromising these principles could reduce the ability of humanitarian organizations to operate efficiently in disturbed region and provide essential assistance to those in need (Guttieri, 2005). These humanitarian organizations are often essential in such areas because states may struggle to provide adequate solutions. This research focuses on analysing the influence of anti-migration policies on the humanitarian space in which NGOs operate. The aim is to understand how such policies affect the capacity of NGOs to effectively provide humanitarian assistance, and to make recommendations for policy improvements that can strengthen the humanitarian space and potentially improve cooperation between NGOs and governments. This leads to the formulation of the following research question:

How do anti-migration policies in the European Union impact the humanitarian space in the Mediterranean region?

This research aims to make several contributions to the scientific field. First, it adds to the existing literature on the impact of policy on the humanitarian space. Hilhorst and Jansen (2010) emphasize the importance of focusing on the empirical perspective of the everyday realities of aid delivery. This research seeks to examine those daily realities by analysing interviews with NGOs and primary documents. The results of these analyses can in turn contribute to further research. Secondly, this research analyses the effect of policy on humanitarian organizations in an international context. This could inform upcoming research

to better understand how policies work in different contexts, particularly in the field of aid delivery.

This research contributes to its social relevance by analysing the effects of anti-migration policies, allowing for the formulation of policy recommendations that enhance the humanitarian space and improve the effectiveness of NGOs in delivering aid. This can improve better mutual understanding and potentially lead to more humane migration policy measures. Additionally, gaining a deeper understanding of the challenges faced by NGOs can improve cooperation between governments, NGOs, and other stakeholders, ultimately benefiting society.

To address the research question, this research is organized into four additional chapters. First, the theoretical framework is presented, providing the foundation for this research by discussing relevant literature, theories, and concepts. Following this, the methodology chapter outlines the methodological approach for this research. The fourth chapter presents the results, where the data is analysed, and the findings are discussed. Finally, the conclusion summarizes the main findings in relation to the theoretical framework and concludes with a reflection on the limitations of the research and recommendations for future work.

2. Theoretical framework

In this chapter, the two variables are conceptualized using contemporary literature, providing a theoretical foundation. First, an in-depth theoretical exploration of the concept of anti-migration policy is presented, followed by a conceptualization of the impact on the humanitarian space. This is followed by a presentation of international maritime obligations. Finally, an examination on how conflicting policies intersect with the humanitarian space follows.

2.1 Anti-migration policies

Migration policies refer to the laws, regulations, and measures that states initiate and implement, with the objective to influence the volume, direction, and composition of migration flows (Czaika & De Haas, 2013). These policies are designed to address various aspects of migration. Migration policy is therefore an umbrella term for different types of policies that shape migration. There are for example policies for: admission, integration, return, diaspora engagement, and acquiring residency and citizenship (Solano & Huddleston, 2022). The policies described above are more focused on dealing with migration in an administrative, integrated manner. There also exists policies that focus more on influencing migration flows in a beneficial way to a state. Selective migration policies, for example, refer to the process by which countries deliberately choose and control the entry of immigrants based on specific criteria such as skills, education, work experience, and other factors that are deemed valuable to the receiving country (Koslowski, 2013). This shows that migration can be a means to promote a state's interests; migration in this context is seen as something favorable. However, in the context of humanitarian migration, migration is often seen as unfavorable.

People fleeing their homelands often do so for humanitarian reasons, such as civil wars or human rights abuses (Hatton, 2016). These migrants, commonly known as refugees or asylum seekers, are often not welcomed. Long (2013) found that international policymaking often categorizes refugees and migrants as distinctly different groups, despite their historical interconnectedness. She suggests that refugee and migrant flows often overlap, with communities, families, and individuals moving between the two categories. This fluidity indicates that individuals initially classified as refugees may later become migrants, and vice

versa, depending on changing circumstances. This categorization in turn creates different migration policies, which are often less welcome. These policies entail for example the control on refugee migration flows, focusing more on bigger volumes (Hatton, 2016). There are various policies designed to prevent or counteract migration, better known as anti-migration policies. Some of these policies are explicit, such as physical barriers like border walls and fences that prevent unauthorized entry. Others are more subtle, such as visa restrictions.

2.1.1 Migration dissuasion

Based on a review of scientific literature, Collyer (2019) categorizes three types of migration dissuasion methods employed by states to limit the influx of migration: repressive-, coercive-, and preventive dissuasion. Repressive dissuasion involves the use of legitimate violence against migrants who already reached the territory of a host nation. Examples of repressive dissuasion measures entails practices such as detention and deportation. These practices aim to deter migrants from remaining in the country. Repressive dissuasion often sparks debates about the legitimacy of state actions, particularly when violence leads to fatalities or when enforcement operations extend beyond national borders (Collyer, 2019).

Coercive dissuasion focuses on intercepting migrants prior to their arrival at their desired destination. This approach includes surveillance, interception, and the delegation of migration control responsibilities to private entities. Governments may contract (semi) private firms to manage migration control beyond their borders or impose fines on those facilitating unauthorized migrant transportation. The EU, for example, delegates external border control to Frontex (Léonard, 2010). Coercive deterrence methods may entail maritime patrols in international waters, consulate-based visa officers, and other forms of control outside national boundaries. The use of coercive dissuasion raises issues related to the involvement of non-state actors in migration control and the potential for human rights violations in interception activities (Collyer, 2019).

Lastly, preventive dissuasion aims to prevent migration through development and humanitarian aid. By offering assistance in the countries of origin, governments aim to prevent individuals from leaving in the first place. This strategy entails international

collaboration, awareness campaigns promoting safe migration, and opportunities for legal migration. Development aid is often used in preventive dissuasion efforts. However, there is ongoing debate regarding its effectiveness on migration flows. Preventive dissuasion is considered the least forceful of the three types of dissuasion, as it often takes place in other countries through independent actors like development professionals. However, the use of preventive dissuasion raises questions whether it is ethical to use development aid as an instrument against migration flows (Collyer, 2019).

2.1.2 Policies as barriers: understanding their impact

NGOs often find themselves navigating the complexities of state policies they encounter (Dupuy et al., 2014). These policies affect various domains, including bureaucratic, legal, judicial, and operational areas. NGOs frequently experience obstacles across these multiple domains simultaneously. Bureaucratic challenges, such as administrative hurdles, involve complex procedures and documentation that NGOs must manage. These administrative tasks consume resources like time and money, which could otherwise be allocated to providing assistance. Dupuy et al. (2014) found that consistently addressing these types of administrative tasks can slow down NGO decision-making, affecting organizational agility. One notable administrative burden that NGOs face in the context of SAR activities in the Mediterranean is the Code of Conduct, for instance. This Code of Conduct, hereinafter ‘Code’, consists of thirteen provisions that the Italian government wants NGOs to adhere to (Carrera et al., 2023). This Code provides challenges rather than facilitating SAR activities within the Mediterranean region (Cusumano, 2017b).

Legal regulations can influence NGOs in various ways. For instance, laws can affect the funding from foreign sources or operational aspects of NGOs, such as their geographic scope or operational methodologies (Dupuy et al., 2021). For example, through regulations on (foreign) funding, NGOs may face difficulties in securing the essential resources needed to effectively implement programs and projects. This situation can result in financial instability and operational challenges for NGOs (Dupuy et al., 2021). Closely linked to legal regulations are judicial challenges. An example of this is the criminalization of NGO activities, which involves NGOs facing criminal suspicions, investigations, and convictions. Criminalizing NGOs not only diverts attention and resources from their activities but also fosters a climate

of suspicion surrounding their work. This environment may subsequently reduce NGOs operational capacities (Cusumano & Villa, 2020). In the Mediterranean, NGOs have encountered supplementary impediments like for example the seizure of NGO owned vessels, legal pressures, the accusation of cooperating with human smugglers, and restricting or prohibiting access to ports. These obstacles may lead to the suspension of the organization's SAR operations (Smith, 2017). In addition, several EU Member States have pursued legal measures. Examples include Italy, Malta, and Greece. However, less expected countries such as The Netherlands and Germany have also initiated legal measures against NGOs (Janner Torrens, 2020). The Dutch authorities, for example, implemented measures impacting organizations that conducted operations using vessels registered under the Dutch flag (Janner Torrens, 2020). These legal actions illustrate a wider trend of legal scrutiny and responses undertaken by different EU Member States regarding SAR operations in the Mediterranean. In conclusion, policies may create obstacles for NGOs in various domains, including bureaucratic-administrative hurdles, as well as legal, judicial, and operational challenges.

2.1.3 State interests: understanding policy choices

Member States maintain sovereignty over their national borders and are tasked with implementing EU border policies within their territories (Kalkman, 2020; Marin, 2014). One of the EU-wide operations deployed in the Mediterranean to protect the EU's external borders, was Operation Sophia from 2015 till 2020. The operation was an EU military mission with the main objectives of disrupting the business model of migrant smuggling and human trafficking networks in the Southern Central Mediterranean region (Bevilacqua, 2017). Despite the primary focus of combating illegal smuggling practices, the operation also entailed SAR activities within the Mediterranean. However, these SAR activities were mainly carried out because of maritime law obligations to rescue people in distress (Boşilcă et al., 2020; Bevilacqua, 2017).

Operation Sophia was originally divided into four successive phases. However, the operation never progressed beyond phase 2. There are two affiliated scholarly streams of explanations for the suspension of the operation. One explanation of the suspension was concerns about the legal framework of Operation Sophia. The Italian government, a prominent participant in the operation, was among the nations expressing doubts regarding the efficacy and durability of

the mission. Italy's reservations about the operation encompassed concerns regarding the absence of a clear legal framework for transferring detained suspects to local authorities, which eventually prevented the full implementation of its mandate (Boşilcă et al., 2020; Bevilacqua, 2017). A second explanation of the suspensions were political disagreements among various EU Member States. The disagreements were not related to the core objective of the operation but were related to the subordinate SAR activities of Operation Sophia. The suspension of the operation resulted from a lack of a clear and agreed-upon mechanism for the distribution of rescued migrants among EU Member States and created a significant obstacle. This led to a deadlock in decision-making and eventually to Italy's decision to deny permission to vessels involved in Operation Sophia to disembark rescued migrants at Italian ports. Other Member States, such as Greece and Malta, followed suit (Janner Torrens, 2020; Greiwe, 2023; Boşilcă et al., 2020). Countries such as Italy, Greece and Malta denied permission to disembark rescued migrants, because these countries receive a high number of migrants. This can be explained by the fact that these countries are peripheral nations situated on the Mediterranean Sea, near the African continent (Lutz et al., 2020). The Council of the European Union prolonged the mandate of this naval operation until March 2020, while restricting its activities to air operations only. This restriction resulted in the de facto cessation of SAR activities by EU Member States and Frontex (Janner Torrens, 2020). Frontex is still active in the Mediterranean region in different operations, however these operations are security oriented and have no SAR activities involved (Janner Torrens, 2020). Furthermore, the European Parliament has concluded by means of a motion that since November 2014 there has been no proactive state-operated SAR initiatives in the Mediterranean (Aguilar, 2019).

2.2 Humanitarian space

The concept of humanitarian space can be defined as a dynamic and contested physical or symbolic space where humanitarian actors operate to deliver assistance to those in need while upholding humanitarian principles such as impartiality, neutrality, and humanity (Cusumano, 2017a; Hilhorst & Jansen, 2010). The humanitarian space is not just a passive area where aid is provided, but rather an arena where aid providers and aid recipients interact, negotiate, and strategize to access and deliver aid effectively (Hilhorst & Jansen, 2010). The notion of humanitarian space highlights the importance of the environment in which humanitarian actors work, encompassing both the physical locations where aid is delivered, such as refugee

camps or conflict zones, as well as the broader socio-political context in which humanitarian action takes place. This space is characterized by challenges, including politicization, security risks, and power dynamics that influence the delivery of aid and the relationships between different actors involved in humanitarian assistance (Hilhorst & Jansen, 2010; Guttieri, 2005). The humanitarian space reflect the complex interplay between actors, policies, and practices in the field of humanitarian assistance, emphasizing the need for a nuanced understanding of how humanitarian action unfolds in real-world contexts (Hilhorst & Jansen, 2010; Guttieri, 2005; Cusumano, 2017a). The anti-migration policies have their effects on the NGOs that carry out SAR activities in the Mediterranean. The question then arises as to how this affects NGOs, and more specifically, how these policies influence the humanitarian space in the Mediterranean region.

2.2.1 Conceptual drivers of NGO-led operations

Cusumano and Pattison (2018) argue that state dependence on non-governmental organizations (NGOs) for humanitarian work underscores the failure of states to fulfill their responsibilities. Although NGOs conduct humanitarian work with altruistic intentions and a moral duty to save or improve lives, they encounter substantial constraints in terms of capacity and resources. This reliance on NGOs can be seen as a form of outsourcing their responsibilities, allowing governments to justify their unwillingness to provide humanitarian services themselves. NGOs provide humanitarian work mainly to address gaps in government response efforts (Sezgin & Dijkzeul, 2013). They aim to bridge deficiencies in state capabilities to assess and respond to humanitarian crises (Irrera, 2016). By managing these operations with a non-governmental approach, NGOs seek to improve rescue capabilities and the treatment of migrants both on- and offshore. Moreover, NGOs' independence from political agendas and bureaucratic constraints can enhance their agility and effectiveness in humanitarian work. By addressing gaps in government response, NGOs contribute to a more comprehensive and coordinated emergency response system, ultimately saving lives and reducing the impact of disasters and crises on affected populations (Sezgin & Dijkzeul, 2013).

Because of the rigid stance adopted by Member States concerning the docking of SAR vessels, coupled with the Council's determination to solely maintain a presence in the Mediterranean through aerial means, the SAR operations have effectively been halted by both

Member States and Frontex. Hence, there exists a void in these undertakings within the Mediterranean area, which multiple NGOs have stepped into to address (Janner Torrens, 2020). Initially, the attitude towards NGOs conducting SAR operations was friendly; the conviction that SAR operations remained both a legal and ethical necessity was not doubted. The Italian government even welcomed NGOs in 2014 to help in SAR activities after Frontex operation Triton proved to be insufficient (Cusumano, 2017a). Although the operation proved to be insufficient, European state vessels were by far leading in rescuing migrants in the Mediterranean, with more than 120.000 migrants, whereas Migrant Offshore Aid Station (MOAS - the only NGO conducting SAR activities at that time) did not even save 1000 migrants in 2014 (Cusumano & Villa, 2020; Cuttitta, 2017).

However, the rising influx of migrants in 2016 and the EU-wide deadlock on the distribution of migrants resulted in an escalating sense of migration fatigue, mainly in Italy (Cusumano, 2017). The impact of this fatigue is evident in the outcomes of SAR operations carried out by European state vessels. While these vessels rescued approximately 120,000 migrants annually in 2014, 2015, and 2016, this figure sharply declined to around 53,000 migrants in 2017. In 2018, European state vessels rescued approximately 18,000 migrants, and in 2019, the number decreased further to around 2,000 migrants (Cusumano & Villa, 2020). This represents a decline of over 98% between 2014 and 2019. In this period, it becomes apparent that NGOs are taking on the role of SAR operations, traditionally undertaken by Member States (Cuttitta, 2017). While in 2014 NGOs rescued fewer than 1,000 migrants, this figure grew to 20,000 in 2015, and approximately 44,000 in both 2016 and 2017 (Cusumano & Villa, 2020).

2.2.2 Implications on the humanitarian space

In science, several concepts have been found that influence the humanitarian space. A frequently described concept is the politicization of humanitarian action. The involvement of political actors can lead to the manipulation of humanitarian operations for political gain. This could compromise humanitarian principles such as neutrality, impartiality and humanity and lead to a smaller humanitarian space (Hilhorst & Jansen, 2010). Another concept that significantly impacts the humanitarian space is security considerations. Humanitarian efforts are often required in unstable environments, where NGOs frequently operate. Insecurities,

violence, and attacks on humanitarian workers can affect both the physical and symbolic dimensions of the humanitarian space (Shannon, 2009). These challenges include impediments to the movement of humanitarian workers, which in turn lead to diminished access to affected populations, thereby constricting the physical humanitarian space. In response to security challenges, NGOs regularly apply adaptation strategies, for example through risk assessments. There are many examples of these types of adaptation strategies, such as operating incognito or carrying out work at night. While these measures highlight the adaptability of NGOs in managing security constraints, they also emphasize the shrinking of the humanitarian space where such precautions are essential for operational safety (Shannon, 2009).

The diverse obstacles encountered significantly impact NGOs undertaking SAR activities within the Mediterranean region. This impact is starkly illustrated by the substantial reduction in migrants rescued by NGOs. While approximately 44,000 migrants were rescued by NGOs in 2017, this figure reduced to 2,000 in 2018 and fewer than 1,000 in 2019 (Cusumano & Villa, 2020). Consequently, by 2019, the number of rescued migrants had regressed to the level observed in 2014, marking the inception year of NGOs' SAR initiatives. The count of NGO vessels engaged in SAR operations has significantly decreased as well. According to data from the EU Fundamental Rights Agency (FRA), the number of operational vessels decreased from 13 in 2017 to 5 by 2020 (European Union Agency for Fundamental Rights, 2022). This reduction is not primarily attributed to a decrease in migrant numbers; while 2015 saw an extraordinarily high influx, with over one million arrivals, this figure dropped to 340,000 in 2016 and further to 185,000 in 2017. From then until 2022, the number of migrants stabilized at around 160,000 annually (United Nations High Commissioner for Refugees, 2024).

2.3 International maritime obligations

Various treaties have stipulated agreements regarding SAR activities at sea. One of the most important treaties is the United Nations Convention on the Law of the Sea (UNCLOS) from 1982, which is signed and rectified by all members of the European Union as well as the European Union itself (United Nations, 1982). This treaty sets out, among other things, the obligations to render assistance to any person in distress at sea. This is regulated under article

98: ‘*Duty to render assistance*’. This duty to render assistance is formulated in two paragraphs; the first paragraph prescribes that a state requires the master of the ship to 1) render assistance to any person found at sea in danger of being lost and to 2) swiftly undertake the rescue of individuals in distress upon receiving notification of their need for help, as long as such a response is within reasonable expectation. Paragraph two of article 98 prescribes that every coastal State is obligated to encourage the development, functioning, and upkeep of a competent and efficient search and rescue service to ensure safety at sea and in the air. Moreover, when situations demand it, they should collaborate with neighboring States through joint regional agreements to achieve this objective (United Nations, 1982).

The UNCLOS is not the only convention which includes the obligation to rescue people in distress at sea. The International Convention for the Safety of Life at Sea (SOLAS) from 1974 prescribes under chapter 5 - regulation 33, the obligations and procedures related to distress messages: The master of a vessel at sea, capable of rendering aid upon receiving a distress signal from any origin indicating individuals in peril, is obligated to promptly proceed to their aid. If feasible, the captain should also inform the distressed individuals or the search and rescue service of the ship's intention to provide assistance (SOLAS, 1974). A third convention regulating the provision of assistance to persons at sea, is the 1979 International Convention on Maritime Search and Rescue (SARC). Chapter 2.1.10 states that parties must guarantee that assistance is extended to any individual in distress at sea, irrespective of the person's nationality, status, or the circumstances under which they are encountered (United Nations, 1979). A notable aspect of this passage is the non-discriminatory nature. In summary, these three conventions set forth a legal framework in which states and/or masters of vessels must operate in cases involving individuals in distress at sea.

2.4 Balancing conflicting policies: the focal point

The duties pertaining to aiding individuals in maritime distress are explicitly outlined in various maritime conventions as prescribed above. Nonetheless, regulations also exist for providing assistance in instances of illegal entry. It's not uncommon in such agreements to encounter situations where different conventions and regulations may contradict one another. Here is where the intersection occurs between humanitarian work on one side and state interests on the other.

In an effort to combat illegal migration, the EU adopted the so called ‘‘Facilitators package’’ (Council directive 2002/90/EC) and ‘‘Facilitators directive’’ (Council Framework Decision 2002/946/JHA). The Facilitators package follows out the Facilitators directive and aims towards aligning the criminal legislation of Member States to combat practices of assistance in instances of illegal entry. Subsequently, the facilitators directive outlines and penalizes the act of aiding unauthorized entry, transit, and residence of migrants within EU Member States. Its focus is on individuals or groups who aid migrants in entering or staying in the EU without proper authorization, typically for financial gain. The directive requires states to impose sanctions on those who incite, engage in, or endeavor to aid a non-EU citizen in entering or crossing the territory of a Member State in violation of that State's laws regarding the entry or transit of non-citizens (Council Framework Decision 2002/946/JHA). Therefore, the implementation of the directive and the package may lead to criminal prosecution. To avoid impeding the SAR efforts of humanitarian organizations, an exception clause has been incorporated in the Facilitators directive. Article 1.2 of the directive states that any Member State retains the discretion to refrain from imposing sanctions related to the conduct outlined in the directive, particularly in cases where the intention of such conduct is to offer humanitarian aid (Council directive 2002/90/EC).

However, the presence of this clause does not shield NGOs committed to SAR operations from potential accusations of migrant smuggling and human trafficking, along with the ensuing criminal penalties (Janner Torrens, 2020). This is because the incorporation of this clause into national criminal laws is discretionary rather than obligatory, as stated in Directive 2002/90/EC: ‘‘Member States may decide not to impose sanctions.’’ As a result, humanitarian organizations oftentimes face prosecution for their SAR efforts. Wetterich (2022) finds that NGOs face investigations and accusations of abetting human smuggling. The allegations of aiding human smuggling suggest that authorities may perceive the activities of these NGOs as facilitating illegal migration, thereby triggering legal scrutiny and investigations. Wetterich (2022) describes in her research a change in Italy’s attitude towards NGOs that carry out SAR activities: In 2013, under the Mare Nostrum operation, the Italian government allowed disembarkations of migrants who were rescued in international waters. In 2017, the Italian government issued a code of conduct for maritime rescue NGOs, urging their cooperation in

combatting human smuggling under the threat of potential prosecution under Italian law; shifting towards a less welcoming approach (Carrera et al., 2023). One year later, Italy barred NGO SAR vessels from entering its ports, with the former Italian Minister of Interior accusing NGOs of aiding human smuggling and labeling them as 'the mafia of human trafficking'. While Italy is the most outspoken about its stance on SAR activities by NGOs, other Member States share a similar attitude, including Malta and Greece for instance (Janner Torrens, 2020).

3. Methodology

This chapter presents the methodology used in this research. First, the research design is described, followed by the operationalization of the variables and a presentation of the data collection methods. Lastly, a justification of the research's reliability and validity follows.

3.1 Research design

3.1.1 Case selection

To explore the impact of anti-migration policies on humanitarian efforts, this research examines the experiences of NGOs engaged in SAR operations in the Mediterranean region. Several factors influenced the selection of this case study. First, SAR operations in this area have been marked by evolving narratives: NGOs initially received a welcoming reception, which later shifted to a more hostile and distant attitude. This shift can be attributed to the strong increase in migrants since 2015 (Cusumano & Villa, 2020). This contrast facilitates straightforward measurement of narrative changes and allows for an investigation into how and why anti-migration policies affect the humanitarian space. To accurately capture this shift in narrative, the research focuses on the period between 2014 and 2020. This timeframe was selected because 2014 marked the involvement of the first NGO in SAR operations in the Mediterranean. The end date of 2020 was chosen because the COVID-19 pandemic introduced restrictions that fall outside the scope of this research. Secondly, multiple NGOs have participated in SAR activities in this region (Janner Torrens, 2020). This offers more diverse data, which enhances the research's validity and reliability.

3.2 Operationalization

3.2.1 Dependent variable

The dependent variable is humanitarian space. To make this rather abstract concept measurable, it will be converted into measurable and observable indicators, so that it could be measured and analyzed in this research. Each indicator will be described as specifically as possible by adding characteristics of the indicator that are inspired by scientific literature and based on the theoretical framework. The indicators are shown in table 1.

Indicator 1: Access to SAR area	Indicator 2: Security of operations	Indicator 3: Acceptance by authorities	Indicator 4: Respect for humanitarian principles
Frequency of SAR operations compared to previous years (2014 – 2020)	Increase in security incidents targeting NGO staff or assets.	Level of collaboration and cooperation <ul style="list-style-type: none"> - Quantity of cooperation - Quality of cooperation (difficulties, trust issues) 	Adherence to core principles as: <ul style="list-style-type: none"> - Neutrality - Impartiality - Independence (Cusumano, 2017a).
Quantity of migrants saved compared to previous years (2014 – 2020)	Severity level of security incidents (e.g., the severity of injuries and damages on NGO staff or assets).	Perceived level of acceptance by NGO staff. <ul style="list-style-type: none"> - Intercourse before, during and after SAR activity. 	Level of engagement with (local) authorities to advocate for respect of humanitarian principles in situations such as: <ul style="list-style-type: none"> - Medical situations - flexibility in impending humanitarian emergencies
SAR operations can be organized if necessary. <ul style="list-style-type: none"> - Administrative; - Legal-; - Judicial-; - Operational hurdles. 	Perceived level of security by NGO staff. <ul style="list-style-type: none"> - Increased or decreased during 2014 - 2020 	Room for negotiation with (local) authorities. <ul style="list-style-type: none"> - Rigid attitude - Flexible attitude 	

Table 1: Indicators humanitarian space

3.2.2 Independent variable

The independent variable is anti-migration policies. To make this concept measurable, the definition in this research focuses on policies against NGOs that carry out SAR activities in the Mediterranean. This definition sets the boundaries of the concept, enabling the identification of measurable indicators. Anti-migration policies, as highlighted in the theoretical framework, are the primary drivers impacting the humanitarian space. Consequently, the indicators are formulated with this perspective in mind. Each indicator is accompanied by specific examples of obstructions, illustrating its measurability. The indicators are shown in table 2.

Indicator	Definition	Operationalization
Legal/ Judicial restrictions	Measure the type of legal barriers imposed on NGOs related to SAR operations, leading to financial or operational hurdles (Dupuy et al., 2021), or criminalization (Cusumano & Villa, 2020).	Collect events in which laws or directives limit or controlled SAR activities and track instances in which NGOs have received fines, prosecution, detention or other penalties, such as: <ul style="list-style-type: none"> - Withdrawing a vessels flag (Janner Torrens, 2020); - Charging NGOs (e.g. human smuggling or human trafficking) (Wetterich, 2022); - Fining NGOs (Wetterich, 2022).
Access limitations	Measures the instances of denied or restricted access to critical areas for SAR operations, leading to operational hurdles (Dupuy et al., 2021).	Record cases where SAR NGOs are prevented from entering specific maritime zones or ports that are essential for their operations: <ul style="list-style-type: none"> - Prohibiting entry into a port;

		<ul style="list-style-type: none"> - Refer to a more distant port (hence slowing the operation down).
Bureaucratic delays	Bureaucratic hurdles that delay or prevent NGOs from conducting SAR operations, leading to a delay of SAR operations (Dupuy et al., 2014).	Measure the time taken for SAR NGOs to receive necessary operational approvals. <ul style="list-style-type: none"> - Control of permits - Assessing the condition of the vessel - Control of other documents

Table 2: Indicators anti-migration policies

3.3 Data collection

To investigate the influence of anti-migration policies on the humanitarian space, this research used qualitative data collection methods. This approach to data collection offers several advantages. One advantage is that qualitative methods enable researchers to explore the nuances of a specific phenomenon more thoroughly. This facilitates capturing detailed descriptions that surpass surface-level understanding and thereby enhances the explanation of the phenomena under investigation (Tracy, 2010).

To ensure the data richness of this research, two types of qualitative data selection were used: document analysis and conducting and analyzing semi-structured interviews. The document analysis contributed by providing meaning and first insights into empirical knowledge. The interviews enriched the data by delving deeper into the impact of anti-migration policies on humanitarian space, revealing experiences of NGOs that conduct or conducted SAR operations. By analyzing both primary data sources and interviews, the research gathered deeper and more extensive empirical insights, enriching the ability to answer the research question.

3.3.1 Document analysis

Document analysis is used in this research to systematically evaluate primary data. This method allows for an in-depth exploration of how governmental policies impact NGO-led

SAR operations, particularly in environments with strict anti-migration policies (Bowen, 2009). The research focuses on a range of documents including NGO operational reports and media reports (See Appendix 2 - Overview primary sources). This appendix consists of the author(s), their origin, the year of publication, the number of pages and a brief motivation for using the source. These documents are chosen because they collectively provide a detailed view of the anti-migration policies and its practical implications for NGOs. NGO reports will be obtained directly from the organizations' official websites and media reports will be collected from established news outlets' online archives. Documents will be included if they are: 1) published between 2014 and 2022) relate directly to SAR operations in the Mediterranean, and 3) are available in English. Each document will be initially read to gain a general understanding and then subjected to a detailed content analysis. Key themes such as 'legal restrictions', 'penalties', and 'operational obstacles' will be coded. This thematic coding will help identifying patterns and trends relevant to the research questions (See Appendix 3 – Visualization of the code procedure – Document analysis).

3.3.2 Semi-structured interviews

For this research semi-structured interviews are chosen to allow for a detailed exploration of experiences and viewpoints regarding the effects of anti-migration policies on SAR activities, while still maintaining enough structure to ensure that specific topics are addressed consistently across all interviews (Adams, 2015). The interviews will seek to uncover firsthand insights from NGOs involved in SAR operations, focusing on experiences of challenges, and the perceptions of the policies' impacts on the humanitarian space. The interview guide will include open-ended questions to explore topics on the anti-migration policies and the humanitarian space. The guide was developed based on literature review and preliminary document analysis (see Appendix 4 – Interview guide). The interviews will be conducted via Microsoft Teams video calls due to logistical and geographic reasons, each lasting approximately 60 minutes. All participants will be assured of confidentiality, and interviews will be audio recorded with their consent for accuracy in data transcription. The transcripts will be analyzed using thematic analysis to identify and categorize patterns and themes related to the impacts of anti-migration policies. Coding will be assisted by ATLAS.TI software, which facilitates the organization and retrieval of data for thematic development (see Appendix 5 – Visualization of the coding procedure – Interviews).

3.3.3 NGO selection

In this research, the selection of NGOs operating in the Mediterranean Sea was guided by the aim to explore how anti-migration policies affect the humanitarian space. For the interviews conducted for this research, there was not a large pool of NGOs to choose from. This is because there are only about twenty NGOs that carry out or carried out SAR activities in the Mediterranean (see Appendix 1- List of NGOs). To ensure the reliability of the research, all NGOs as listed in Appendix 1 were invited to participate in the research. The invitations resulted in the participation of 5 NGOs. The selection criteria for the NGOs are:

1. Must be an NGO;
2. That conduct or conducted SAR activities, or were involved in SAR activities in the Mediterranean region;
3. In between 2014 and 2020.

These selection criteria are in line with the research's theoretical framework, ensuring the reliability and validity of the data selection. Criterium one is justified by the research focus on examining the impact of anti-migration policies on the humanitarian efforts of NGOs. Given the investigation into NGOs' experiences, this criterion is both logical and essential. Criterium two ensures the focus of the research, which examines the impact of anti-migration policies on the humanitarian activities of NGOs conducting SAR operations in the Mediterranean region. By incorporating these two criteria, the specific type of activity (NGO-led SAR activities) and the geographical focus (the Mediterranean) are ensured. The last criterium guarantees the period in which the NGOs operated.

The respondents include employees of various types of NGOs, both large organizations with broad (inter)national support and smaller, local groups. This approach provides added value by enabling observation of diverse experiences. Larger NGOs with greater resources are likely to respond differently to anti-migration policies affecting the humanitarian space compared to smaller NGOs. Gathering data from various NGOs of different sizes allows for the collection of diverse experiences and responses, thereby contributing to a more reliable answer to the research question.

3.3.4 Ethical considerations

Ethical considerations are addressed through various measures in this research and respondents' privacy is safeguarded in several ways. First, respondents were requested to review and sign an informed consent form. This document clearly outlines the research's objectives and the purpose of the interviews. It also provides transparent information on how data is collected, utilized, securely stored, etc. In short, how the data is processed. The data has been processed in accordance with the ESSB Education and Examination Regulations. Additionally, the form explains who will have access to the data and assures respondents of the confidential handling of their personal information. To further protect personal data, pseudonyms are used, and personally identifiable information is not processed in the research. Importantly, the form underscores that participation in the research is entirely voluntary, and respondents are free to withdraw from the research at any point. Furthermore, respondents receive the interview transcript and have the option to indicate any phrases they prefer not to be included in the research. For a detailed overview of the informed consent form, see Appendix 6: Informed Consent Form.

3.3.5 Data synthesis

Findings from the document analysis will be compared to the interview data from NGO employees to enhance the reliability of the conclusions. Patterns identified in the documents will be compared against the experiences shared by respondents, providing a multidimensional view of the influence of anti-migration policies on the humanitarian space of NGOs that conduct SAR activities in the Mediterranean region.

3.4 Reliability and validity

The reliability and validity of this research is ensured through multiple methods. For example, through utilizing both primary document analysis and interviews for data collection. Using both data collection methods creates depth through the shared experiences of the interviews and breadth through the systematic analysis of primary documents. To collect a wide range of experiences and documents, interviews are conducted with various NGOs, and documents are collected from multiple NGO sources, enhancing the research's reliability. Additionally, interviews are conducted using a standardized interview guide, ensuring that all respondents

are asked the same questions consistently, which contributes to the reliability of the research (Creswell & Poth, 2017). By framing the questions in the interview guide according to scientific literature, this research can enhance its validity. Furthermore, transcripts are shared with the respondents, adhering to the concept of member checking. This approach enhances the accuracy of the data and interpretations and contributes to the reliability of this research.

4. Results

This chapter presents the findings derived from the data analysis. Initially, it outlines the various types of obstacles identified, followed by an examination of their impact on the humanitarian space. These results are foundational for addressing the research question.

4.1 Obstacles

The analysis of the sources identified several obstacles that NGOs encountered. These obstacles were categorized into four types during the analysis phase: operational, administrative, legal, and criminal-judicial. Another finding involves discrepancies, indicating that contradictory experiences have been observed, which hinder NGOs.

4.1.1 Operational obstacles

The identified obstacles have a significant impact on the operations of NGOs. Operational obstacles are categorized as one of the main types because they often emerge as collateral effects of administrative, legal, and criminal-related obstacles. For instance, a technical or permit check, classified as an administrative obstacle, might cause delays, thus creating an operational impact. To accurately classify the various obstacles, the obstacles were divided into four categories. It is important to note that these categories are not mutually exclusive; they influence and overlap with one another. This interplay and overlap will be examined in the following sections.

4.1.1.1 Closed port policy

One of the most described and mentioned obstacles that NGOs face is the closure of the ports of several European cities by national governments. One of the first countries to close ports to NGO vessels was Italy in 2018. Minister of Interior Salvini closed the ports as a response to the increasing influx of NGO vessels disembarking migrants in Italy (Irrera, 2016). Closing the ports slowed down the NGO's operations. For example, one respondent said: "First it was the closed port policy, so the fact that we couldn't disembark people in a timely way, we had years in which we had very long standoffs." - Francesca Conti. The analysis of the primary documents also showed that closing the ports caused a delay.

4.1.1.2 Ports of safety

Criticism arose from diverse sources, both domestic and international, regarding the extended waiting periods as a result of the closed port policy. To escape criticism, the Italian government changed its policy. The government used Italy's long geographical reach to designate other ports as ports of safety, something that countries such as Greece and Malta cannot do due to their geographical location. Figure 1 illustrates the predominant sea routes, indicating that southern Italy, Lampedusa, and Sicily serve as primary destinations and that the entire coastline of both Malta and Greece are arrival points. The northern and eastern parts of the Mediterranean Sea have no significant sea routes. Therefore, Italy's new policy now designates different 'ports of safety'. The Italian Maritime Rescue Coordination Centre (MRCC) specifies northern ports as locations where NGO vessels can disembark.



Figure 1: Migrant sea routes (MSF, 2016)

These further located designated ports of safety carry the same implications as port closures: namely, delays. One respondent remarked:

“Obviously, then we have the situation where the Italian authorities they're trying to yeah, put some, uh, obstacles to our work. And so, for example, they assign us a different place of safety than Sicily which is more distant, so you have like 12 hours of navigating towards the place of safety on such a small ship, which is not ideal.” – Marco Bianchi

This quotation highlights two key aspects. First, the respondent perceives the different port of safety as hindering the SAR activities conducted by their organization. Secondly, and in connection with the first aspect, this obstacle results in delays. Specifically, the respondent mentions a delay of twelve hours in this instance. Moreover, the return journey to the rescue area also required twelve hours, leading to a delay of up to 24 hours. MSF nuanced in a report that they are not being assigned a port of safety, but a port of destination. The distinction between the two concepts lies in the differing perspectives on what defines a port of safety. From the NGO's viewpoint, a port of safety is one that is nearby. However, the authorities also consider more distant ports as ports of safety.

Both the closure of ports and the designation of more distant ports of safety create operational obstacles. Analyses show that both policies were sometimes implemented simultaneously. This resulted in situations where waiting was required until a distant safe port, which required a lot of sailing time, was assigned. The primary consequence is the inefficient use of time. For example, one respondent said about this:

“This was used together with the proxy of assigning northern place of safety ... Lamorgese [former minister] was assigning place of safety after many days, so the technique was also too slow everything down, so yeah, for sure you will get a place of safety, It's just gonna take a while. So wait ten days, eight days; just wait there and then I give you a place of safety.” -

Marco Bianchi

4.1.2 Administrative obstacles

4.1.2.1 Code of Conduct

The Code of Conduct is a list of eleven points that should guide the way in which NGOs carry out SAR activities in Italian territorial waters (Cusumano, 2017b). This list consists of the following points:

1. NGOs cannot enter Libyan territorial waters;
2. NGOs should not interfere with satellite tracking-devices;
3. NGOs must commit to refraining from using light signals or communication to aid the departure and boarding of migrant-carrying vessels;

4. NGOs must also show that their personnel are trained in rescue operations and that their vessel meets all the necessary technical requirements for SAR missions;
5. Captains of NGO ships have to report their involvement in SAR operations to their flag state;
6. NGOs are required to maintain regular communication with the Italian MRCC and comply with its directives;
7. NGOs are required to disclose all their sources of funding to both the flag state and the Italian government;
8. NGOs are not allowed to do transshipments;
9. The Code mandates NGOs to cooperate fully with the public security authorities at their planned disembarkation location;
10. NGOs must gather makeshift boats and engines from migrant vessels.
11. NGOs are required to accommodate (weaponed) police officers to conduct investigations.

Although the Code is not legally binding, many NGOs felt compelled to sign it. They experienced this pressure from the media and politics. For example, one respondent said about this: “And all the NGOs were pressured by, yeah, Minniti [former minister], but also together with the Italian press to sign this Code. Several NGOs signed it, several of them signed it with some amendments.” – Marco Bianchi. These amendments arose from criticism on the Code. For instance, there was criticism that the initial seven provisions of the Code were already regulated by international maritime law (Cusumano, 2017b). Most of these provisions appear to be redundant or insinuating.

However, there were also objections on certain points. For example, certain NGOs did not want armed authorities on board, because this would compromise an important NGO principle: neutrality. MSF, for example, has a worldwide no-weapon policy. The quote below shows that this point in the Code conflicts with the neutrality of the NGO:

“MSF was very much against having any person with weapon on board. They were saying: We don't get people with weapon in our hospital in Afghanistan. Why should we have people with weapons on board our ships in the Central Med?”. – Marco Bianchi

4.1.2.2 Safety regulation and port state controls

An NGO has encountered changes in safety regulations by the German government as an obstacle. Their vessel was registered as a pleasure craft, where other vessels are registered as commercial vessels. An advantage is that the pleasure crafts are not subject to the time-consuming port state controls. Different, more flexible rules apply to pleasure crafts than to commercial vessels. However, these safety regulations were tightened, leading to a delay in vessel usage. The adjustments required to comply with these changes were also costly for the NGOs. There is suspicion among NGOs that these stricter safety rules are politically driven and are perceived as an obstacle, as shown in the quote below:

“For the Rise Above [vessel], it was three years in total with a long dockyard time in the beginning, because Germany changed the safety regulations for pleasure craft. More technical devices and more electronic to do more tests and trials before we can start to work. (...) Having this history with the former Minister of Transport, and several times in the court case to change exactly this phrase in the safety regulations, I think it's absolutely political motivated.” – Max Müller

Port state controls represent another type of administrative obstacles. During these inspections, port authority's board vessels to conduct various checks before permitting disembarkation. If a defect is found during the inspection, the port authorities may detain the vessel in the port until the defect has been resolved. The strictness or accuracy of these checks is of course up to the port authority. However, the experience of NGOs is that there were very strict controls that often resulted in a vessel being detained in a port. For example, one respondent said:

“So we started seeing NGO ships having to face ports state controls every time it disembarked in Italy. (...) In the end they were coming up with a list of deficiencies that was used to block and detain the ship in port. (...) Basically, the vessels of NGO's were detained for very long time in Italian ports waiting to solve all these deficiencies.” – Marco Bianchi

The quotation above indicates that port state controls occurred during each disembarkation, resulting in waiting periods in the ports. This administrative obstacle results in an operational delay, as the vessel cannot depart until the identified deficiencies are resolved.

4.1.2.3 Flag state

A fourth administrative obstacle concerns issues related to a vessels flag state. The flag state of a vessel refers to the country where it is registered. The ship operates under the authority and legal jurisdiction of this country according to international maritime laws. A ship is not permitted to sail unless it is registered under a flag state, being registered under the flag of a state is therefore important. During the analyses of primary documents and interviews, the subject of flag state removal was a notable recurring obstacle. A report by SOS Mediterranee outlines a timeline in which the obstacle regarding the removal of the flag state of their vessel Aquarius becomes clear:

- June 2018 The Aquarius sailed under the Gibraltar flag.
- August 2018 Gibraltar authorities ordered SOS Mediterranee to remove the
Gibraltarian flag from the Aquarius, leaving the vessel unflagged. The
reason: the vessel was not correctly registered (It was the Gibraltar who
registered the vessel at the IMO).
- September 2018 The State of Panama agreed to grant its flag to the Aquarius.
- September 2018 One week later, the State of Panama ordered SOS Mediterranee to
remove the flag from the Aquarius, leaving the vessel unflagged again.

In an official statement, the authorities of Panama declared that the Italian government had pressured them to implement urgent actions against the Aquarius as its continued flagging poses significant political challenges for the Panamanian government and its fleet operating in European ports (Rajablat, 2022). The removal of the flag and the associated influence have caused a lot of outrage, as one respondent said during the interview:

“In in that period in 2017 [it was 2018], there was first the issue with the flag States and flag states pulling out the flags... The fact that European Member States had so much of an

influence over external states, to impose them to remove a flag, which is, which is something big within the framework of maritime legislation, was really shocking.” – Francesca Conti

The citation indicates that there was pressure to remove the flag of the vessels. Not only in Panama but also in countries like the Netherlands and Germany flags were withdrawn. As a result, this administrative obstacle became an operational one, as sailing is not permitted under international maritime law without flag registration.

4.1.3 Legal obstacles

In addition to administrative obstacles, legal obstacles were also observed. The key distinction lies in the legal enforceability of these obstacles. For instance, the Code is not legally binding; NGOs have the option to opt out and decline to sign it. Conversely, the matter concerning flag states carries legal obligations. However, these legal decisions are determined by states that are less actively involved in anti-migration policies, such as Panama. However, as mentioned earlier, certain obstacles are interconnected, including the issue of flag states.

4.1.3.1 Decreto Sicurezza and Decreto Piantedosi

In 2018, as a measure against the influence of migrants, the so-called Sicurezza Decreto (security decree) was approved in Italy. This decree made it possible for the Minister of Interior to refuse NGOs access to the ports, due to security considerations. The argument was that the migrants endangered national security, making them unwelcome. Violating this decision had various consequences, such as a fine of up to €50,000, the seizure of vessels, or even prosecution leading to prison sentences (Janner Torrens, 2020). One respondent said:

“One of the first things that Salvini [former minister] did when arriving at the government was to approve the so called Decreto Sicurezza. He basically gave the possibility to the Ministry of Interior, the Ministry of Transportation (...), and the Ministry of Defense to sign a ban of entry for NGOs in the territorial waters as the law was saying they represent a threat to national security.” – Marco Bianchi

This decree was enacted because international maritime laws guarantee freedom of navigation, allowing vessels to navigate territorial waters provided they do not endanger

national security. The decree determined the vessels of NGOs as a threat to national security, as a result of which they were no longer allowed to enter Italian territorial waters.

The Decreto Piantedosi was later adopted to impose stricter rules on SAR activities. An important aspect of the decree is that vessels cannot be delayed; they are assigned a specific time slot to arrive at the port of safety, and failure to meet this time slot results in denial of entry to the port. The consequence of this time slot is that NGOs can no longer undertake other SAR activities after they have rescued a vessel with refugees. Although multiple SAR rounds are not explicitly prohibited, they cannot be conducted, as affirmed by a respondent:

“So, it's not written in the Piantedosi Decree that it's forbidden to do more rescue, like several rescues, but it is a direct consequence of saying: ‘Ok, immediately after you receive that place of safety, and the place of safety being assigned immediately after the first rescue, you have to go directly to the place of safety. you cannot go anywhere else, not even to a distress case.’ Because if you go towards another distress case, then you are accused of delaying your arrival to the place of safety and therefore you're being detained.” – Marco

Bianchi

4.1.4 Criminal obstacles

The analyses of data shows that NGOs regularly encounter judiciary authorities. This type of obstacle is related to other categories, such as legal obstacles. It happens that NGOs are suspected, accused, investigated, or prosecuted for their actions. For example, for facilitating illegal migration, to help migrant smugglers or human traffickers. This is evident from the following quote: “And then of course we did have also more proper criminalization examples where our staff was persecuted for allegedly facilitating ‘illegal immigration’.” – Francesca Conti.

These criminal allegations are often accompanied by other obstacles as well. Such as, for example, the seizure of a vessel. As a result, NGOs may encounter multiple obstacles from different categories. For example, administrative and operational. Or, as the quote below shows, criminal- and operational obstacles:

“That's also how we ended up with the situation with Arturo Centore being the captain of Sea Watch 3 and waiting for the possibility to enter the port of Lampedusa for days, until when the prosecutor of Agrigento said: ok, I have to intervene somehow. I open an investigation for aiding and abetting illegal migration. And I see the Sea Watch 3 as part of the crime that is being committed. ... And then a few weeks later he just unseize the ship and then he dropped the charges for aiding and abetting illegal migration.” - Marco Bianchi

4.1.5 Safety obstacles

There have been multiple incidents involving interactions between the Libyan coast guard and NGOs engaged in SAR operations. These incidents have ranged from dangerous maneuvers by Libyan coast guard vessels around NGO vessels to threats, unwanted boarding of NGO vessels and even instances involving firearms. During the interviews one respondent mentioned:

“We did have incidents with the Libyan coast guard. The first one in the very early days of the establishments of the coast guard and now more recently we had a weekend where we had a couple of incidents, just in March, umm, and it was quite umm, shocking, because the incident we had happened while Libyan coast guard was using an Italian donated asset. So we really denounced that as just part of what we've been actually denouncing for years, which is the, I mean the reckless behavior of the Libyan coast guard that sea” - Francesca Conti

The quote above illustrates three key points: First, it highlights that the Libyan coast guard poses risks to NGOs and their personnel and resources. Secondly, it suggests that these incidents are not isolated but rather part of a systematic pattern. Thirdly, it indicates that these incidents have been ongoing for years.

4.1.6 Contradictions

The analysis of the interviews revealed an intriguing development. It was repeatedly said that there were contradictions. For example, about the orders of the authorities and the content of the various decrees. As a result, the operational reality is different from what is regulated in policies. This is an obstacle because no clear line is drawn regarding the expectations of NGOs, which means NGOs have less certainty. For example, the procedures in one port may

differ from the procedures in another port. One respondent said the following: “It is oftentimes actually Italian institutions that are asking us to breach the same regulations that are imposed on us by the government.” – Francesca Conti.

4.2 The impact on the humanitarian space

This section presents the implications that the various obstacles, that arose from anti-migration policies, have on the humanitarian space.

4.2.1 Perception of NGOs

Over the years the perception of NGOs has been subject to fluctuations; the narrative changed. In the early years of the migration crisis, NGOs were referred to as angels of the sea, because of their efforts to save the lives of migrants who dared to cross the Mediterranean Sea. As the number of migrants increased, the narrative shifted. This shift was also observed by the NGOs. For example, Francesca Conti said: “I think 2017 will always be remembered as the year in which NGOs shifted from being the angels of the sea to being the taxis of the sea.” This shift in narrative virtually coincides with the implications of the criminal obstacles. As described, NGOs were accused and prosecuted by states for aiding illegal migration and collaborating with migrant smugglers. For example, one respondent said: “The whole narrative of NGO's being the good ones, the angels of the sea, rescue people in need. Got changed into NGO's being the friends of the smugglers and helping smugglers.” – Marco Bianchi. The relationship between the narrative and the development of criminal obstacles, and whether one influenced the other or they interacted together, remains uncertain; nevertheless, both have an impact on the humanitarian space.

4.2.2 Collaborative climate

It was already described above that there were contradictions during the collaboration. However, the collaboration between the various actors is much more nuanced and extensive. Related to the perception of the NGOs, the cooperation between authorities and NGOs has also changed over the years. In the early days of SAR activities, states played a prominent role and took the lead. However, NGOs experienced a deterioration in cooperation between them and the authorities. The next quote illustrates this:

“At the time you just distributed a bottle of water uh, yeah, maybe snacks or check whether there were, was any medical case that needed immediate evacuation ... so, it was really an assistance work and it was all done in coordination with MRCC Rome that was properly giving instruction” – Marco Bianchi

However, cooperation between the various Member States and Libya increased. The analysis of the primary sources reflects this. For example, the EU and several Member States are helping Libya with training and donating vessels to the Libyan coast guard. In addition, the EU is helping to expand the SAR area of Libya. Due to the expansion of this area, Libya is responsible for the SAR activities in this part of the Mediterranean. As a result, migrants rescued in these waters return to Libya and not to Europe. Member States such as Italy, Greece and Malta therefore benefit from a larger SAR area of Libya. A European vessel is not allowed to navigate migrants back to Libya because of unsafe situations there. A news article writes that for this reason European governments are helping Libya to build up the capabilities of their coast guard, so that the Libyan coast guard can carry out SAR activities itself. During the interviews, the Libyan coast guard and cooperation with Member States were often discussed and the following was said about the Libyan coast guard:

“The last piece of this puzzle is, of course, the agreements that the Italian government did with Libya in 2017. That is necessarily element to really understand what was happening in the central Mediterranean Sea and all the operational burdens that have been put on us.” –

Francesca Conti

This quote highlights the significance of cooperation between the Libyan coast guard and Member States, particularly in the light of the operational challenges experienced by the NGOs.

4.2.3 Safety implications

Linked closely to the collaborative environment and the growing cooperation between Member States and the Libyan coast guard, is the security under which NGOs conduct their SAR operations. This section will address the security conditions in which NGOs operate and the implications this has for the humanitarian space.

4.2.3.1 The Libyan coast guard

The unsafe situations which are created by the Libyan coast guard have affected the way NGOs conduct their SAR operations and thus the humanitarian space. After the shooting of an MSF vessel, several NGOs temporarily halted their operations. During this period, the NGOs reflected on the event and carried out risk analyses. The incident led to a shrinkage of the humanitarian space, as the following quote shows:

“We stopped operating for some time because we had to reassess whether it was safe enough (...) This was also the moment when many NGO's really stopped operating. (...) So, I think that was the main moment where, yeah, the NGO's were faced with the doubt of saying should we continue and how shall we modify [how] we are operating.”- Marco Bianchi

The quote above demonstrates that the episode of violence has impacted the operational environment of several NGOs in the humanitarian sector. There was deliberation on whether to continue operations and how to adapt in response to incidents involving the Libyan coast guard.

In conclusion, evolving perceptions of NGOs, shifting cooperation dynamics, and security uncertainties have evolved over time. These dynamics introduce new factors that influence the humanitarian environment in which NGOs operate.

5. Conclusion

This research synthesizes the analysis of primary documents with the analysis of the experiences of NGOs engaged in SAR activities. It explores how anti-migration policies and ensuing obstacles affect the humanitarian space of NGOs that conduct SAR activities within the Mediterranean, addressing the research question: *How do anti-migration policies in the European Union impact the humanitarian space in the Mediterranean region?* The main findings, discussion, limitations, and recommendations are presented below.

5.1 Main findings

All participants in the research reported encountering challenges related to their respective NGOs' search and rescue operations. The nature and intensity of these challenges varied among the NGOs. Nonetheless, it was found that all NGOs faced operational hurdles, with one organization particularly affected by administrative obstacles and others predominantly grappling with issues related to criminal activities, which led to operational obstacles.

The document analysis reveals that NGOs encountered various forms of obstacles as well. It indicates that these categories of obstacles are interconnected and can mutually reinforce each other, rather than existing independently.

An unpredicted observation from the interview analysis are the contradictions experienced by NGOs, along with the different type of contradictions and interpretations encountered. Variances in definitions, interpretations of laws, and deviations from established norms collectively contribute to a complex and distorted operational reality, which is experienced as an obstacle.

Aligned with the theoretical framework of this research, anti-migration policies generate various obstacles (Dupuy et al., 2014). NGOs engaged in SAR operations encounter administrative, legal, criminal-judicial, operational, and security obstacles. The various obstacles in turn affect the humanitarian space. This influence can be attributed to three key concepts. Firstly, the way NGOs are perceived by politicians, media and the public. And the affiliated downward trend on the NGO narrative. Secondly, the climate within which the various actors work together and thirdly, the safety within which NGOs can execute their search and rescue operations.

5.2 Discussion

This research gathered the experiences of NGOs involved in search and rescue activities through the analysis of interviews and primary documents. By compiling and examining these experiences, the research provides insights into how anti-migration policies within the European Union affect the humanitarian space in which NGOs operate in the Mediterranean region.

Despite the specific nature of this case research, the findings can be extended to a broader context, making the research generalizable to a certain extent. Different policies have been shown to create obstacles that subsequently impact the humanitarian space. The consequence of policy may be that it is more difficult for NGOs to operate based on their three core principles: humanity, neutrality and impartiality and must take into account administrative, operational, legal and criminal-judicial obstacles that can disrupt operations and lead to a deteriorated humanitarian space. However, NGO operations in different regions and contexts, involving different actors and governed by other laws and regulations are likely to result in different experiences; policies in other settings are also likely to impact the humanitarian space differently. Nevertheless, this research does show that policies have an impact on the humanitarian sector and clarifies how this influence operates.

The results are consistent with expectations as described in the theoretical framework of this research. The expectation was that anti-migration policies influence the humanitarian space of NGOs. However, several nuances have been encountered that were previously unpredicted. An example of this is the high degree of insecurity to which NGOs can be subjected. The interaction of influences from the different states was also not anticipated. The reason for this may be the vastness of the subject. For example, anti-migration policy is a comprehensive concept and humanitarian space is extensive; as can be seen from the literature, it is both symbolic and tangible and is difficult to define. Nevertheless, these are interesting findings that illustrate how policies influence the humanitarian space.

In conclusion, the obstacles posed by anti-migration policies have varied impacts on the humanitarian space. These impacts range from operational delays and the erosion of

humanitarian principles to changes in working methods and even the cessation of SAR operations.

5.3 Limitations and recommendations

Like any research, this research has its limitations too. The first limitation is the relatively low number of respondents interviewed, which restricts the scope of the findings. Although the number of NGOs conducting SAR activities in the Mediterranean is limited, a higher number of respondents should have been interviewed to enhance the reliability of the research.

Another limitation of this research is its emphasis on Italy. While the research aimed to investigate anti-migration policies across the EU, the focus on Italian policies became prominent early in the literature review. Despite using interview guidelines structured around Member States questions, discussions during interviews frequently centred around Italian examples of anti-migration policies. Consequently, the findings of this research are predominantly drawn from Italian contexts. This limitation could have been avoided by maintaining a broader EU view from the start, and by identifying this deviation earlier in the process.

A recommendation for further research centres on the newly identified and unforeseen obstacle of contradictions. This issue does not stem directly from anti-migration policy but arises due to variations in policy implementation across different locations and individuals, or due to adjustments made to suit authorities' preferences. Additionally, the unpredictability of policy changes over time contributes to this problem. These inconsistencies and (rapid) policy shifts create uncertainty for NGOs, leading them to adopt alternative approaches that impact the humanitarian sector. The underlying mechanisms driving these outcomes remain unclear. Therefore, it is recommended to investigate and explain these mechanisms.

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Appendices

Appendix 1 - NGOs that execute(d) SAR activities within the Mediterranean region

1. Open Arms (Spain)
2. Save The Children (UK)
3. Jugend Rettet (Germany)
4. MSF (France)
5. Sea Watch (Germany)
6. Mission Lifeline (Germany)
7. Sea Eye (Germany)
8. Proem-aid (Spain)
9. Emergency Response Center International (Greece)
10. Team Humanity (Denmark)
11. Mediterranea Saving Humans (Italy)
12. SOS Méditerranée (France)
13. Mare Liberium (Germany – Not operative due to ‘‘Sabotage, obstruction, and, repression’’ from the conservative government of Greece and a current impossibility to continue its role safely in observing the border authorities.
14. Salvamento Marítimo Humanitario (Spain)
15. Migrant Offshore Aid Station (Malta)
16. Refugee Rescue (Northern-Ireland)
17. United 4 Rescue (Germany)
18. Human Rights at Sea (UK)
19. International Maritime Rescue Federation (UK)
20. Stichting Bootvluchteling (Netherlands – Not active in mediterranean through vessels; focus on advocacy and aid on shore).

Appendix 2 – Overview primary sources

	Author(s)	Origin	Type of source	Year of publication	Number of pages	Brief motivation	Access to the source
1. Left to drown in the southern European border	N/D	MSF	Report	July 2022	25	The report is based on one year of SAR experiences with MSF vessel the Geo Barents.	Link
2. In plain sight: The human cost of migration policies and violent practices at Greek sea borders	N/D	MSF	Report	November 2023	31	The report provides insights in the experiences of MSF in Greece and has a section on the shirking of the humanitarian space.	Link
3. Obstacle course to Europe – A policy-made humanitarian crisis at EU borders	N/D	MSF	Report	January 2016	31	The reports shed light on MSF's first SAR experiences and delves deeper in the role of EU policy.	Link
4. New threatening gestures of the Italian interior minister against	N/D	Jugend Rettet	Press release	June 2018	1	This press release shows the position of Jugend Rettet on closing Italian ports. In this	Link

German maritime rescue organizations						press release, the organization describes the implications of closing the ports.	
5. How Italy's NGO Boat Seizure Exposes Europe's Dangerous Policy at Sea	Matteo de Bellis	The New Humanitarian	News Article	March 2017	5	This (more independent) article sheds light on the cooperation between the EU (Italy) and the Libyan coast guard. And describes the Italian vessel seizure policy.	Link
6. Free Iuventa – Sea rescue is not a crime	N/D	Jugend Rettet	Article	September 2016	2	This source reflects the implications of not signing the Code of Conduct.	Link
7. The Castaways from hell	Marie Rajablat	SOS Mediteranee	Report	June 2022	83	This report is based on the experiences of SOS med. over their operational years (2015 – present). *The report also includes testimonies of migrants. These will not be coded.	Link

Appendix 3 – Visualization of the coding procedure - Document analysis

Open coding	Axial coding	Selective coding
Administrative detention Delay Diplomacy Flag state Request denied	Administrative	Obstacles
Code of conduct Flag state Force of power Illegal immigration Place/ port of safety Prosecution Investigation	Legal	
Allegations Charges Criminalization Detained Force of power Illegal immigration Pushbacks	Criminal	
Building fences Closed ports Code of conduct Contravention Delay Disembark Hamper NGO Libyan coast guard Obstruction SAR activities Place/ port of safety Sealing off borders Seizure Stand-offs/ Waiting Stricter border controls	Operational	
Chilling effect	Environment	Deterioration of humanitarian space

Complicated Threats Shooting Fear Misconduct		
Danger Fear Force of power Shooting Libyan coast guard Violence	Security	
Maltese coordination Cooperation EU Cooperation Libyan coast guard Abdicate responsibilities Conflicting Eu withdraw	Collaboration (challenges)	
Human trafficking Mafia Smear campaigns Slander Cooperation (with) smugglers Charges Allegations	NGO perception	

Appendix 4 – Interview guide

Introduction

- Thank participant for participating
- Aim of the interview: Collecting experiences on the SAR operations of NGOs in the Mediterranean and examining the impact of anti-migration policies on the humanitarian space.
- How do anti-migration policies in the European Union impact the humanitarian space of SAR NGOs within the Mediterranean region?
- Emphasize confidentiality of answers and privacy
- Discuss informed consent
- Ask permission to record the audio of the interview and to keep the recordings. As well as transcribing.

introductory questions

1. Can you tell me more about the NGO you are working for now?
2. Can you take me through your career path within NGOs?
3. Can you elaborate on your actual roll within the organization?
4. Can you describe how / to what extent your organization is involved in SAR activities in the Mediterranean?

Substantive Questions

Themes:

Anti-migration policies

1. Has your organization experiences hinderance by states when conducting SAR activities in the Mediterranean, and if yes; could you elaborate?
 - a. Concrete examples?
 - i. Legal challenges
 - ii. Political pressure
 - iii. Operational interference
 - b. How did your organization react to it?

Humanitarian space

1. How did the hinderance influence the way you conduct SAR activities?
 - a. Did you do more activities?
 - b. Did you do less activities?
 - c. Can you elaborate on challenges if you had any?
 - d. What does the hinderance mean in providing humanitarian assistance?

Self-censorship

1. Can you discuss any instances where your organization has considered or evaluated the continuation of SAR activities in the Mediterranean?
 - a. Can you elaborate on it?
2. What factors were taken into account during these discussions?

closing questions

1. Are there any topics you would like to add to the conversation?
2. Do you have any questions or comments for me?

Closing

- Thank respondent for his/her/their time and contribution to the research
- Stop the interview and the recording

Appendix 5 – Visualization of the coding procedure – Interviews

Open coding	Axial coding	Selective coding
Closed ports Code of conduct Delaying Disembark Place of safety Port set controls / Port state controls Seizure Stalling Transshipments	Operational	Obstacles
Change policy Code of conduct Diplomacy Flag state Political pressure Port state controls Safety regulations Technical approach Vessel category	Administrative	
Ban territorial waters Decreto Piantedosi Decreto Sicurezza Flag state Judicial level	Legal	
Charges Criminalization Investigation National Security Prosecution	Criminal	
Breach regulations Definition distress Interpretation Maritime (int.) law	Discrepancies	
Communication (with authorities) Cooperation Environment (friendly vs. hostile)	Cooperation (with different actors)	Deterioration of the humanitarian space

EU withdraw Interpretation (different) Media Other NGOs Press Pressure State cooperation State led SAR State orders		
Insults Libyan coast guard Shooting Threats Violence	Security risks	
Breach regulations Compliance Flag state	Power dynamics	
Reputational impact	Reputational impact	
Fire employees Interrupt Medical care Modify Number of rescues Productivity Psychological care Supply food	Operational implications	
Donations Financial Fire employees Funding	Funding	
Cooperate with smugglers Enemies Frontex report Hostile environment Pull factor Reputational impact	Anti NGO	Narrative

Sea taxis		
Counter narrative	Pro NGO	
Friendly environment		

Appendix 6 – Informed Consent Form

Information sheet and consent form

Information sheet

Introduction

Dear respondent. Thank you for your participation to this research. I am Juun Hazejager, and I am a student at Erasmus University Rotterdam. At this university I study the master International Public Management and Public Policy. As part of the curriculum, I am writing my thesis to acquire my degree. I am writing my thesis on the influence of anti-migration policies on the humanitarian space of non-governmental organizations (NGOs) that conduct / conducted search and rescue (SAR) operations within the Mediterranean Sea. If you have any more questions or remarks on my research, please do not hesitate to contact me via e-mail: 547792ph@eur.nl

Data collection

To gather the data for my research, I will also conduct interviews. The interview will be semi-structured with open questions. To analyze the data, the interview will be recorded (sound recording only), transcribed, and analyzed. The data will be analyzed using ATLAS.TI, a software program to analyze the interviews.

Potential inconvenience & risks

There are no physical, legal or economic risks associated with your participation in this study. It is not mandatory to answer all questions. Your participation is voluntary and you can stop at any time.

Confidentiality & data protection

The collected data will be used for an aggregated analysis and no confidential information or personal data will be included in the research outcome. The data is stored in a secure offline location and will be kept for seven years.

Data sharing

I will share the data with Dr. (Clara) C.M. Egger for the purpose researching and writing my master thesis mandatory for completion of my studies at Erasmus School of Social and Behavioural Sciences, Erasmus University.

Voluntary participation & individual rights

Your participation is voluntary and you can stop at any time. When you participate in the research, you have the rights to request more information about the data collection, analysis or withdraw the consent and ask data erasure before the dataset is anonymized or manuscript submitted for publishing. You can exercise your rights by contacting Juun Hazejager.

If you have any complaints regarding the processing of personal data in this research, please contact Juun Hazejager – 547792ph@eur.nl

Consent form Research on humanitarian space

Upon signing of this consent form, I confirm that:

- I've been informed about the purpose of the research, data collection and storage as explained in the information sheet;
- I've read the information sheet, or it has been read to me;
- I've had an opportunity to ask questions about the study; the questions have been answered sufficiently;
- I voluntarily agree to participate in this research;
- I understand that the information will be treated confidentially;
- I understand that I can stop participation any time or refuse to answer any questions without any consequences;
- I understand that I can withdraw my consent before the dataset is submitted for approval.

Additionally, I give permission to:

	Yes	No
I give permission to audio record the interview		
I give permission to use quotes from my interview		
I give permission to use my name with the quote(s)		

Name of research participant: _____

Date: _____

Signature: _____
