

Human Rights on the Mediterranean Sea

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Abstract

Over the past decade, as more and more people have attempted to cross the Mediterranean Sea towards Europe, the legal situation for outsiders has also become more entangled. The article aims to reflect an objective view of the big picture from above. Thereby, more clarity is to be created over the different legal sources approximately around the topic of the flight on the Mediterranean Sea. In doing so, different actors from the refugees themselves to the smugglers to the states and lastly rescue organizations are in the foreground in each case. The explanation of the legal provisions is always evaluated in the context of practical events. Later in the article, there will be an increasingly political and practical focus.

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The flight across the Mediterranean - which rights exist?

Today, more people are fleeing their homes than ever before. As of World Refugee Day in June 2021, more than 82 million people worldwide have been forced to flee their homes due to war, violence or persecution¹. A large proportion of these people stay close to home - fleeing to another part of their country or to surrounding neighbouring countries. But the European Union is also a destination for asylum seekers. The number of people fleeing to Europe via the Mediterranean reached its peak in October 2015, with 220,000 people seeking protection making their way across the Mediterranean².

In the public debate, the EU and the countries bordering the Mediterranean face accusations that they are doing too little to combat the deaths in the Mediterranean. This is because the route across the Mediterranean harbours many dangers for the unseaworthy rubber dinghies and fishing boats that people use to cross the sea. In recent years (2015-2020), 17,012 people have drowned or gone missing in the Mediterranean, and this year alone the number is already 896³.

This article looks at the situation of refugees taking the Mediterranean route from a (human) rights perspective. There is no claim to completeness in terms of legal details or individual cases. Rather, the aim is to provide an overview - with a focus on the legal basis and political obstacles in the “refugee crisis” on the Mediterranean.

Right to rescue at sea

See eye, a German non-governmental sea rescue organisation, refers in its report “Four Years of Sea Rescue” to the first three articles of the Universal Declaration of Human Rights of 1948⁴. They read: “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*” (Art. 1, p. 1); “*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” (Art. 2 para. 1) “*Everyone has the right to life, liberty and security of person.*” (Art. 3). As all-encompassing as these formulations sound, they are non-binding. They were adopted as a resolution of the UN General Assembly about 70 years ago. Thus, in contrast to the resolutions of the UN Security Council, they are not legally binding and can only be regarded as a political agreement for the

¹ UNHCR (2021). Live Blog 2021: This World Refugee Day, we are stronger together [online] Available at: <https://www.unhcr.org/news/latest/2021/6/60ad1e2f4/live-blog-2021-world-refugee-day-stronger-together.html> [Accessed 18 Jul. 2021]

² UNHCR (2021). Operational Data Portal, Mediterranean Situation [online] Available at: <https://data2.unhcr.org/en/situations/mediterranean> [Accessed 22 Jul. 2021]

³ *Ibid.*

⁴ Sea-Eye_Report (2016-2019). Vier Jahre Seenotrettung [online] Available at: https://sea-eye.org/wp-content/uploads/2020/07/Sea-Eye_Vier-Jahre-Seenotrettung_2016-2019.pdf [Accessed 20 Jun. 2021]

respect of human rights between the states of the United Nations (UN)⁵. The UN Security Council has not yet adopted a resolution on sea rescue; it only adopted a resolution on traffickers in 2015.

International: 1982 United Nations Convention on the Law of the Sea (UNCLOS)

The UN Convention on the Law of the Sea is somewhat more specific. In Art. 98 para. 1, it obliges the states or the seafarers sailing under their flag to assist any person in distress at sea as quickly as possible. Paragraph 2 goes a step further and requires coastal states to “*promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea.*”⁶

However, all these examples have one important requirement in common: the migrants concerned must be in distress at sea. Otherwise, the right to rescue at sea is not applicable. It would then only be a matter of people trying to reach the EU via the Mediterranean - which is illegal for non-EU citizens without a visa or an application for asylum (or another legal ground). But are there other legal grounds besides rescue at sea that a person can rely on? Do refoulement in European ports (Italy and Malta 2018)⁷ and return transport to unsafe ports constitute violations of the law? To answer these questions, it is not enough to look at the law of rescue at sea.

Respect for Human Rights

Europe: European Convention on Human Rights (ECHR)

The European Convention on Human Rights applies on European soil. Its scope largely overlaps with the EU, but is much wider. States such as Russia and Turkey are also members of the Council of Europe⁸ and thus states where the ECHR applies (Belarus is an exception). The ECHR was adopted by the Council of Europe, which was founded after the Second World War to preserve peace and human rights in Europe. Accordingly, it is about protecting human rights in Europe - also for people who are nationals of a state that is not a member of the Council of Europe but who are within the scope of the ECHR. Anyone who suffers a significant disadvantage as a result of a violation of Convention rights can bring an action before the ECHR against a state that has ratified the ECHR, if national legal channels have been exhausted (Art. 34, 35 ECHR, Art. 13 ECHR).

⁵ Security Council. United Nations [online] Available at: <https://www.un.org/en/model-united-nations/security-council> [Accessed 03 Aug. 2021]. Article 25 of the UN Charter: « The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter »

⁶ Art. 98 Duty to render assistance: « **1. Every State** shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to **render assistance to any person found at sea in danger of being lost**; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him; (c) [...] 2. Every coastal State shall promote the establishment, operation and maintenance of an **adequate and effective search and rescue service** regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose »

⁷ DENTI, A. (2018). *US-Europa Migrants NGO. Italy refuses safe harbor to migrant ship, Spain also reluctant.* [online] Available at: <https://www.reuters.com/article/us-europe-migrants-ngo-idUSKBN1KY17H> [Accessed 30 Aug. 2021]

⁸ Council of Europe Portal (2021) *Our Member States* [online] Available at : <https://www.coe.int/en/web/about-us/our-member-states> [Accessed 29 Aug. 2021]

On this basis, Somali and Eritrean migrants sued Italy in 2012. They accused the state of violating the ECHR in the form of collective expulsion (Art. 4 in conjunction with Art. 6 ZPrtk IV)⁹. According to Art. 4 Additional Protocol IV ECHR, it is forbidden to expel foreigners collectively, i.e. to turn them away as a group without individual control. This also applies on the high seas if the state under whose flag the ship is sailing has effective control over the persons concerned (ECHR judgment of 23 February 2012)¹⁰. An example of such illegal collective expulsions, also known as “pushbacks”, are the expulsions by Greece to Turkey. Greece denies the illegality of its action on the grounds that the refugees did not ask for asylum and travelled voluntarily towards Turkey¹¹.

A deportation to a country like Libya is also a violation of Art. 3 ECHR : “*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*” Although deporting parties do not torture or degrade the refugees, they knowingly accept such crimes. In Libya, refugees are held in detention camps where human rights violations are commonplace and sanitation is lacking.

The European Union

Relying on the EU Charter of Fundamental Rights is more difficult for refugees. This is because the fundamental rights enshrined in the Charter must only be respected by the EU institutions and by its member states when they implement EU law (Art. 51 of the Charter).

Criticism of the situation in the Mediterranean often focuses on the European agency Frontex. Its core task is to help secure and protect the EU area of free movement. To this end, it protects the external borders of the EU. In carrying out their tasks, Frontex team members must fully respect fundamental rights (in particular, those of the Charter of Fundamental Rights) - including the right of access to asylum procedures, and human dignity (Art. 43 para. 4 S 1-2 Regulation (EU) 2019/1896)¹². Frontex's mission is not in conflict with the reception of refugees or the rescue of people in distress at sea. Nevertheless, the European agency has come under increasing criticism in recent years. For example, it is accused of looking the other way during pushbacks by the Greek coast guard¹³. Frontex cannot be proven to have been directly involved in illegal refoulement. However, the accusation that Frontex has not taken preventive action against human rights violations and has not taken effective measures in their aftermath

⁹ Case of *Hirsi Jamaa and Others v. Italy*, (Application no. 27765/09) [online] Available at: <http://hudoc.echr.coe.int/eng?i=002-102> [Accessed 14 Aug. 2021]

¹⁰ DIENELT, K. (2012) ECHR: Refoulement of refugees on the high seas unlawful. migrations Recht Net [online] 23 Feb. Available at: <https://www.migrationsrecht.net/nachrichten-asyrecht/egmr-menschenrechte-fluechtlinge-zurueckweisung.html> [Accessed 14 Jul 2021]

¹¹ JESKE, A-K. (2021) *Was über die Pushback-Vorwürfe bekannt ist.* 4 Mar. [online] Available at: <https://www.zdf.de/nachrichten/politik/frontex-pushback-fluechtlinge-100.html> [Accessed 18 Jul. 2021].

¹² Regulation (EU) 2019/1896 [online] Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/HTML/?uri=CELEX:32019R1896&from=EN> [Accessed 11 Aug. 2021]

¹³ Definition by ECCHR: “*Push-backs are a set of state measures by which refugees and migrants are forced back over a border – generally immediately after they crossed it – without consideration of their individual circumstances and without any possibility to apply for asylum or to put forward arguments against the measures taken.*” Available at: <https://www.ecchr.eu/en/glossary/push-back/> [Accessed 6 Sep. 2021]

has been confirmed, meaning that it has thus not been able to reduce the risk of future violations of fundamental human rights¹⁴.

1951 Geneva Convention relating to the Status of Refugees (“the Geneva Convention”)

In addition to EU and Council of Europe regional law, refugees are protected by the 1951 Geneva Convention. All states having ratified the Geneva Convention, must grant refugee status to persons who apply for it, and the rights and responsibilities of those persons. Articles 1 and 33 § 1 of the Geneva Convention provide: Article 1 “... *For the purposes of the present Convention, the term 'refugee' shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*” It can be assumed that the refugees on the Mediterranean Sea fulfil this status in case of doubt. They are therefore entitled to apply for asylum. As a logical complement to this, Article 33 (1) states that “*No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*”. The principle of non-refoulement is codified in this section of international law. As of 09 July 2021, countries that have ratified the Geneva Convention include Angola, Cyprus, Spain, Tunisia, Turkey and Greece¹⁵. Libya is not one of them.

In conclusion, it can be stated that there are regulations at an international scale to protect the rights and lives and in the end dignity of human beings who are in danger.

Both the ECHR and the Geneva Refugee Convention guarantee people seeking protection from serious human rights violations in another country or in the EU access to an asylum procedure. In this procedure, it must be examined individually whether the applicant has a right to protection or not. Turning refugees away in groups or not rescuing them from distress at sea is a violation of applicable law. In order to ensure safety on its waters, each state must maintain an adequate search and rescue service (Art. 98 para. 2 UNCLOS). However, with regard to the Libyan coast guard, the reality is different. It does not provide effective and sufficient sea rescue. In the past, rescue operations have also failed due to a lack of English language skills, for example¹⁶.

¹⁴ EUROPEAN PARLIAMENT. (2021) *Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations*. [online] Available at: <https://www.statewatch.org/media/2590/ep-frontex-scrutiny-group-final-report-14-7-21.pdf> [Accessed 27 Jul. 2021]

¹⁵ United Nations Treaty Collection (2021) *Convention relating to the Status of Refugees*. [online] Available at: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en [Accessed 19 Jul. 2021]

¹⁶ ENGERT, M. (2020) BuzzFeed [online] *Libyen soll für die EU Menschen im Mittelmeer retten – doch die Küstenwache geht nicht ans Telefon*. 19 Dec. Available at: <https://www.buzzfeed.de/recherchen/libyen-soll-fuer-die-eu-menschen-im-mittelmeer-retten-doch-die-kuestenwache-geht-nicht-ans-telefon-90134116.html> [Accessed 29 Aug. 2021]

Most relevant actors on the Mediterranean

The Role of Smugglers - The Economy of the Mediterranean Escape Route

Every disaster brings winners and losers. People who profit from the crisis and others who suffer from it. Often these two sides can be found very close to each other. This is also the case in the refugee crisis and especially during the flight across the Mediterranean. Here, many of the smugglers are among the people who enriched themselves financially. Even if many voices, especially among the refugees themselves, celebrate them as heroes¹⁷, their profit from the misery and the desire of the refugees to cross the Mediterranean can hardly be denied. More than 90% of all refugees have accepted the services of smugglers in the course of their flight¹⁸. Smaller smugglers smuggle about 600-700 people a year and larger smuggling networks tens of thousands¹⁹. On average, 1000 dollars are charged for the crossing from Libya to Italy. The prices vary depending on whether the refugee is transported below deck (about 700 euros) or above deck (about 2000 euros)²⁰. It is evaluated that the annual turnover of the Mediterranean smugglers alone is 100 million dollars²¹. Europol estimates²² that more than 40,000 people are involved in smuggling in some way²³. The tasks and positions of those involved range from backers to smugglers actually in contact with the refugees. For each stage of the journey, there are usually smugglers who specialise in that particular route. Experts speak of organised criminals who cooperate with each other via a network on different sections of the route. About 80% of the illegal human trafficking goes through Libya.

In 2015, a European operation was launched against the smugglers²⁴. First, information was to be collected with the help of ships, drones and aircraft, and then, in a next step, the smugglers' ships were to be seized and destroyed²⁵. The deployment was met with sharp criticism, as it violated international and

¹⁷ STEPHAN, F. (2015) ZEIT ONLINE [online] *Smugglers: the higher law*. 21 Apr Available at: <https://www.zeit.de/kultur/2015-04/schleuser-giampaolo-musumeci-interview/komplettansicht> [Accessed 29 Aug. 2021]

¹⁸ HÖFER, K.M. (2016) Deutschlandfunk [online] *Strategies against Smugglers*. 24 Jul. Available at: https://www.deutschlandfunk.de/strategien-gegen-schleuser-den-schleppern-das-handwerk-legen.724.de.html?dram:article_id=361045 [Accessed 30 Aug. 2021]

¹⁹ KITZLER, J.C. (2015) ARD [online] *From the inner life of human smugglers*. 4 Apr. Available at: <https://www.tagesschau.de/ausland/interview-schleuser-101.html> [Accessed 30 Aug. 2021]

²⁰ Federal Ministry of Defence (2021) *Trafficking gangs*. [online] Available at: <https://www.bmvg.de/de/themen/dossiers/engagement-in-afrika/herausforderungen/menschenhandel/schlepperbanden> [Accessed 29 Aug. 2021]

²¹ 1,000 dollars is the standard price for crossing from Libya to Italy. If there are 1,000 people, a smuggler will make a million dollars. If we assume 200,000 boat people as in 2014, we arrive at 200 million dollars. If we assume only 500 dollars per crossing, the annual profit for the Mediterranean smugglers is 100 million dollars.

²² MÜLLER-MEININGEN, J. (2015) Fluter. [online] *The business of traffickers*. Available at: <https://www.fluter.de/in-der-schattenwelt> [Accessed 9 Sep. 2021]

²³ HÖFER, K.M. (2016) Deutschlandfunk [online] *Strategies against Smugglers*. 24 Jul. Available at: https://www.deutschlandfunk.de/strategien-gegen-schleuser-den-schleppern-das-handwerk-legen.724.de.html?dram:article_id=361045 [Accessed 30 Aug 2021]

²⁴ Federal Ministry of Defence (2019) *Operation Sophia*. [online] Available at: <https://www.bmvg.de/de/themen/dossiers/engagement-in-afrika/einsaetze-in-afrika/operation-sophia-eu-einsatz-in-drei-phasen-13286> [Accessed 29 Aug. 2021]

²⁵ ROMANN, H. (2019) *Marine-Operation ohne Schiffe*. ARD-Brüssel. [online] 27 Mar. Available at: <https://www.tagesschau.de/ausland/sophia-operation-101.html> [Accessed 29 Aug. 2021]

German constitutional law. The lives of refugees are endangered and those who are stuck in Libya are deprived of the chance to escape. Moreover, the smugglers send their clients on the run with inferior boats, so that if they are caught by the authorities, they only lose these boats and their good and expensive boats are not destroyed²⁶.

The effectiveness of the increased presence in the Mediterranean is also questionable, as the smugglers have long since adapted their strategies to the new situation: they send the refugees out to sea with less fuel so that they just make it to international waters. From then on, the refugees are to be rescued by the ships - which include ships of the European operation "Sophia", Frontex and non-governmental organisations. This new approach saves money for the smugglers, as they can not only use cheaper boats, but also bring more people on a boat due to the space saved for the fuel canister. Frontex suspects that cargo ships and companies involved in transport and logistics may also be involved in smuggling for financial gain²⁷.

The role of the private sea rescue

According to UN migration expert Safa Msheli, private rescue ships have already saved the lives of tens of thousands of people in need²⁸. In addition to state-run sea rescue missions such as Mare Nostrum (now discontinued) or Sophia, there are also private rescue ships in the Mediterranean. These include Alan Kurdi, Sea-Eye and Sea-Watch-3.

More and more often, private sea rescue is accused of being a pull factor for refugees. What exactly is behind this assumption?

During rescue operations, it is not uncommon for conflicts to arise between sea rescue ships and states. The incident in June 2019, in which captain Carola Rackete with the Sea-Watch-3 approached the port of the Italian island of Lampedusa, despite a ban by the Italian authorities, attracted a lot of attention. Beforehand, Rackete waited for weeks for permission to enter and dock²⁹ [2]. Since she did not receive it, she finally docked without a permit in order to "bring exhausted and desperate people ashore"³⁰. A trial followed in which Rackete was accused of disobeying the orders of law enforcement officials, committing acts of resistance or violence against a warship and entering Italian territorial waters as a boatwoman

²⁶ NUSPLIGER, N. (2017) *Criticism of EU operation against traffickers grows*. Neue Zürcher Zeitung. [online] 18 Jul. Available at: <https://www.nzz.ch/international/eu-militaereinsatz-im-mittelmeer-anti-schlepper-operation-in-der-kritik-ld.1306541> [Accessed 6 Sep 2021]

²⁷ HÖFER, K.M. (2016) *Strategies against Smugglers*. Deutschlandfunk. [online] 24 Jul. Available at: https://www.deutschlandfunk.de/strategien-gegen-schleuser-den-schleppern-das-handwerk-legen.724.de.html?dram:article_id=361045 [Accessed 30 Aug 2021]

²⁸ HERBERMANN, J.D. (2020) *UN-Expert: Private boats rescued tens of thousand people*. evangelisch.de [online] 24 Aug. Available at: <https://www.evangelisch.de/inhalte/173652/14-08-2020/un-expertin-private-schiffe-haben-zehntausende-menschen-gerettet> [Accessed 30 Aug 2021]

²⁹ MEILER, O. (2019) *Sea Watch - Carola Rackete drohen mehrere Jahre Haft*. Süddeutsche Zeitung. [online] 29 Jun. Available at: <https://www.sueddeutsche.de/politik/italien-kapitaenin-rackete-anklage-1.4504704> [Accessed 29 Aug 2021]

³⁰ DPA/AFP (2019) *Carola Rackete verteidigt Hafeneinfahrt*. Der Tagesspiegel. [online] 30 Jun. Available at: <https://www.tagesspiegel.de/politik/festgenommene-sea-watch-kapitaenin-carola-rackete-verteidigt-hafeneinfahrt/24509412.html> [Accessed 3 Aug 2021]

despite a ban³¹. However, after three days in custody, the competent judge acquitted her on the grounds that Rackete had not broken the law, as international maritime law obliges masters to take people in distress and bring them to a place of safety (moor in a safe harbour) (Convention on Maritime Search and Rescue, SAR Convention Annex, Rule 1.3.2, 3.1.9)³². The Convention defines the term 'rescue' as follows: “An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety” (Annex, Rule 1.3.2.). According to the order of legal sources, this obligation of international law would prevail over Matteo Salvini's decision to block boats with migrants at Italian ports³³. In the past, other states besides Italy have stood in the way of private sea rescue organisations, such as Malta³⁴.

Changes in the Ship Safety Ordinance now make the work of private sea rescue organisations even more difficult. Sea rescue vessels can no longer be registered as recreational craft, as only vessels used for “sport and recreation” are counted as such. For this reason, sea rescue ships have to fulfil stricter requirements in order to receive permission to sail. The sea rescue workers, who are often only financed by donations, are faced with considerable costs for the conversion of the ships³⁵.

Politics

European politicians, such as the Austrian Chancellor Sebastian Kurz, criticise sea rescue, regardless of who is carrying it out, on the grounds that it will only encourage more people to make their way to Europe through rescue and successful passage³⁶. Sea rescue endangers human lives. However, this justification can be questioned. Several studies show that people decide to flee across the Mediterranean sea or not flee independently from the activities and numbers of sea rescue organisations³⁷. Therefore, the statement that sea rescue endangers human lives, seems paradoxical: By not providing assistance, human lives are put at risk and their deaths are accepted in order to dissuade others from crossing and thus possibly save their lives. Two open questions arise here: Are human lives weighed against each

³¹ HEFLIK, K. (2021) *Sea-Watch-3: Trial against Carola Rackete discontinued*. ZEIT ONLINE. [online] 19 May. Available at: <https://www.zeit.de/gesellschaft/zeitgeschehen/2021-05/carola-rackete-sea-watch-3-verfahren-eingestellt-italien-seenotrettung> [Accessed 30 Aug 2021]

³² International Convention on Maritime Search and Rescue (SAR) [online] Available at: <http://www.nmsa.gov.pg/wp-content/uploads/2016/11/SAR-Convention-1979-pdf.pdf> [Accessed 06 Sep 2021]

³³ MDR Aktuell. (2019) *Richterin sieht Sea-Watch-Kapitänin im Recht*. [online] 5 Jul. Available at: <https://web.archive.org/web/20190706154316/https://www.mdr.de/nachrichten/politik/ausland/italien-gericht-entlastet-sea-watch-kapitaenin-rackete-seenotrettung-100.html> [Accessed 30 Aug 2021]

³⁴ DENTI, A. (2018) *US-Europe Migrants NGO Italy refuses safe harbor to migrant ship, Spain also reluctant*. Reuters. [online] 13 Aug. Available at: <https://www.reuters.com/article/us-europe-migrants-ngo-idUSKBN1KY17H> [Accessed 30 Aug 2021]

³⁵ SCHNEIDER, J. (2020) *Wie private Seenotrettung erschwert wird*. ZDF. [online] 9 Jun. Available at: <https://www.zdf.de/nachrichten/politik/seenotrettung-schiffahrt-fluechtlinge-100.html> [Accessed 30 Aug 2021]

³⁶ DPA/TPF (2020) *Merkel considers new sea rescue useful*. die welt. [online] 3 Feb. Available at: <https://www.welt.de/politik/ausland/article205568705/Merkel-haelt-neue-Seenotrettung-fuer-sinnvoll-Kurz-haelt-dagegen.html> [Accessed 30 Aug 2021]

³⁷ STEINHILPER, E. and GRUIJUTERS, R. (2017) *Border Deaths in the Mediterranean: What We Can Learn from the Latest Data*. [online] 8 Mar. Available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/03/border-deaths> [Accessed 3 Oct 2021]

other? Is the life of a refugee who is in the middle of the flight process worth less than that of a person who has not yet started the flight? Moreover, isn't the option of staying in one's home country or remaining in a transit country - such as Libya, a country in civil war - also life-threatening? Increasing terrorist attacks on the African continent speak for this³⁸.

Morally extremely questionable is also the argument that only a few months ago would be explicitly put forward by the Danish Minister for Foreigners and Integration, Mattias Tesfaye. Tesfaye explains that the resources that Denmark and other EU states spend on asylum procedures and administrative tasks related to refugees are being reduced. To zero. According to him, half of all asylum applications would be rejected anyway, so he suggests that other countries in the vicinity of the refugee countries should rather be supported financially. Then they would be responsible for examining the applications and granting protection in the case of an approved application. Criticism of this logic comes from within the country: the integration policy spokesperson of the left-liberal Radical Venstre party counters that as long as it is necessary to apply for asylum in Denmark, people will not be prevented from fleeing there³⁹.

Conclusion

In conclusion it can be stated that human rights, be it the right to rescue at sea or the right of access to asylum are violated on the Mediterranean Sea. Even though the duty to save people from drowning in the sea must be distinguished from the right to seek asylum, they often appear together. People in distress have the right to rescue. People fleeing have the right to apply for asylum.

Providing an effective sea rescue is not an easy or cheap task and organizing asylum processes and integration of refugees has - along history - been a challenge. However, should the EU not have the resources to handle migration? In order to be able to answer questions on EU internal politics and policies, it would be worth having a closer look on how administrative work is processed, how integration is organized and to which member states refugees are distributed. Thus, the human rights situation on the Mediterranean Sea could be understood better.

³⁸ REUSS, A. (2020) *What Terrorists help*. Süddeutsche Zeitung. [online] 8 Jun. Available at: <https://www.sueddeutsche.de/politik/coronavirus-terrorismus-afrika-kommentar-1.4929706> [Accessed 30 Aug 2021]

³⁹ DONGES, S. (2021) *No more "resources" for asylum seekers*. ARD. [online] 3 Jun. Available at: <https://www.tagesschau.de/ausland/europa/daenemark-migrationspolitik-101.html> [Accessed 30 Aug 2021]

REFERENCES

Case of *Hirsi Jamaa and Others v. Italy*, (Application no. [27765/09](#)) [online] Available at: <http://hudoc.echr.coe.int/eng/?i=002-102> [Accessed 14 Aug 2021].

Council of Europe Portal (2021) *Our Member States* [online] Available at : <https://www.coe.int/en/web/about-us/our-member-states> [Accessed 29 Aug 2021].

DENTI, A. (2018) US-Europe Migrants NGO *Italy refuses safe harbor to migrant ship, Spain also reluctant*. Reuters. [online] 13 Aug. Available at: <https://www.reuters.com/article/us-europe-migrants-ngo-idUSKBN1KY17H> [Accessed 30 Aug 2021].

DIENELT, K. (2012) ECHR: Refoulement of refugees on the high seas unlawful. *migrations Recht Net* [online] 23 Feb. Available at: <https://www.migrationsrecht.net/nachrichten-asyrecht/egmr-menschenrechte-fluechtlinge-zurueckweisung.html> [Accessed 14 Jul 2021].

DONGES, S. (2021) *No more “resources” for asylum seekers*. ARD. [online] 3 Jun. Available at: <https://www.tagesschau.de/ausland/europa/daenemark-migrationspolitik-101.html> [Accessed 30 Aug 2021].

DPA/TPF (2020) *Merkel considers new sea rescue useful*. *die welt*. [online] 3 Feb. Available at: <https://www.welt.de/politik/ausland/article205568705/Merkel-haelt-neue-Seenotrettung-fuer-sinnvoll-Kurz-haelt-dagegen.html> [Accessed 30 Aug 2021].

DPA/AFP (2019) *Carola Rackete verteidigt Hafeneinfahrt*. *Der Tagesspiegel*. [online] 30 Jun. Available at: <https://www.tagesspiegel.de/politik/festgenommene-sea-watch-kapitaenin-carola-rackete-verteidigt-hafeneinfahrt/24509412.html> [Accessed 3 Aug 2021].

ENGERT, M. (2020) BuzzFeed [online] *Libyen soll für die EU Menschen im Mittelmeer retten – doch die Küstenwache geht nicht ans Telefon*. 19 Dec. Available at: <https://www.buzzfeed.de/recherchen/libyen-soll-fuer-die-eu-menschen-im-mittelmeer-retten-doch-die-kuestenwache-geht-nicht-ans-telefon-90134116.html> [Accessed 29 Aug 2021].

EUROPEAN PARLIAMENT. (2021) *Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations*. [online] Available at: <https://www.statewatch.org/media/2590/ep-frontex-scrutiny-group-final-report-14-7-21.pdf> [Accessed 27 Jul 2021].

Federal Ministry of Defence (2021) *Trafficking gangs*. [online] Available at: <https://www.bmvg.de/de/themen/dossiers/engagement-in-afrika/herausforderungen/menschenhandel/schlepperbanden> [Accessed 29 Aug 2021].

Federal Ministry of Defence (2019) *Operation Sophia*. [online] Available at: <https://www.bmvg.de/de/themen/dossiers/engagement-in-afrika/einsaetze-in-afrika/operation-sophia-eu-einsatz-in-drei-phasen-13286> [Accessed 29 Aug 2021].

HEFLIK, K. (2021) *Sea-Watch-3: Trial against Carola Rackete discontinued*. ZEIT ONLINE. [online] 19 May. Available at: <https://www.zeit.de/gesellschaft/zeitgeschehen/2021-05/carola-rackete-sea-watch-3-verfahren-eingestellt-italien-seenotrettung> [Accessed 30 Aug 2021].

HERBERMANN, J.D. (2020) *UN-Expert: Private boats rescued tens of thousand people*. evangelisch.de [online] 24 Aug. Available at:

<https://www.evangelisch.de/inhalte/173652/14-08-2020/un-expertin-private-schiffe-haben-zehntausende-menschen-gerettet> [Accessed 30 Aug 2021].

HÖFER, K.M. (2016) *Strategies against Smugglers*. Deutschlandfunk. [online] 24 Jul. Available at: https://www.deutschlandfunk.de/strategien-gegen-schleuser-den-schleppern-das-handwerk-legen.724.de.html?dram:article_id=361045 [Accessed 30 Aug 2021].

International Convention on Maritime Search and Rescue (SAR) [online] Available at: <http://www.nmsa.gov.pg/wp-content/uploads/2016/11/SAR-Convention-1979-pdf.pdf> [Accessed 06 Sep 2021].

JESKE, A-K. (2021) *Was über die Pushback-Vorwürfe bekannt ist*. 4 Mar. [online] Available at: <https://www.zdf.de/nachrichten/politik/frontex-pushback-fluechtlinge-100.html> [Accessed 18 Jul 2021].

KITZLER, J.C. (2015) ARD [online] *From the inner life of human smugglers*. 4 Apr. Available at: <https://www.tagesschau.de/ausland/interview-schleuser-101.html> [Accessed 30 Aug 2021].

MDR Aktuell. (2019) *Richterin sieht Sea-Watch-Kapitänin im Recht*. [online] 5 Jul. Available at: <https://web.archive.org/web/20190706154316/https://www.mdr.de/nachrichten/politik/ausland/italien-n-gericht-entlastet-sea-watch-kapitaenin-rackete-seenotrettung-100.html> [Accessed 30 Aug 2021].

MEILER, O. (2019) *Sea Watch - Carola Rackete drohen mehrere Jahre Haft*. Süddeutsche Zeitung. [online] 29 Jun. Available at: <https://www.sueddeutsche.de/politik/italien-kapitaenin-rackete-anklage-1.4504704> [Accessed 29 Aug 2021].

MÜLLER-MEININGEN, J. (2015) Fluter. [online] *The business of traffickers*. 20 Jun. Available at: <https://www.fluter.de/in-der-schattenwelt> [Accessed 9 Sep 2021]

NUSPLIGER, N. (2017) *Criticism of EU operation against traffickers grows*. Neue Zürcher Zeitung. [online] 18 Jul. Available at: <https://www.nzz.ch/international/eu-militaereinsatz-im-mittelmeer-anti-schlepper-operation-in-der-kritik-ld.1306541> [Accessed 6 Sep 2021].

Regulation (EU) 2019/1896 [online] Available at: <https://eur-lex.europa.eu/legal-content/DE/TXT/HTML/?uri=CELEX:32019R1896&from=EN> [Accessed 11 Aug 2021].

REUSS, A. (2020) *What Terrorists help*. Süddeutsche Zeitung. [online] 8 Jun. Available at: <https://www.sueddeutsche.de/politik/coronavirus-terrorismus-afrika-kommentar-1.4929706> [Accessed 30 Aug 2021].

ROMANN, H. (2019) *Marine-Operation ohne Schiffe*. ARD-Brüssel. [online] 27 Mar. Available at: <https://www.tagesschau.de/ausland/sophia-operation-101.html> [Accessed 29 Aug 2021].

SCHNEIDER, J. (2020) *Wie private Seenotrettung erschwert wird*. ZDF. [online] 9 Jun. Available at: <https://www.zdf.de/nachrichten/politik/seenotrettung-schiffahrt-fluechtlinge-100.html> [Accessed 30 Aug 2021].

Sea-Eye_Report (2016-2019). Vier Jahre Seenotrettung [online] Available at:
https://sea-eye.org/wp-content/uploads/2020/07/Sea-Eye_Vier-Jahre-Seenotrettung_2016-2019.pdf
[Accessed 20 Jun. 2021].

Security Council. United Nations [online] Available at:
<https://www.un.org/en/model-United-nations/security-council> [Accessed 03 Aug. 2021].

STEINHILPER, E. and GRUIJUTERS, R. (2017) *Border Deaths in the Mediterranean: What We Can Learn from the Latest Data.* [online] 8 Mar. Available at:
<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/03/border-deaths> [Accessed 3 Oct 2021].

STEPHAN, F. (2015) ZEIT ONLINE [online] *Smugglers: the higher law.* 21 Apr Available at:
<https://www.zeit.de/kultur/2015-04/schleuser-giampaolo-musumeci-interview/komplettansicht>
[Accessed 29 Aug 2021].

UNHCR (2021). Operational Data Portal, Mediterranean Situation [online] Available at:
<https://data2.unhcr.org/en/situations/mediterranean> [Accessed 22 Jul. 2021].

UNHCR (2021). Live Blog 2021: This World Refugee Day, we are stronger together [online] Available at:
<https://www.unhcr.org/news/latest/2021/6/60ad1e2f4/live-blog-2021-world-refugee-day-stronger-together.html> [Accessed 18 Jul. 2021].

United Nations Treaty Collection (2021) *Convention relating to the Status of Refugees.* [online] Available at:
https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mt_dsg2&clang=en [Accessed 19 Jul 2021].

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