12th IFLOS Maritime Talks

Migrants at Sea

Practical and Legal Aspects of the Refugee Situation in the Mediterranean

at the International Tribunal for the Law of the Sea (ITLOS), Hamburg 17.03.2018

Sea Watch perspective
Dr. Frank Dörner
SAR and politics: a deadly alliance

Moonbird foto 05.05.17
Agenda

• Why this title?
• Who is Sea-Watch?
• How do we work?
• What are the obstacles?
• What is political at sea?
• What should be changed?
SAR and Politics – a deadly alliance

- Mediterranean Sea is highly militarised and monitored
- Mare Nostrum safeguarded many lives, but was discontinued
- Human rights / refugee rights vs. externalisation interests of Europe
- It is the deadliest border of the world

=> Mare mortum…
Most dangerous border

>50% of all deaths

Deaths

- > 1,000
- 500 - 999
- 101 - 499
- 2 - 499
- 2 - 100
- 0 - 1

TOTAL DEATHS
6,142
in 2017

Source: IOM's Missing Migrants Project, MissingMigrants.IOM.int
Who are we?

- German NGO privately funded since 2015
- Sea Watch started with a 100 yrs old fishing trawler to rescue
- No transport, first aid & „watch“
- Extension to Turkey / Greece route from Lesbos late 2015
- Stop through deal with Erdogan May `16
Development 2016

- In 2016 new boat: Sea Watch 2
- More other NGOs followed example
- > 20,000 peoples rescued with others
- Air surveillance
- Political recognition
- Political tension
Development 2017

- Need for more capacity
  - many people died
  - overall conditions got worse
  - the EU withdrew and increased pressure
  - traffickers increased number of people on boats (study university of Oxford)

- Libya failed state; Italy alone; change of rhetoric – **diffamation and criminalisation**
Sea Watch in 2017

>35,000 people
safed since 2015!
100% private!
Independant -
Purely humanitarian!
How do we work?

- MRCC Rome coordinates
- SOPs follow experience and are shared
- Amongst NGOs good collaboration
- Communication happens with all at all times: often shared action
- We had up to 12 NGO ships on the Med, but due to pressure times change…
Criminalisation

- Despite other statements concerted effort: politicians, Italian media, far right (IB)
- CoC issued and not signed by many
- Two days after ultimatum on 2. Aug. confiscation of Juventa (Jugend Rettet)
- To date no official accusation: what is known has NO substance

=> Pure political move to pressure NGOs
Juventa safed many lives...

MS Juventa at SAR in 2017 before seizure
Future for NGOs

• Several obstacles
  - Criminalisation
  - Dangerous encounters with LCG
  - Now even intentions for MRCC Libya
  - Money constant issue for some: high running costs, media attention
  - No more support for NGOs – people die!
SAR and Military

- Mare Nostrum was big
- Much less support for refugees now
- Military is not all one: EUNAVFOR, Frontex, NATO, Italian; LYCG
- NGOs rescued and Military took over; but less so now: mainly keeping distance
- And **use SAR** and „collaboration“ as sales argument
Military: who is who

- EUNAVFOR Med operation Sophia:
  - Phase 1: Intelligence on trafficking and SAR
  - Phase 2: direct action against traffickers and boats; controle of weapons embargo
  - Phase 3 starts: **destroy traffickers infrastructure**
  - Works closely with LYCG: training and material

=> *Often state that “close collaboration with NGOs“ exists*
Frontex (Triton to Themis)

- To protect the borders (Frontex) at sea (Triton): against illegal migration
- Informell support of LYCG
- Sometimes transport refugees
- **Transition from Frontex into European Border and Coast Guard Agency (EBCGA)** - since Feb op Themis
- Bigger and more competencies / power
NATO

• Two missions: Maritime Group 2 to Secure the Med and defend the NATO interests
• Operation Active Endeavour: to fight terror infrastructure and prevent entry of weapons of mass destruction
• Support Turkey and Greece CG plus Frontex
• NO SAR

=> Link to EUNAVFOR Med
So called LYCG

• **Split** into different parts: Infl. of central gvt limited

• Receives **support** from EU (training and tech)

• So far: several **attacks** „against“ NGOs (SW, Sea Eye, MSF, OA); on 21 Sept 2016 against rescue ops with several deaths (*case here*)! Again on 6. Nov 2017!

⇒ „**prevents**“ **people from leaving: EU interest“
Other alarming situations


- 15.03.2018: ALARM JETZT! Die libysche Küstenwache 73 Meilen vor ihrer Küste, bedroht die Open Arms mit Schüssen zum Töten, wenn Proactiva Open Arms die geretteten Frauen und Kinder nicht abliefert. (Tweet issued for support)
What is at stake?

• Less SAR capacity – more death!
• More dangerous routes will be taken
• No focus on saving lifes and working on the long term changes
• Crucial rights denied: support of an actor violating rights and international conventions (refoulement principle)
Right to leave any country including one’s own
Right seek and obtain asylum from persecution
Right to life

Right to protection from refoulement

Prohibition of torture [incl. inhuman reception cond’ts]
Prohibition of arbitrary detention [incl confinement at sea]
Right to a fair trial < access to procedures
Right to effective remedies < appeal if negative decision

Art. 12(2) ICCPR, Art. 2 Prot. 4 ECHR
Art. 14 UDHR, Art. 18 CFR

Art. 6 ICCPR, Art. 2 ECHR,
Art. 2 CFR
Arts. 7 ICCPR, Art. 3 CAT, Art. 19 CFR
Arts. 7 ICCPR, Art. 1 ff CAT,
Art. 3 ECHR
Art. 9 ICCPR, Art. 31(2) RC,
Art. 5 ECHR
Arts. 7 ICCPR, Art. 3 CAT, Art. 13 ECHR
Art. 2 ICCPR, Art. 14 CAT,
Art. 47 CFR

by Dr Violeta Moreno-Lax, Director Immigration Law Programme, Queen Mary University London
Current practise

• …is considered as violating rights and conventions

• Expertise of Prof Proelß (Universität Trier; öffentliches Recht, spez Völker- und EU-recht)

• Several Reports by Dr. Moreno-Lax (Queen Mary University; Dir of Immigration Law Programme)

• Expertise of the Bundestag (wissenschaftlicher Dienst; Feb 2018)

• *Piracy and violence by LYCG*
What`s needed

• **Acknowledgement** that situation is complex – Increase SAR! NOW!

• **Immediate stop of criminalisation** of NGOs and refugees

• **Fulfillment of state obligations**, respect of rights

• **Stop LYCG**

• **Support of Italy** to keep the ports open
„If you safe one live you safe humanity“ (Talmud and Koran)

Don’t risk humanity! Safe lifes!

Sea-Watch.org