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European Solidarity Values change under the influence of International Migration Flows

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Contents

List of abbreviations

CJEU	Court of Justice of the European Union
CoE	Council of Europe
ECHR	European Convention of Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EU	European Union
FRA	European Union Agency of Fundamental Rights
IMO	International Maritime Organization
IOM	International Organization for Migration
MOAS	Migrant Offshore Aid Station
MRCC	Maritime Rescue Coordination Centre
MSF	Médecine Sans Frontières
NGO	Non-governmental Organization
OMN	Operation Mare Nostrum
PICUM	Platform for International Cooperation on Undocumented Migrants
ReSOMA	Research Social Platform on Migration and Asylum
SAR	Search and Rescue
SMH	Salvamento Humanitario Marítimo
SOLAS	International Convention for the Safety of Life at Sea
SRR	Search and Rescue Region
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for Refugees

Introduction

Solidarity is a very wide and comprehensive concept, increasingly deployed throughout the latest decades in the debate surrounding the functioning of the European Union (EU) as a community of 27 member states bound by common interests and values[1]. Meanwhile, European civil society has recently begun to actively participate in the public debate, proposing a different understanding of solidarity spanning beyond the national borders[2], i.e. transnational solidarity[3]. Thus, lately, and especially after the 2015 'refugee crisis', due to its high politicization, the migration field has become one of the major stages where the diverging ways of conceptualizing and realizing solidarity by European state- and non-state actors are constantly confronting[4]. In their daily encounter, these divergences have often translated into fractions and confrontations, hindering an otherwise fruitful cooperation[5]. One of the most recent outcomes of this divergence is the criminalization of solidarity, a strategy used by the EU and European states to discourage civil society from aiding irregular migrants and, by so doing, interfering with the states' legitimate interest to secure their borders from illegal crossings, transit and stays[6]. Nonetheless, criminalization has already been proved to not be beneficial, leading to several unintended consequences, such as migrants' social exclusion and increasing polarization in the European society[7]. The following thesis aims at proving whether it is effective.

The concept of European solidarity, thus, is the object of the research, whereas the subject is how the understanding and realization of solidarity has been changing as a result of the growing influx of irregular migrants to the EU. In particular, this thesis aims at studying the evolution of transnational solidarity

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[1] NIŻNIK (2012); DOMURATH (2013); KONTOCHRISTOU, MASCHA (2014); HILPOLD (2015); BEUTLER (2017); KOTZUR (2017); STEINVORTH (2017); DI NAPOLI, RUSSO (2018).

[2] LAHUSEN, THEISS (2019); NOWICKA et al. (2019); GOULD (2020); SCHWIERTZ, SCHWENKEN (2020).

[3] By the term "transnational solidarity" we mean those grassroots forms of solidarity established by European citizens with third-country nationals such as migrants in Europe. For a more detailed definition see Chapter 1, section 3.

[4] AGUSTÍN, JØRGENSEN (2018); CANTAT, FEISCHMIDT (2019); FEKETE (2018); REGGIARDO (2019); PUSTERLA (2020).

[5] IRRERA (2019).

[6] ALLSOPP (2012); PROVERA (2015); CARRERA et al. (2018a); FEKETE et al. (2019); PUSTERLA (2019); VOSYLIŪTÉ, CONTE (2019b); RESOMA (2020); ESCARCENA (2021); PUSTERLA (2021).

[7] HELLER, PEZZANI (2016); FONTANARI, AMBROSINI (2018); FEKETE et al. (2019); GORDON, LARSEN (2020).

toward irregular migrants in the latest decade with a view to assessing the long-term impact and effectiveness of state criminalization on it.

Indeed, although the role played by the civil society during the 2015 'refugee crisis' has been widely researched by the literature on the topic[8], after the peak of the crisis a wider historical analysis on the evolution of the phenomenon and its long-term effects has been missing. Nonetheless, this issue is topical and timely. Although the COVID-19 emergency has shifted the attention of the media and the political discourse, irregular migration to the EU is still very high on the political agenda. With the re-ignited Afghan crisis, it might hit the headlines again in the forthcoming years[9]. Meanwhile, local and informal actors have been playing an increasingly central role in providing services to irregular migrants before and after their arrival in Europe: migration to the EU is not an exclusive prerogative of state institutions anymore. Further, transnational solidarity actors are becoming more politically engaged and contesting the European migration policies[10]; this might lead to new outcomes and challenges worth further research. The only institutional response, so far, has consisted in criminalizing them, perhaps underestimating the long-term impact of such phenomenon. Literature on the topic has widely described the criminalizing methods[11] used for this purpose and its unintended consequences[12], but a quantitative analysis on the number of non-governmental organizations (NGOs) that ceased their operations as a consequence of criminalization is missing. This is necessary to understand whether and to what extent criminalization is effective, a question European policymakers should investigate before defining the future strategy to pursue in the management of irregular migration flows. A look behind can help us recognize the way transnational solidarity actors are likely to act and influence the political arena in the foreseeing future, and whether the current criminalizing strategy will have the desired effect. Our research eventually aims at advancing this debate.

Therefore, the main research question is the following: *considering the evolution of European transnational solidarity to irregular migrants throughout the*

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[8] FONTANARA, AMBROSINI (2018); CANTAT, FEISCHMIDT (2019); LAHUSEN, THEISS (2019); PRIES (2019); HAJER, AMBROSINI (2020); KANELLOPOULOS et al. (2020); KOUSIS et al. (2020).

[9] According to the United Nations High Commissioner for Refugees (UNHCR), up to half a million Afghans could flee their country by the end of the year.

[10] FEISCHMIDT, ZAKARIAS (2019); LAHUSEN, THEISS (2019); MAGGINI, FERNANDEZ (2019); NOWICKA et al. (2019); GOULD (2020); SCHWIERTZ, SCHWENKEN (2020).

[11] CARRERA et al. (2018a); CONF/EXP(2019)1; FEKETE et al. (2019); PUSTERLA (2019); OKAFOR (2020).

[12] HELLER, PEZZANI (2016); FONTANARI, AMBROSINI (2018); FEKETE et al. (2019); GORDON, LARSEN (2020).

latest decade, is criminalization likely to eventually extinguish this phenomenon in the upcoming decade?

Secondary tasks in the view of the achievement of a satisfactory answer are:

1. to define the various and diverging understandings of European solidarity (Chapter 1);
2. to investigate the evolution of European transnational solidarity toward irregular migrants and its changing interaction with state actors in the latest decade (Chapter 2);
3. to study the evolution of European transnational solidarity in the form of NGOs providing SAR in the Mediterranean in the latest decade (Chapter 3);
4. to predict the main trends in the evolution of European transnational solidarity in the upcoming decade (Chapter 3).

Our hypothesis, before conducting the research is that, *despite the criminalization process moved toward it by the EU and European states, being driven by the urgent need to fill the vacuum left by state institutions, and by a strong civic and political engagement, transnational solidarity is unlikely to disappear or substantially decrease in the upcoming decade.*

Thus, the above-mentioned thesis statement will be investigated through a historical and analytical approach. First, the concepts and definitions of 'solidarity', 'European solidarity', and 'European transnational solidarity' will be analyzed in Chapter 1 from a historical, legal and sociological perspective. Second, Chapter 2 will focus on the historical analysis of European transnational solidarity, aiming at researching its evolution in the latest decade, especially after the 2015 'refugee crisis'. Following, Chapter 3 will focus on a specific form of transnational solidarity, i.e. the SAR services provided by the NGOs in the Mediterranean, one of the major routes crossed by irregular migrants on their way to Europe. The period chosen is of particular relevance due to the unprecedented increase of migration influx in Europe in 2015 and the subsequent mushrooming of NGOs and volunteers eager to help them. Studying the evolution of this phenomenon, the author attempts at finding certain general trends that are likely to continue in the upcoming decade. For this endeavor, the research will involve the information obtained from the examination of a mix of primary and secondary materials, books, studies, articles, public documents, statistics related to the topic.

Moreover, in Chapter 2 and 3, we will make use of a set of qualitative and quantitative secondary data retrieved from existing studies on transnational solidarity. Chapter 2 focuses on the main actors and ways in which civil

society has been aiding irregular migrants, making large use of empirical studies[13] carried out by TransSOL. This is a transnational research project aiming at gathering systematic and up-to-date data regarding European solidarity, with a focus on eight European countries[14]. It will be complemented by various studies on the wave of solidarity toward asylum seekers between 2015-16[15]. As for Chapter 3, the research is concentrated on NGOs providing SAR in the Mediterranean between 2014 and 2021, using quantitative and qualitative data gathered mostly by the European Union Agency of Fundamental Rights (FRA)[16] and re-elaborated by the author for our purpose. Further, the websites and social media of SAR NGOs have been used for the study.

Hence, the following thesis is divided into three Chapters and a conclusion. Chapter 1 will introduce the concept of solidarity investigating its historical evolution from the Greek *polis* to the Westphalian sovereign state until its recent expansion beyond national borders. This approach is essential to understand how solidarity has historically managed to bind social groups of different sizes, including new communities spanning beyond the nation-state. Indeed, we will attempt at investigating the dynamics underlying the solidarity established among the members of the EU, and that binding European citizens with third-country nationals. For this purpose, throughout the whole chapter, political philosopher Hanna Arendt's theory of 'inclusive' and 'exclusive' solidarity[17] will provide the theoretical basis to explain the dynamics inherent in this phenomenon. The analysis will deploy a multi-disciplinary approach, combining legal, political, and sociological studies: solidarity is a fundamental concept of various sciences, each of which highlights different aspects.

After the theoretical part, Chapter 2 will then focus on the empirical part, investigating the main trends in the evolution of transnational solidarity to irregular migrants during the latest decade, especially after the 'refugee crisis'. In particular, the research will shed a light on the main actors, activities, driving principles, and national differences of this phenomenon across Europe. Such analysis cannot overlook the changing interaction between European civil society and traditional actors in the management of irregular migration flows to Europe which had a huge impact on the *modus operandi* of the former. The last two sections are, in fact, concentrated respectively on their

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[13] MAGGINI, FERNÁNDEZ (2019); FERNÁNDEZ, LAHUSEN, KOUSIS (2020); KANEL-LOPOULOS et al. (2020); KOUSIS et al. (2020); LAHUSEN (2020); ZSCHACHE et al. (2020).
[14] Denmark, France, Germany, Greece, Italy, Poland, Switzerland, and the United Kingdom.
[15] FONTANARA, AMBROSINI (2018); CANTAT, FEISCHMIDT (2019); LAHUSEN, THEISS (2019); PRIES (2019); HAJER, AMBROSINI (2020).
[16] FRA (2018); FRA (2019); FRA (2020a); FRA (2020b); FRA (2021).
[17] ARENDT (1964); ARENDT (1975); ARENDT (1990); RESHAUR (1992).

relations with the EU and the national governments with a specific focus on the process of criminalization of solidarity. The theory of 'inclusive' and 'exclusive' solidarity will be tested in this framework.

Finally, Chapter 3 will go deeper in the analysis of transnational solidarity, focusing specifically on one of its forms, the non-governmental provision of SAR in the Mediterranean. The reason behind this choice is twofold. First, this is one of the most contested fields of action where the phenomenon of securitization and criminalization of civil society is most clearly displayed. At the maritime gates of 'Fortress EU', a vibrant clash between the exclusive and inclusive understanding of European solidarity is ongoing between state- and non-state actors holding different perceptions of borders. Second, NGOs involved in SAR operations have drawn a high degree of public and scholarly attention in the last seven years and a significantly higher volume of data registering this phenomenon is available than those regarding the broader transnational solidarity. Therefore, in this Chapter, an overview of the legal framework regulating SAR and migration at sea will be provided in an attempt to better define the field of action of SAR NGOs, a complex arena where many actors come into play. Following, our analysis will focus on the evolution of non-governmental provision of SAR in the Mediterranean from the first non-governmental SAR mission in 2014 until August 2021. Finally, the third section will analyze the process of criminalization against SAR NGOs, its unintended consequences, and its effect over the last decade. The postulated hypothesis will be tested on the basis of the main findings. Thus, a forecast of the main trends expected to characterize European transnational solidarity in the next decade will conclude the Chapter.

Finally, the conclusion will summarize the results of the previous chapters, trying to briefly list the main findings.

Chapter 1. Solidarity beyond the national border: concept and theories

1.1. Solidarity: definition and history of the concept

Despite having been widely deployed in a myriad of disciplines ranging from jurisprudence to philosophy, from political sciences to sociology, the concept of solidarity is notwithstanding hard to define due to the lack of an "explicit and coherent theoretical tradition of its use as a systematic term"[18]. In an attempt to solve the interpretative conundrum, contemporary social scientists have been increasingly focusing on the evolution in the use of the term starting from its first appearance in the mid-19th century from the French *solidarité*[19]. Tracking down the existence of this phenomenon to the ancient Greek and Roman times, long before the formulation of both the idea and the term, Stjernø has recently offered, perhaps, the most illustrative conceptualization of solidarity. Two conceptions of solidarity, he states, may be recognized in the history of the term; solidarity may be understood as "being norms contributing to social integration", or, alternatively, as "being a relationship between members of a more or less specified group"[20]. Thus, we may conclude that there are "two necessary values, that an individual should identify with others, to some degree, and that a feeling of community should exist between the individual and (at least some) others, and as a consequence it can be argued that all these ideas of solidarity imply some sort of inclusiveness"[21].

The history of this phenomenon confirms that, since its very first emergence, solidarity has been closely connected to inclusiveness and harmony. Early instances of institutionalized solidarity may be traced back to the Greek *polis* and Roman Empire, long before the emergence of the modern nation state[22]. They "appear to have provided humankind with its earliest form of pacification", maintaining the harmony within those communities through the responsibility of affluent members toward more indigent ones[23]. Moving from classical to modern times, then, solidarity has gone through a process of extension. During medieval times, the Christian brotherhood among friars evolved to

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[18] DERPMANN (2009: 304).
[19] According to the Merriam-Webster Dictionary, the term *solidarité* first appeared in 1841. It comes from the adjective *solidaire,* i.e. characterized by solidarity, from Latin *solidum*, i.e. whole sum, sturdy, firm.
[20] STJERNØ (2009: 85).
[21] STJERNØ (2009: 88-89).
[22] CINGOLANI (2015: no pagination).
[23] CINGOLANI (2015: no pagination).

include a wider social group, the unions of men of the same profession such as merchants and artisans[24]. Finally, in post-revolutionary France, the term was not only secularized, but it also began to acquire a political and legal meaning in the context of modern nation-states[25]. Indeed, solidarity as a norm emerged as an evolution of French fraternity, with the latter – from the revolutionary slogan "*liberté, égalité, fraternité*" – being understood as the feeling of common belonging to the democratic political community shared by free and equal individuals[26]. Thus, in post-revolutionary France fraternity was seen as a way to build a new nation of equals and overcome the hierarchical social order typical in the *ancien régime*[27]. A merely political-philosophical concept was transformed into a legal one in an attempt to strengthen the integration of the French post-revolutionary society[28]. However, for the modern legal concept of solidarity to eventually materialize, a century had to pass. First, in the 1830s-40s, the term *solidarité* replaced *fraternité* and started to be spread in the debate surrounding solidarity of class by the French utopian socialists[29]. However, solidarity juridically materialized in the 1880s in the context of European nation-states that were increasingly consolidating[30]. Indeed, at the time of the French Third Republic, "solidarism", i.e. the mutual interdependence among citizens, was used by the Radical Party to legitimize several institutions provided by the state to correct the social inequalities in the society[31]. Finally, the first manifestations of the principle of solidarity appeared in the modern welfare states, culminating in the adoption of social constitutions such as the Weimar Constitution of 1919 which had been inspired by the concept of French fraternity[32]. Clearly, the welfare state is an advanced instance of institutionalized solidarity, further developed in modern democracies after the Second World War.

From the late 19th century, solidarity has been increasingly associated with the sense of togetherness shared by the citizens of the same state[33]. Thus, solidarity in a nation-state "may originally be based on the commonality of culture and language, but it has widely been replaced by formal citizenship"[34]. The

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[24] STJERNØ (2009: 27).
[25] CINGOLANI (2015: no pagination).
[26] GIUBBONI (2012: 529).
[27] GIUBBONI (2012: 529).
[28] SOMMERMANN (2014: 13).
[29] STJERNØ (2009: 32).
[30] GIUBBONI (2012: 535).
[31] CINGOLANI (2015: no pagination).
[32] SOMMERMANN (2014: 14).
[33] The main exception to national solidarity in the 20th century is represented by Marxist and Leninist solidarity of class, unifying the working class internationally.
[34] DERPMANN (2009: 306).

reasons behind this feeling of commonality among citizens are still highly debated. Offering the first comprehensive scientific elaboration on the concept in the late 19th century, in his *Division of Labor* sociologist Émile Durkheim proposed an inclusive and group-oriented understanding of solidarity. Distinguishing it from the 'mechanical' solidarity of tribal groups based on sameness and mutual independence, he described the solidarity of contemporary societies as 'organic'. This is based on "division of labor, specialization, and recognition of the individual's freedom of opinion"[35]; thus, modern societies are held together by a relationship of mutual dependence[36]. More recently, reflecting on the level of dependence between the people in *The Politics of Social Solidarity*, Baldwin proposed to distinguish between philanthropy that is based on the dependence of one party on the other, and solidarity that is based on interdependence[37]. According to him, solidarity is misleadingly associated with altruism. Openly opposing to the altruistic logic, Hilpold has recently underlined the role played by egoism through the phrase "solidarity expects solidarity"[38] : the citizens accept to help the other members of the community knowing that in case of need they would be assisted as well. He significantly downgraded the feeling of togetherness binding the community, stating that "this help is nothing other than a well-calculated measure of self-preservation"[39]. Moreover, Offe argues, the reason behind solidarity is neither pure affection, nor only self-concern, but there is a feeling of political, legal, or moral obligation toward the others[40]. According to Derpmann, though, that obligation may not actually exist, yet the people "at least feel obliged to promote the well-being of other members, even incurring significant sacrifices for themselves"[41].

Regardless of the motives behind solidarity, the point on which most scholars on the topic agree is the idea of inclusiveness closely connected with solidarity. Nonetheless, inclusiveness entails a certain level of exclusiveness since, as Max Weber underlined, "the feeling of belonging together is always associated with the exclusion of others"[42]. Challenging Durkheim's classic sociological conceptualization of solidarity, indeed, in the late 20th century Weber offered a first political definition of the concept perceived as both an integrative and a divisive force. Since then, the internal struggle between 'We', the members of the group bound by a feeling of mutual support and responsibility

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[35] CINGOLANI (2015: no pagination).
[36] CINGOLANI (2015: no pagination).
[37] LIEDMAN (2002: no pagination).
[38] HILPOLD (2015: 262).
[39] HILPOLD (2015: 262).
[40] OFFE (2004: 35).
[41] DERPMANN (2009: 305).
[42] STJERNØ (2009: 38).

toward each other, and 'the Other' outside that group, or the struggle between unity and antagonism within the concept of solidarity, has been frequently explored by many scholars[43]. They underlined how this tension is clearly displayed by the state-centered understanding of solidarity: here the national border is a geographical, juridical, and social line of confinement between citizens and non-citizens.

Whether it is possible to overcome the boundary between 'insiders' and 'outsiders', and promote a different, more inclusive form of solidarity is a question that many scholars have investigated. Among them, a decisive contribution to the debate was offered by philosopher Hannah Arendt, although her concern for solidarity – as Gaffney argued – was "largely implicit throughout her work, rarely coming into view as a systematic part of her theoretical framework"[44]. In *On Revolution*, distinguishing solidarity – which she sees as the driving force of the French Revolution – by pity, Arendt stated that while out of pity men feel attracted towards weaker men, out of solidarity men establish a community of interest with the oppressed and exploited[45]. This common interest is the dignity of man. Indeed, as Hansen underlined, for Arendt solidarity is "the ability that makes it bearable to live with other people, strangers forever, in the same world, thanks to human understanding"[46]. Furthermore, studying the Arendtian approach to solidarity throughout her work, Reshaur[47] has recognized four different types of solidarity. The first concept of solidarity in Arendt's writings is 'exclusive solidarity' which is "limited to those who are suffering from exploitation or oppression"[48], whereas the second is 'inclusive'. It does not only involve those who suffer, but also those who make common cause with them. Then there is 'universal' solidarity extended to humankind and 'natural solidarity' that is, though, "conceptually inadequate and confused"[49].

Therefore, Arendt does not exclude the existence of another type of solidarity that is not based on mutual interdependence or egoistic feelings and provides us with an illustrative example of 'inclusive solidarity' in *Eichmann in Jerusalem*[50], as well as in her Sonning Prize acceptance speech[51]. During the Nazi

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[43] RORTY (1989); BRUNKHORST (2005); WILDE (2007); LAHUSEN (2020).
[44] GAFFNEY (2018: 6).
[45] ARENDT (1990).
[46] HANSEN (2004: 3).
[47] RESHAUR (1992).
[48] RESHAUR (1992: 726).
[49] RESHAUR (1992: 735).
[50] ARENDT (1964).
[51] Arendt gave this speech in Copenhagen in 1975 when she was awarded the Sonning Prize, a Danish culture prize awarded for outstanding contributions to European culture.

occupation of Denmark, in order to prevent the Nazis from deporting stateless people – mostly German Jewish refugees whose nationality had been annulled –, she argued, Denmark gave them asylum. Additionally, the Danish King and most Danes began to wear the Star of David in solidarity with the Jews. Solidarity was established both on a moral and on a legal basis by the Danes[52].

The above-mentioned form of solidarity is, therefore, very different from the national solidarity typical of the welfare state: it is neither based on mutual interdependence, nor egoistic interests; it is not inspired by a sense of belonging to the same national community, but rather by a universal feeling of belonging to humankind or a pressing desire to restore human justice. It reminds us of the Catholic solidarity based on the belief that men are created in the image of God, thus they are all equal in His eyes[53]. Indeed, among all the forms of solidarity analyzed by Stjernø, Catholic solidarity is the most inclusive, as "transcending class boundaries, it is explicitly meant to encompass all classes of people across all social and economic barriers and divisions"[54]. However, it might be argued, despite being inclusive and involving both the suppressed (the Jews) and the people not directly involved and, thus, in a privileged position (the Danes), this form of inclusive solidarity is still characterized by a certain level of antagonism or exclusion. By showing solidarity and helping the Jews, we argue, the Danes were taking – more or less consciously – a position against the Nazis, excluding them from their community in order to prevent them from committing actions perceived as unjust and undesirable on the Danish territory.

The importance of this historical example, thus, is twofold. First, it shows a form of solidarity that reached the maximum extension, spanning well beyond the initial boundaries of a Greek *polis* and a modern nation-state. Studying the evolution in the phenomenon of solidarity, we may see the increasing emergence of this sort of 'human' solidarity as the result of social changes linked to globalization[55]. As suggested by Wilde, new forms of communities have been increasingly arising often inspired by a broader, global form of solidarity encompassing the whole of humankind; they challenge the traditional forms and understandings of solidarity. This might explain the scholars' renewed interest in this concept, after having been largely neglected in favor of other characteristics of political association such as democracy, community, human rights, nationalism, multiculturalism[56]. Second, this example suggests that, even in a form of inclusive or human solidarity, it is not unlikely that the

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[52] RESHAUR (1992: 729).
[53] STJERNØ (2009: 73).
[54] STJERNØ (2009: 74).
[55] BAUMAN (1997); BRUNKHORST (2005); WILDE (2007).
[56] WILDE (2007: 171).

members of the group will be bound together by some sort of antagonism toward another social group perpetrating – more or less willingly – some form of discrimination or oppression toward the oppressed people. In sum, not only the power of their shared beliefs and goals binds them together, but also the feeling of being "other" than those who commit such undesirable actions.

Hence, given the growing number and importance of these new forms of solidarity extending beyond the national border, it is crucial to study their evolution and assess the way solidarity has been understood within these new forms of association. Our analysis will focus on two forms of solidarity beyond the national border in Europe. In fact, the European context is of particular interest to study the expansion of solidarity from the national level to new levels such as the supranational and transnational ones. On the one hand, since its emergence, the European Union (EU) has attempted to extend an institutionalized form of solidarity to the whole community of member states; the concept of solidarity is largely deployed in the European legal jargon, as well as in discussions concerning European values. Therefore, in section 2 we will investigate how European solidarity is understood and practically realized, as well as where the line of exclusion between 'insiders' and 'outsiders' has been set within this community of 27 members. The analysis will finally focus on the concept of solidarity in the migration field, specifically toward irregular migrants[57]. Furthermore, alongside formalized, and institutionalized forms of European solidarity, in the last decade, a growing network of European grassroots transnational actors has been emerging, acting in favor of people in need. Over the last decade, they have been playing a particularly active role in aiding irregular migrants reaching the European Union illegally. Section 3 will, thus, focus on the understanding of solidarity inspiring these transnational actions of solidarity, investigating both the reasons and the tension between 'We' and 'the Other' at their core.

1.2. European solidarity: concept and controversies

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[57] The term "irregular migrant" will be deployed throughout this research according to the definition provided by the International Organization for Migration (IOM) in its Key Migration Terms: "although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels. [...] Moreover, categories of migrants who may not have any other choice but to use irregular migration channels can also include refugees, victims of trafficking, or unaccompanied migrant children".

As Beutler argued, "the European Union is the first functioning institutional action system based on real solidarity embodied by actions that go beyond the self-interest-based cooperation of states claiming their own exclusive sovereignty"[58]. However, the first conceptualization of European solidarity can be dated back to 1950, long before the Maastricht Treaty and the emergence of the EU: the first reference to solidarity may be found in the Schuman Declaration when the French Minister of Foreign Affairs Robert Schuman proposed the foundation of the European Coal and Steel Community. He declared that "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity"[59]. For the first time, the ambitious prospect to apply an institutionalized system of solidarity to a supranational entity was envisioned. The founders of a united Europe replaced the individuals presupposed in the idea of solidarity with the European states; however, Steinvorth argues, they failed to see the undeniable difference between them. Individuals and states, indeed, bear different types of rights and have different ideas of what is desirable: this misconception proved to be a "momentous mistake" in the following years, for instance during the 2008 global financial crisis and the 2015 'refugee crisis' when the European solidarity proved to be highly ineffective[60]. Hence, an overview of the normative basis at the core of European solidarity will shed a light on the conception of solidarity promoted by the founding fathers and the actual practical realization of such idea by the member states, as well as the numerous controversies related to it.

Several are the references to the concept of European solidarity both in the Treaty on the European Union (TEU), and in the Treaty on the Functioning of the European Union (TFEU). Solidarity is first mentioned in the preamble of TEU, where it is stated that the Union aims "to deepen the solidarity between their peoples while respecting their history, their culture and their traditions"[61]. Thus, it is perceived as a goal to be achieved by European citizens unified by common citizenship, regardless of their national identities and peculiarities. This aspect is repeated in Article 3 of the TEU enunciating the objectives of the Union, which states that the EU "shall promote economic, social and territorial cohesion, and solidarity among member states"[62]. In fact, three dimensions of solidarity can be identified within the EU: solidarity between member states, between member states and individuals, and between

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[58] BEUTLER (2017: 33).
[59] DI NAPOLI, RUSSO (2018: 202).
[60] STEINVORTH (2017: 12).
[61] European Union, 9 May 2008, OJ C115/13, *Consolidated Version of the Treaty on European Union*.
[62] *Consolidated Version of the Treaty on European Union*, Art. 3.

generations. Nonetheless, as argued by Domurath, as a result of its abstractness and distance from the logic of reciprocity central in the other two dimensions, inter-generational solidarity is the least developed[63]. Not only the future generations are perceived as more distant, but it is also inconceivable for the agents of such solidarity to receive any future compensation in turn. Moreover, in Article 2 TEU solidarity is enlisted among the principles prevailing in the EU society alongside pluralism, non-discrimination, tolerance, justice, and equality between women and men.

Thus, solidarity is perceived as a guiding principle for the member states expected to act on behalf of a feeling of togetherness with the others; yet it also constitutes "a specific provision in strategic policy areas or in paradigmatic situations, such as asylum, immigration, energy, foreign policy, and natural or manmade disasters"[64]. Article 24 TEU highlights that the EU's external action shall be based on "the development of mutual political solidarity among member states"[65] and that "member states shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity"[66]. Article 80 of the TFEU sets out that the policies of the Union regarding immigration, border checks, asylum and their application "shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the member states"[67]. Furthermore, Articles 122 and 194 of the TFEU establish a principle of solidarity in the field of economic policy, and in particular energy policy, whereas Article 222 of the TFEU refers to intergovernmental solidarity in case a member is the object of a terrorist attack or the victim of a natural or manmade disaster.

Finally, there are many references to European solidarity in the EU Charter of Fundamental Rights[68] in whose preamble it is enlisted, together with human dignity, freedom, and equality, among the "indivisible, universal values" on which the Union is founded. Title IV also includes several provisions on the protection of European citizens' social rights and solidarity from the EU institution and states in implementing EU law. The Charter, in fact, has been frequently interpreted as a legal instrument to promote the 'vertical' dimension of European solidarity, i.e. the solidarity established between states and

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[63] DOMURATH (2013: 470).
[64] DI NAPOLI, RUSSO (2018: 204).
[65] *Consolidated Version of the Treaty on European Union*, Art. 24, para. 2.
[66] *Consolidated Version of the Treaty on European Union*, Art. 24, para. 3.
[67] European Union, 7 June 2016, OJ C202/1, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*.
[68] European Union, 7 December 2000, *Charter of Fundamental Rights of European Union*.

individuals as opposed to the 'horizontal' dimension, i.e. the solidarity established among member states[69].

Clearly, legal scholars agree that the European legal system provides the member states with a fully-fledged set of rules and procedures regulating solidarity on the three dimensions of the Union[70]; nonetheless, criticism and complaints about the ineffectiveness of such system have been constantly expressed, especially by those countries most severely hit by the financial and 'refugee crisis' such as Greece[71].

Several are the controversies related to the concept of European solidarity. On the one hand, seven decades after its first conceptualization, the idea of European solidarity remains notwithstanding a conundrum. In a research proposal for the Salzburg Centre of European Union Studies, Schmalenbach, Puntscher Riekmann and Wydra highlighted that the notion is "ambiguous in its content: it can simply be a 'moral orientation' of pre-legal nature or constitute a 'legal duty'. It can be used in a purely descriptive or decisively prescriptive, thus normative way"[72]. As a matter of fact, as Niżnik underlined, the 'real solidarity' described in Schuman declaration aspired to go beyond the rhetorical understanding of the word with a strong normative purpose; nonetheless, European solidarity is, nowadays, mostly used in a rhetorical way by domestic politicians to justify unpopular decisions to the eyes of the electorate[73]. And one of the reasons behind that may be the lack of consensus over the meaning of solidarity in the framework of the EU and its legal, political, economic, and moral limits[74]. On the other, there appears to be a considerable distance between the theory and the practice; the current legal framework regulating European solidarity has not been fully exploited, indeed the problem is more a political than a legal one[75].

Therefore, the founding fathers' experiment to adapt a national form of solidarity to a supranational entity has proved to be highly contested and mostly ineffective so far. Indeed, a strongly state-centered approach to solidarity was applied to the Union where the primary source of bindingness among the member states is represented by enlightened self-interest, rather than mutual dependency[76]. In their study for the think tank *Notre Europe*, Fernandes and

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[69] DI NAPOLI, RUSSO (2018: 205).
[70] DI NAPOLI, RUSSO (2018: 241).
[71] LAHUSEN (2020: 310).
[72] KOTZUR (2017: 39).
[73] NIŻNIK (2012: 23 ff.).
[74] KONTOCHRISTOU, MASCHA (2014: 51).
[75] DI NAPOLI, RUSSO (2018: 241).
[76] FERNANDES, RUBIO (2012: 4-5).

Rubio demonstrated that European solidarity is a clear example of Durkheim's organic solidarity: what leads the states to help each other is their expectation of future benefits[77]. The 'strong reciprocal nature' of European solidarity – as Hilpold defined it [78]– is clear proof that the sentiment of European identity is still underdeveloped, whereas states are mainly thinking in terms of national interests and identity. However, Raspotnik et al. argue, this should not be surprising considering the history of the Union. At the times of the European Economic Community's foundation, after the Second World War, solidarity among member states was rooted in the national calculation of implementing self-interests and only recently, since Maastricht, it has been "supplemented by idealistically phrased common European norms and values"[79].

In sum, from an overview on the normative basis and the scholars' understanding and criticism of solidarity within the EU, we may say that European solidarity is a projection of national solidarity stretched to fit a supranational context but largely based on the same logic as solidarity in a national community of citizens. Reciprocity and self-interest are at the core of European solidarity, whereas European identity plays a significantly minor role.

The strong state-centered approach to solidarity within the EU is particularly evident with regard to the management of migration flows and, specifically, of irregular migrants. As Bell has clearly shown, both the Tampere principle[80] and the Long-Term Residents Directive[81] set out the boundaries of European solidarity in terms of economic and social entitlements, stating that fair treatment of third-country nationals would include only those who "reside legally on the territory of its member states"[82]. These are the only non-European citizens entitled to access the same social and economic rights as European citizens, though with certain limitations. Indeed, Domurath suggests, the most developed rationale of solidarity in the EU is the logic of 'sameness' among citizens[83]: third-country nationals are different, thus excluded from the social ties binding together all European individuals.

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[77] KONTOCHRISTOU, MASCHA (2014: 52).
[78] HILPOLD (2015: 257).
[79] RASPOTNIK et al. (2012: 1).
[80] The European Council held a special meeting in Tampere in October 1999 on the creation of an area of freedom, security and justice in the European Union, intending to go beyond the economic cooperation among the member states. The Tampere Agenda declared that "the European Union must ensure fair treatment of third country nationals who reside legally on the territory of its member states".
[81] The Council Directive 2003/109/EC of 25 November 2003 concerns the status of third-country nationals who are long-term residents in the EU.
[82] BELL (2010: 2).
[83] DOMURATH (2013: 3).

More generally, a "firm dichotomy between legal and irregular migrants" may be recognized in the EU immigration policy discourse[84]. Not by chance in the European Commission's 2008 Communication on a common immigration policy for Europe[85], where the new pillars around which the immigration policy would be organized are enlisted – (e.g. prosperity, solidarity, and security) –, solidarity is defined only in terms of intergovernmental solidarity. Member states should assist each other in the management of migration flows; as for the irregular migrants, "they are dealt with under the 'security' heading"[86]. In fact, as Mitsilegas discovered through the analysis of European constitutional law, besides the state-centered approach European solidarity is also understood in a highly securitized way by the EU and state institutions. European asylum law states that member states and the Union are expected to act in solidarity with another member state in order to protect it from perceived urgent threats, i.e. the management of asylum seekers who entered the EU through its national borders[87].

Finally, European solidarity is perceived in an exclusionary way, as third-country nationals are absent from this form of solidarity[88]. Schwiertz and Schwenken highlighted that a telling example of the exclusive and securitized understanding of European solidarity established by state institutions, especially in the context of irregular migration, may be found in one of the President of the Commission, Ursula von Der Leyen's declaration of March 2020[89]. Visiting the Greek-Turkish border[90], one of the main gates of Fortress EU that growing numbers of irregular migrants have been trying to cross, she thanked Greece "for being our European *aspida* [shield] in these times"[91]. The use of military jargon in the context of irregular migration reveals a growing securitization and criminalization of migration at the state and EU level; here

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[84] BELL (2010: 154).

[85] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 17 June 2008, COM(2008) 359 final, *A Common Immigration Policy for Europe: Principles, actions and tools.*

[86] BELL (2010: 160).

[87] MITSILEGAS (2017: 722).

[88] ROSS (2010); MITSILEGAS (2017); AGUSTÍN, JØRGENSEN (2018); SCHWIERTZ, SCHWENKEN (2020).

[89] SCHWIERTZ, SCHWENKEN (2020: 409).

[90] Between late February and early March 2020, Turkish President Recep Tayyip Erdogan's decision to suspend the EU-Turkey deal and stop trying to prevent migrants from crossing the EU borders prompted many clashes with the Greek security forces at the border. Four days later, the leaders of the European Commission, the European Council, and the European Parliament paid a visit in solidarity to Greece, after pledging financial assistance to contain the new influx of migrants.

[91] European Commission, 3 March 2020, Statement/20/380, *Remarks by President von der Leyen*.

intergovernmental solidarity only means protection for the front-line countries facing the influx of irregular migrants from the other member states. Hence, reflecting on the political dimension that European solidarity has acquired in the media and political discourse, Ross suggested that "it may not be too much of an exaggeration to claim that traditional class conflict has been replaced by a conflict of migrants versus citizens"[92].

The exclusion of migrants from European solidarity reminds us of the struggle between inclusiveness and exclusiveness typical of this phenomenon analyzed in the previous section. Indeed, European solidarity seems to reflect the same internal tension between 'We' and 'the Others' inherent in national solidarity. In conclusion, we may assume that in the context of the European Union the national boundary between insiders and outsiders has been moved up to one more level, the supranational level, replicating the same mechanisms and logic. Third-country nationals, especially irregular migrants, represent 'the Other' not included in the institutionalized form of European solidarity and depicted as a potential security threat 'against' which European states and institutions are united.

1.3.   European transnational solidarity: concept and controversies

Alongside highly institutionalized forms of European solidarity which are organized and regulated through a top-down approach, throughout the latest decades many grassroots and less formal types of solidarity have been emerging[93] from the European civil society[94].
As a matter of fact, refusing the thesis that European solidarity is univocal, Knodt and Tews have recently distinguished among four types of solidarity resulting from the combination of the horizontal and vertical dimensions of organization within the EU[95]. Although 'intergovernmental solidarity', established among the member states, is the most popular and evident form, the

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[92] ROSS (2010: 37).
[93] LAHUSEN, THEISS (2019); NOWICKA et al. (2019); SCHWIERTZ, SCHWENKEN (2020).
[94] In the following research, 'civil society' is defined according to the illustrative definition proposed by Fioramonti and Thümler "civil society is an open arena of participation, located beyond the fuzzy boundaries of state and market, in which different types of individuals, groups, and organizations cooperate or compete for visibility and relevance, in the pursuit of collective (though not necessarily shared) political and social goals and animated by a variety of values and interests" (FIORAMONTI, THÜMLER, 2013: 120).
[95] KNODT, TEWS (2017).

authors recognize 'international solidarity' as well, i.e. developed by European actors with societies and nation-states in the international arena, 'transnational solidarity' developed horizontally among individuals organized across national borders, and 'supranational solidarity' developed vertically among European citizens.

Unlike the supranational form which is strictly linked to "the sense of belonging as European citizens to a political community with specific rights and duties"[96], transnational solidarity is often based on a feeling of commonality shared among the group members. It may, thus, be extended beyond the borders of the European Union to involve third-country nationals as well.

In fact, the adjective "transnational" reveals a phenomenon extending or operating across the territorial borders of nation-states. Emerged during the 19th century referring to international labor movements, this term changed its meaning as an effect of globalization and the end of the Cold War; finally, recent migratory flows brought to a renewal of transnational solidarity within the Global North[97]. Furthermore, as a result of the growing European citizens' engagement in cross-national activities of support especially in reaction to the recent crises, a new scholarly interest in the phenomenon has attempted to shed a light on the understanding of solidarity at its core and the related controversies. Our analysis will first focus on the 'glue' binding group members in transnational solidarity and its main limits, and then investigate the level of inclusion and exclusion within this sort of solidarity in the context of the European migration field.

According to Gould, to understand the nature of transnational solidarity, it is crucial to distinguish between 'unitary' and 'networked' forms of solidarity[98]. Indeed, whereas the former, based on a traditional conception of solidarity binding together the members of the same community, can be easily found in a nation-state or – in a weaker form – in the EU, transnational solidarity should be studied under the lens of 'networked solidarity'. This entails "overlapping networks of relations between individuals or groups and distantly situated others, in which the former aim to support the latter through actions to eliminate oppression or reduce suffering"[99]. The main difference between the two consists in the lack of a pre-existing common identity and a pre-existing social group in transnational solidarity. As a matter of fact, whereas the unitary form of solidarity is explained through "exclusionary definitions of who is a true member of the nation in question or by notions of a pre-existing community

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[96] KNODT, TEWS (2017: 52).
[97] SCHWIERTZ, SCHWENKEN (2020).
[98] GOULD (2020: 22 ff.).
[99] GOULD (2020: 23).

and history", networked forms of solidarity are "internally related and inter-defined, but generally not as strongly or enduringly as are groups or individuals within a unitary solidary community"[100]. Therefore, given that there is no pre-existing group linking the members of transnational solidarity, we may wonder what the 'glue' holding them together is.

Rippe has defined transnational solidarity groups as "project-oriented": rather than in a common identity, their unity is rooted in a common goal such as promoting justice or alleviating human suffering[101]. Moreover, as other scholars have argued, frequently, besides the shared objectives, transnational solidarity may be justified also through a feeling of common belonging to humankind[102]. In fact, Lahusen argues that this form of 'borderless' solidarity should not be separated conceptually from other expressions of solidarity: it also represents a type of group-bound social relationship, simply diverging "in scope and size, when compared with more spatially restricted forms"[103]. Indeed, transnational solidarity is usually related to bigger entities and can sometimes even encompass the whole of humankind; in this case "as members of this community, individuals are called to act in solidarity in order to conform to global rights, obligations and responsibilities"[104]. Hence, in this form of solidarity, it is likely to find the same feeling of moral obligation binding together the members of a national community. Michele Foucault suggested that, on behalf of "international citizenry" and its subsequent rights and duties, everyone is obliged to stand up against all forms of abuse of power, regardless of who commits them and who their victims are[105]. Other scholars, such as Sangiovanni, agree that human beings have clear moral obligations towards other human beings deserving equal rights, respect, and recognition, regardless of their belonging to any pre-existing category such as ethnicity, race, age, gender[106]. Philosopher Charles Taylor defined this form of universal moral solidarity aiming at alleviating the sufferings and protecting the human rights of people outside one's society as "humanitarian solidarity", arguing that it is only possible when people believe in God[107].

As a matter of fact, the common feeling of belonging to humankind as the main 'glue' in transnational sorts of solidarity comes with many controversies.

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[100] GOULD (2020: 28-29).
[101] RIPPE (1998: 355 ff.).
[102] BAUMAN (1997); BRUNKHORST (2005); WILDE (2007).
[103] LAHUSEN (2020: 305).
[104] LAHUSEN (2020 : 305-306).
[105] FOUCAULT (2000: 474-475).
[106] SANGIOVANNI (2013: 218).
[107] SMITH, LAITINEN (2009: 68).

Although recognizing a growing shift from national to universal principles with a new "post-national consciousness", Habermas doubts that solidarity may be only based on an idea of universal humanity[108]. Similarly, Rorty questions the concept of human solidarity, arguing that the feeling of belonging to a common national identity will always be more appealing than membership to the global community[109].

Finally, another crucial aspect pointed out by the scholars of transnational solidarity is the level of inclusion to which it aspires. Indeed, by establishing links between people of different backgrounds and interests, it is "often developed in a tradition of struggles aimed at overcoming forms of exclusion on the national level"[110]. The attempt of promoting more inclusive forms of solidarity may be found in several forms of grassroots transnational solidarity: a clear example is European pro-migrant transnational solidarity. This has been recently renewed due to the unprecedented influx of irregular migrants to Europe during the latest decade and especially after the so-called 2015 'refugee crisis'[111]. Thus, empirical studies on transnational solidarity in the migration field across Europe showed that alongside a more vertical, top-down approach based on a philanthropic call, a new approach has recently emerged[112]. This is a more horizontal approach that "privileges cooperation between equals, highlights reciprocity and mutualism, and promotes a political notion of solidarity, claiming the need to empower citizens, local communities or the larger public, and enabling them to claim and enforce their rights on their own"[113]. This was confirmed by Zschache's research on German transnational solidarity organizations engaged in the refugee field that appear to promote a new conception of solidarity departing from "asymmetric top-down, help-oriented charity approaches towards more subject-centered, bottom-up and empowerment-oriented approaches"[114]. Agustín and Jørgensen suggested that these forms of solidarity "challenge the methodological nationalism which underpins both the framing of the refugee crisis and especially the handling of the crisis"[115].

Therefore, European transnational solidarity toward irregular migrants is likely to replicate the same tension between inclusion and exclusion highlighted in the previous sections. Clearly, this sort of solidarity is inclusive

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[108] HABERMAS (2004).
[109] RORTY (1996: 191-192).
[110] SCHWIERTZ, SCHWENKEN (2020: 409).
[111] LAHUSEN (2020); SCHWIERTZ, SCHWENKEN (2020).
[112] FERNÁNDEZ et al. (2020); KOUSIS et al. (2020).
[113] FERNÁNDEZ et al. (2020: 4).
[114] ZSCHACHE (2021: 117).
[115] AGUSTÍN, JØRGENSEN (2018: 2).

toward their beneficiaries, bound by a common sense of belonging to human-kind and a moral obligation to protect their human rights and restore global justice. However, besides unity, there is also a form of – more or less hostile – antagonism or opposition to the exclusive and securitized understanding of European solidarity and the increasingly restrictive migration policies at the European and state level. Such antagonism may be openly expressed, or more inherent depending on the level of political engagement and neutrality of the actors involved – that will be further analyzed in the following chapter, in particular in section 2.

A possible objection to this thesis has been already expressed by some scholars who have wondered whether, despite the efforts to promote an inclusive conception of solidarity aiming at equality between the citizens of the global North and South, a form of universally inclusive solidarity is possible in a post-colonial world fraught of power relations and asymmetries[116]. Schwiertz and Schwenken have concluded that "while a completely inclusive solidarity is barely conceivable, we can nonetheless identify practices and acts of inclusive solidarity that aspire to precisely that"[117].

Thus, our aim in the following research is not to investigate whether inclusive solidarity is possible, but rather how European transnational solidarity actors aiding irregular migrants have aspired to it and attempted to realize it over the last decade.

Conclusion

In conclusion, solidarity is a group-bound social relationship characterized by an internal tension between inclusion and exclusion, between the 'We' involved in the group and 'the Other' excluded by it. Although new forms of solidarity extending beyond the national border have been emerging, these replicate the same tension. In fact, the institutionalized form of solidarity established in the EU has simply moved the national boundary between 'insiders' and 'outsiders' up from the national to the supranational level. In the field of irregular migration, this has translated into a state-centered, exclusionary, and securitized understanding of solidarity. As for the European transnational form of solidarity developed by the civil society, a more inclusive form of solidarity encompassing third-country nationals on behalf of a sense of common belonging to humankind has been promoted, especially in the field of irregular migration, although not always consciously and openly. However, a form of antagonism may still be found in this type of solidarity which opposes the European institutional understanding of solidarity and the sufferings it

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[116] DHAWAN (2013); SCHWIERTZ, SCHWENKEN (2020).
[117] SCHWIERTZ, SCHWENKEN (2020: 414).

determines among the excluded. Moving from the theory to the practice, in the following chapter, our analysis will study the way these practices of inclusive solidarity are realized by the European civil society toward irregular migrants and on their evolution during the latest decade, especially after the 2015 'refugee crisis'.

Chapter 2. The evolution of European transnational solidarity after the 'refugee crisis': main trends

2.1. European transnational solidarity toward irregular migrants: a historical overview

Although early instances of European transnational solidarity can be dated back to the early 1900s, there is a "lack of up-to-date empirical, systematic and cross-national studies"[118] regarding this phenomenon, in particular in fields subject to continuous changes such as migration. This is even more evident for solidarity practices targeted to irregular migrants[119], a grouping that may include several categories of migrants such as refugees, victims of trafficking, or unaccompanied minors who have entered illegally the destination country. Their status often prevents them from accessing the services provided by state and local authorities, turning them into the main beneficiaries of alternative types of solidarity provided by non-traditional actors[120]. One of the major experts of irregular migration, Maurizio Ambrosini, highlighted the central role played by the so-called 'intermediaries' in the management of migration flows: by favoring the irregular migrants' "entrance, their entry into the labor market, accommodation, response to their social needs, and possibly regularization"[121], they provide a sort of 'welfare from below'[122]. Among them there are both people acting for profit, and those driven by moral values and purposes. Our analysis will focus on the latter and, making use of a combination of quantitative and qualitative data retrieved from existing empirical studies on the topic, will investigate the major trends in the evolution of European transnational solidarity towards irregular migrants.

In Europe, a combination of formal and informal actors constitutes the main solidarity providers to irregular migrants. A recent study[123] conducted in eight European countries on transnational solidarity organizations showed that solidarity in the migration field is dominated by formal humanitarian organizations such as NGOs, accounting for over 40% of the total solidarity providers.

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[118] KOUSIS et al. (2020: 35).
[119] The definition of 'irregular migrants' that will be deployed throughout the following research is provided in Chapter 1, p. 15, n. 57.
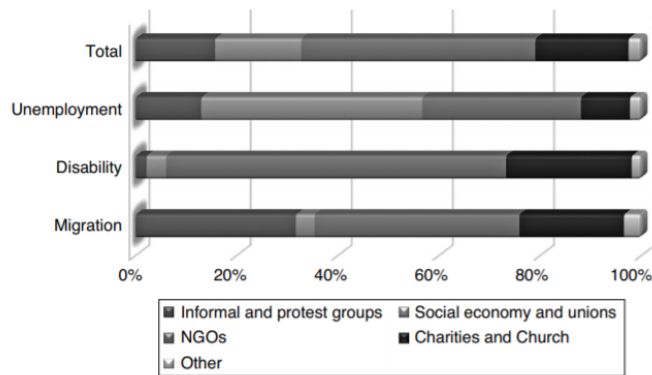[120] AMBROSINI (2016).
[121] AMBROSINI (2017: 1813).
[122] The expression 'welfare from below' was coined by Belloni referring to the people or institutions helping irregular migrants to receive the services they cannot access or providing services themselves.
[123] KOUSIS et al. (2020).

As shown in *Figure 1*, they are followed by informal citizens and protest groups (more than 30%), more traditional actors such as the Church and charities (slightly over 20%), and, finally, by social economy enterprises and unions (5%) that have started to mobilize in more recent times, mostly after the 2015 'refugee crisis'. A similar, multi-faceted picture of European transnational solidarity is mirrored by the studies focusing specifically on solidarity toward irregular migrants. Analyzing grassroots forms of solidarity to irregular migrants in the Netherlands and Italy, Hajer and Ambrosini[124] argued that, besides organized actors, there are many individual citizens unaffiliated to any association. Furthermore, concentrating on the European civil engagement in solidarity to refugees – that are often included among irregular migrants[125] –, Cantat and Feischmidt suggested that among those individuals there are also "groups formed by migrants that have been long-term residents of European countries, or people with older migratory backgrounds who were for some born in Europe and are citizens of EU member states"[126]. Finally, since 2015 several corporate actors, such as companies and large retailer brands like IKEA and Google, have been contributing mainly through donations and financial support[127].

Figure 1. Type of transnational solidarity actor per field. Source: KOUSIS et al. (2020: 60)[128]

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[124] HAJER, AMBROSINI (2020).
[125] As suggested by the definition of 'irregular migrants' by the International Organization for Migration (IOM), refugees may enter the destination country illegally and, in that case, they are included among irregular migrants. In practice, due to the limited number of safe pathways and the lengthy process for accessing them in Europe, many refugees attempt to cross the European borders illegally.
[126] CANTAT, FEISCHMIDT (2019: 385).
[127] CANTAT, FEISCHMIDT (2019: 385).
[128] The following figure was retrieved by a study conducted by Kousis et al. on transnational solidarity organizations active not only in the migration, but also in the unemployment and disability field.

As a matter of fact, there are several possible levels of engagement and forms of support provided to irregular migrants. A crucial differentiation may be done on the temporal level between the assistance provided during their journey, and that provided after the migrants' arrival to Europe. In the first place, transnational solidarity actors may favor the illegal entry or transit of migrants crossing the European borders either by land or by sea, through the so-called 'escape aid'[129]. This practice, as brilliantly described by Schwiertz and Schwenken, may include several activities, such as "sharing information, obtaining documents, offering transport, and organizing (clandestine) border crossings", as well as mobilizing for safe passage through calls for legal pathways for those seeking protection[130]. A clear example of border-crossing facilitation practices is represented by the Search and Rescue (SAR) activities carried out by several NGOs in the Mediterranean – analyzed more in detail in Chapter 3. In the second place, an important role is played by the European civil society upon migrants' arrival to Europe, for instance in meeting their most basic and urgent needs by providing shelter, clothing, and medical services[131].

Among the organizations interviewed in the study conducted by Kousis et al., 84% of the European transnational solidarity organizations working in the field of migration are involved in this type of first-aid activities[132]. Then, over 65% of them are engaged in public sphere dissemination activities aiming at raising awareness through specific campaigns and reports, as well as educational activities. A lower percentage is involved in economy-related activities, such as "job training programs, financial support, products and service provision at low prices, fundraising activities, second-hand shops and bazaars"[133] and culture-related activities (around 40%). Finally, lobbying, and activities against hate crimes and human trafficking appear to have been addressed by respectively 16% and 8% of the organizations interviewed. Thus, the heterogeneity of solidarity activities addressing irregular migrants is clearly shown by Hajer and Ambrosini who distinguish among three types of help[134]. Alongside 'practical help' (e.g., housing, medical care, psychological support) mostly provided by established NGOs or civil society organizations thanks to their higher degree of professionalization, we may find several instances of 'political help' consisting in advocating and lobbying for the cause of irregular

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[129] SCHWIERTZ, SCHWENKEN (2020b).
[130] SCHWIERTZ, SCHWENKEN (2020b: 494).
[131] BAGLIONI, MONTGOMERYABLE (2020); HAJER, AMBROSINI (2020); KANELLOPOULOS et al. (2020); KOUSIS et al. (2020).
[132] KOUSIS et al. (2020: 67).
[133] KOUSIS et al. (2020: 67).
[134] HAJER, AMBROSINI (2020: 205).

migration in local politics. Social centers, activists and squatters' movements are the main providers of political support, aiming at allowing migrants to create their own place in the host society and integrate through language or vocational classes, cultural and educational events. Nonetheless, the scholars argue, the line between these two types of support may be often blurred: many non-traditional actors may aid in both ways, thus creating 'hybrid forms of help'[135].

This complexity and heterogeneity of European transnational solidarity, both in terms of actors and fields of action, may be explained by the historical evolution of the phenomenon. Solidarity in the broader migration field is not a recent phenomenon: as shown by *Figure 2*, it can be dated back to the early 1900s, although increasing waves emerged after the 1950s-60s and escalated more recently, from the 1990s to the present, as a result of the growing global migration flows[136]. In particular, between 2015-18 there was an "outstanding peak" in the emergence of new transnational solidarity actors as a result of the so-called 'refugee crisis'[137]. Analyzing the quantitative data in the evolution of this phenomenon, thus, is crucial to shed a light on its nature: the growing mobilization of European supporters to irregular migrants in the last few years seems to be a response to a specific moment of crisis and thus, closely related to its urgency and intensity.
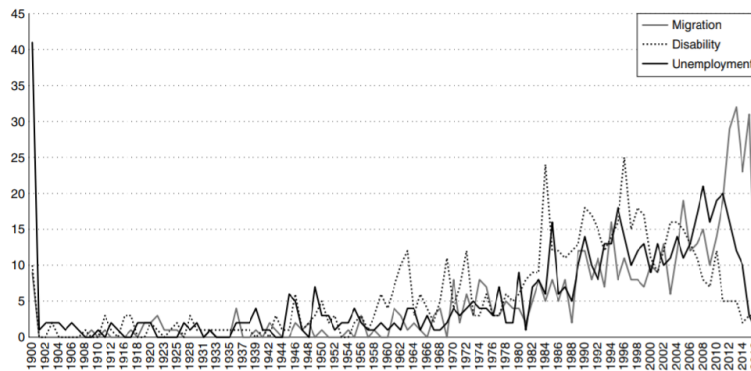
Figure 2. Starting year of transnational solidarity organizations per field. Source: KOUSIS et al. (2020: 62)[138]

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[135] HAJER, AMBROSINI (2020: 208)
[136] KOUSIS et al. (2020: 61).
[137] KOUSIS et al. (2020: 61).
[138] See *supra* at n. 128.

This finding leads us to two important outcomes. On the one hand, as underlined by many scholars, these solidarity practices were established to assist those who were left out of state-provided social safety nets[139]. Therefore, they have been attempting to fill in the vacuum left by state actors and, due to the new influx of refugees to which European states were unprepared, the summer of 2015 represented an important turning point for transnational solidarity to irregular migrants in Europe. As Cantat and Feischmidt argue, the volunteers' and activists' efforts to help people on the move toward Europe have already started to rise significantly with the tightening of the European borders in the mid-1980s. However, what represents the most interesting shift in these grass-roots solidarity initiatives is the rise in their scope and visibility since 2015[140]. On the other hand, as the 'refugee crisis' impacted each European country differently, hitting in particular first-line countries such as Italy and Greece[141], we may expect different trends in terms of increasing transnational solidarity practices during the period considered. Indeed, states most harshly affected by the 2015 crisis, such as Greece and Germany, are those witnessing the growth of new solidarity actors. Conversely, no visible increases may be seen in Denmark and the UK, whereas between 2015 and 2018 the growth of transnational solidarity organizations involved in migration was moderate in Italy and Switzerland[142].

Although national differences may be found in Europe in terms of different starting moments for the organizations acting in support of migrants, the 2015 'refugee crisis' seems to have reduced the traditional divide between the organizational patterns of solidarity practices in the European North and South. In a study involving the civil society organizations in Denmark and Greece, Kanellopoulos et al.[143] showed that, whereas in the past Northern European organizations tended to be more formalized than those established in Southern countries, this divide was shattered by the post-2010 crises, including the 2015 'refugee crisis'. The urgency of the situation brought to the mushrooming of more informal solidarity practices, alongside formalized ones, in the Northern countries mostly hit by the crisis such as Germany. Moreover, these findings were confirmed by Baglioni and Montgomeryable[144], whose study on transnational civil society organizations operating in eight European countries showed that their 'complementary welfare state action' is crucial both in

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[139] KANELLOPOULOS et al. (2020); KOUSIS et al. (2020); PRIES (2019).
[140] CANTAT, FEISCHMIDT (2019: 381).
[141] United Nations High Commissioner for Refugees (UNHCR)'s figures published in December 2015 show that some 1,000,573 people had reached Europe across the Mediterranean, mainly to Greece and Italy, in 2015.
[142] KOUSIS et al. (2020: 61).
[143] KANELLOPOULOS et al. (2020).
[144] BAGLIONI, MONTGOMERY (2020).

countries with less generous welfare regimes such as Italy and Greece and in countries with relatively more generous welfare provisions such as Denmark. Finally, as for the origin of European solidarity actors, there seem to be no relevant differences across countries. Analyzing more broadly the levels of civic solidarity across Europe, Lahusen and Theiss[145] suggested that this is not a mere reflection of institutionalized solidarity, as they could not find more active citizens in generous welfare states such as Denmark, and less in more residual countries such as Greece. Again, European civic solidarity appeared to be more related to the urgency of the situation and the necessity to step up in favor of those largely neglected by institutionalized solidarity. Moreover, solidaristic citizens across Europe are usually inspired by similar ideals, such as the principle of universal social rights that – they argue – should be recognized regardless of national citizenship[146].

Similar principles and experiences shared by transnational solidarity actors across Europe might suggest a good level of transnationalism among organizations supporting irregular migrants in different countries. Indeed, migration solidarity organizations are more transnationally oriented than other organizations involved, for instance, in unemployment and disability[147], even though they "think globally and act locally"[148] and are still mostly of local scope. However, a growing "Europeanisation of solidarity activism"[149] has been emerging in the field of resources. Findings suggest that the role played by EU funding has been increasing in times of crisis, since it is reported to be a more stable and reliable source than national funds subject to austerity policies. Therefore, the competition over scarce national funding led many solidarity actors in the migration field to increasingly turn to the EU.

In conclusion, combining quantitative and qualitative data retrieved from existing empirical studies on European transnational solidarity actors acting both in the broader migration field, and more specifically in support of irregular migrants, our analysis highlights several trends in the evolution of the phenomenon throughout the last decade. Although it had been constantly increasing since the mid-1980s, the 2015 'refugee crisis' seems to have represented a major turning point in the evolution of European transnational solidarity both in quantitative, and qualitative terms. It led, in fact, to the growing importance of new actors alongside more traditional ones. The result is an interesting combination of formal and informal actors mobilized to help irregular migrants arriving in the EU, mainly driven by the urgency of the situation and

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[145] LAHUSEN, THEISS (2019).
[146] LAHUSEN, THEISS (2019 : 455).
[147] KOUSIS et al. (2020: 69).
[148] DELLA PORTA et al. (1999).
[149] KOUSIS et al. (2020: 80).

the necessity to solve the insufficient response from state and EU institutions. Thus, new informal types of solidarity emerged even in those Northern European countries, such as Germany, traditionally dominated by formalized organizations, leading to the decrease of the traditional North-South divide between formalized/non-formalized solidarity. Overall, the phenomenon appeared to be more intense in those countries most severely affected by the crisis, such as Greece and Germany. As for the expansion beyond national borders, European transnational solidarity actors in the migration field are still mostly acting at the local level; we may talk of "soft transnationalism", consisting mainly in "cross-national cooperation between local groups"[150]. Finally, a growing Europeanization of transnational solidarity is the immediate effect of the increasing financial support from the EU, which is more stable and reliable than national funding.

Hence, analyzing the interaction between the civil society and more traditional actors such as the EU and the member states in the management of irregular migration flows is crucial to fully comprehend this phenomenon and its recent evolution. This is the purpose of the following sections.

2.2. Transnational solidarity and the EU after the 'refugee crisis': from Europeanization to politicization

The European civil society in support of irregular migrants and, more often, refugees gained momentum during the "long summer of migration"[151] of 2015, when over one million people fled to Europe by sea, mainly from Syria (50%), Afghanistan (20%), and Iraq (7%)[152]. In addition, 34,000 people ca. arrived crossing the land borders with Turkey[153]. The event was largely framed "as an urgent and global responsibility requiring a strong European asylum policy based on solidarity and fairly shared responsibility among member states"[154]. Nonetheless, as Agustín and Jørgensen[155] argued, what distinguished the summer of 2015 from the previous years was not the sheer number of refugees reaching Europe, but rather the way the migration wave was represented and problematized in the media and political discourse. Indeed,

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[150] KOUSIS et al. (2020: 80).
[151] The expression was used by Hess and Kasparek in *De-and Restabilising Schengen. The European Border Regime After the Summer of Migration.*
[152] CLAYTON, HOLLAND (2015).
[153] CLAYTON, HOLLAND (2015).
[154] PANEBIANCO, FONTANA (2018: 7).
[155] AGUSTÍN, JØRGENSEN (2018).

despite not denying that the year 2015 marked the sharpest rise in sea arrivals to the EU, Pries[156] showed that in relative terms of the population living in the countries of arrival, there was a higher number of refugees arriving for instance to Austria and Germany in the 1990s, to the Canarias in 2006 or Sicily since 2010. Thus, setting the beginning of the 'crisis' in 2015 appears to be inaccurate both because North-South migration flows are not a recent phenomenon, and because most refugees flee to neighboring countries in the global South[157], rather than Europe[158]. Nonetheless, in 2015 the European public attention was largely drawn by the high mediazation and *spectacularization* of the migration flows, as well as the perceived 'loss of control' over the European borders, denounced especially by right-wing and populist parties across Europe[159]. Clearly, the extensive use of the word 'crisis' in the public discourse suggests that the event was framed as an exceptional, rather than structural phenomenon which required the adoption of emergency measures[160]. The urgency of the situation was used to justify the enhancing of border control, as well as the adoption of new measures[161] – such as the externalization and marketization of border control – necessary to manage the 'crisis'[162].

The European institutional response to the emergency and the following restrictive migration policies had a direct impact on the evolution of European transnational solidarity to irregular migrants. Thus, an overview of the measures adopted by Europe to tackle the 'crisis' is crucial to understand how the interaction between them has been evolving during the latest decade.

Due to the growing influx of refugees in the latest months, aiming at addressing the ongoing emergency, in May 2015, the European Commission developed the European Agenda on Migration[163] centered on four pillars. The first pillar, reducing the incentives for irregular migration, was set to be achieved

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[156] PRIES (2019).

[157] As of the time of writing (July 2021), according to the UNHCR, 73% of refugees displaced abroad live in countries neighboring their countries of origin, and 86% are hosted in developing countries. In particular, in 2015 Lebanon, Jordan and Turkey were hosting the greatest bulk of refugees from Syria (UNHCR).

[158] AGUSTÍN, JØRGENSEN (2018: 9).

[159] PRIES (2019: 4).

[160] AGUSTÍN, JØRGENSEN (2018); FONTANARA, AMBROSINI (2018); PRIES (2019).

[161] FONTANARA, AMBROSINI (2018); PUSTERLA (2020).

[162] Like other scholars on the topic, we are critical of the use of 'refugee crisis' which entails an alarmistic connotation and risks stigmatizing migrants and refugees. Henceforth, we deliberately use it in scare quotes.

[163] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 13 May 2015, COM (2015) 240 final, *A European Agenda on Migration*.

through development programs aiming at targeting the root causes of migration, as well as through the joint fight to human trafficking and smuggling of member states and third countries[164]. Moreover, the EU committed to strengthening the readmission agreements with third countries. Overall, these measures contributed to criminalizing migration to Europe[165]. As for the second pillar, border management, over the last few years two growing trends may be recognized: securitization and externalization of the frontiers[166]. This process has been possible by enhancing Frontex, the European agency responsible for coordinating the operational cooperation between member states in the management of the EU external borders. Moreover, in 2015 a special unit within Frontex, the European Border Guard Corps, was created to widen its scope and mandate[167]. The Commission also aimed at setting an EU standard for border management across all member states with external borders, and at improving the monitoring and risk analysis[168]. Furthermore, by strengthening their capacity to manage their borders, the cooperation with third transit countries has been central to reinforce the European border regime[169]. Over the last few years, besides African countries[170], a fundamental role has been played by Turkey. In 2016, indeed, the EU and Turkey signed a Joint Action Plan establishing that Ankara takes any possible measure to prevent new sea or land routes for irregular migration to Europe and that all irregular migrants crossing the border to Greece, and whose asylum application is declared 'inadmissible', will be returned to Turkey[171]. The deal is based on a 1:1 scheme, e.g. "for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU"[172].

Third countries appear again in the key actions to achieve the third pillar of the European Agenda on Migration, creating a strong common asylum policy. Indeed, the EU committed to strengthening Safe-Country-of-Origin provisions of the Asylum Procedure Directive "to support the swift processing of

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[164] Communication COM (2015) 240 final, pp. 9-10.

[165] FEKETE et al. (2019).

[166] AGUSTÍN, JØRGENSEN (2018); MITSILEGAS (2017); RUHRMANN, FITZGERALD (2017).

[167] DI NAPOLI, RUSSO (2018).

[168] Communication COM (2015) 240 final, p. 11.

[169] Communication COM (2015) 240 final, p. 12.

[170] In order to tackle the problem of growing migration flows across the Mediterranean Sea, European and African leaders held an international summit in Valletta in November 2015 to discuss their cooperation to improve the management of migration flows. Moreover, bilateral agreements such as the Memorandum of Understanding signed by Italy and Libya have been crucial tools to seek this goal over the past few years.

[171] European Council, 18 March 2016, *EU–Turkey Statement, 03/2016*.

[172] *EU–Turkey Statement, 03/2016*.

asylum applicants from countries designated as safe"[173]. Moreover, apart from establishing a new monitoring and evaluation system for the Common European Asylum System, in 2015 the Commission proposed the evaluation and possible revision of the Dublin III Regulation in the following year. In EU law, the Dublin system establishes the criteria and mechanism for defining the member state responsible for examining an application for international protection lodged in one of the states by a third-country national or a stateless person[174]. However, since, in case of illegal entry the country responsible for examining the admission is –with very few exceptions[175] – the country of first entry, the system burdens the European states at the external borders such as Cyprus, Greece, Italy, Malta, Spain. Thus, in order to help front-line countries to manage the growing migration flows during 2015, Decisions 2015/1523 and 2015/1601 created two-year temporary schemes of resettlement for 160,000 persons, based on quotas – of respectively 40,000 refugees for Italy and 120,000 for Greece[176]. However, these decisions were highly contested by the Visegrad countries – Czech Republic, Hungary, Poland, Slovakia – that, together with Romania and with the exception of Poland, all voted against it and prevented the establishment of an automatic distribution mechanism based on fixed quotas[177]. Moreover, Hungary and Slovakia asked the Court of Justice of the EU to annul Decision 2015/1601 based on errors of a procedural nature and because it was "neither a suitable response to the migrant crisis nor necessary for that purpose"[178]. In 2017, the Court dismissed their actions entirely[179]. Finally, in April 2020, it ruled that Poland, Hungary and the Czech Republic have failed to fulfil their obligations under EU law[180]. In fact, they had refused to receive the share of asylum seekers re-located from Greece and

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[173] Communication COM (2015) 240 final, p. 13.

[174] Directive of the European Parliament and of the Council, 26 June 2013, OJ L 180 29.6.2013, *on common procedures for granting and withdrawing international protection*.

[175] The criteria are enlisted by articles 4-8 of the Regulation. First, if the applicant has a family member in one of the member states, the latter will be responsible (article 4). Secondly, the responsibility falls on the member state which issued a valid residence permit or a visa. Thirdly, in case of illegal entry, the state of arrival is responsible, unless the applicant has been living for at least six months in another state where the application has already been lodged (article 6). Fourthly, in case of legal entry, the state where the applicant arrived and where the need for a visa is waived, is responsible (article 7). Lastly, in case no member state can be selected on the basis of the above-mentioned criteria, the responsibility falls on the first state where the application is lodged (article 8).

[176] DI NAPOLI, RUSSO (2018: 236).

[177] BARIGAZZI, DE LA BAUME (2015).

[178] Judgment of the Court of Justice of the European Union, 2 April 2020, Joined Cases C-715/17, C-718/17 and C-719/17, *Commission v Poland, Hungary and the Czech Republic*.

[179] Judgment of the Court of Justice of the European Union, 6 September 2017, Joined Cases C-643/15 and C-647/15, *Slovakia and Hungary v Council*.

[180] Judgment of the Court of Justice of the European Union, 2 April 2020, Joined Cases C-715/17, C-718/17 and C-719/17, *Commission v Poland, Hungary and the Czech Republic*.

Italy and allocated to them by the temporary mechanism of resettlement in 2015[181].

Therefore, the 2015 'refugee crisis' enabled the introduction of significantly stricter migration policies aiming at consolidating 'Fortress EU', based on an exclusionary and securitized understanding of solidarity. Meanwhile, those measures revealed the fragility of the internal dimension of European solidarity, leading to a 'race to the bottom' where most member states would be reluctant to share the 'burden' of asylum seekers with the countries of the first arrival, and would rather target refugees in transit with deterrence policies[182]. Over the last five years, several proposals to reform Dublin III Regulation have been discussed by the Commission in an attempt to enhance intergovernmental solidarity and solve the geographic asymmetry within the Union. In September 2020, a New Pact on Migration and Asylum was presented, establishing that a new Asylum and Migration Management Regulation would replace the Dublin system[183]. Recognizing that "no member state should shoulder a disproportionate responsibility and that all member states should contribute to solidarity on a constant basis"[184], the Pact proposed the establishment of a mandatory solidarity mechanism devised to be invoked in events of 'pressure' or 'anticipated pressure'. Once the mechanism has been triggered, the Commission would be responsible for examining the needs of the concerned member state and establishing what measures the other states should take to help. Each member state would be able to freely choose among relocation, return sponsorship, or other operational measures[185]; however, this translates into the possibility for a member state to simply choose other measures like operational support, capacity-building, or cooperation with other non-EU member states for additional support as an alternative to financial assistance or relocation. Therefore, although it is likely to address certain failures of the Dublin III Regulation[186], the Pact "maintains and even reinforces the principle that the first country of arrival is responsible for asylum procedures"[187]. Keeping relocation as an optional choice, it would not relieve

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[181] The Czech Republic relocated only 12 out of the 2,691 refugees assigned, while Hungary and Poland did not accept any, despite the assigned quota of respectively 1,294 and 7,082 applicants. Finally, Slovakia received only 16 out of 902 people it was supposed to relocate. Nonetheless, Slovakia was not referred to the Court for non-compliance of its legal obligations.

[182] AGUSTÍN, JØRGENSEN (2018: 12).

[183] At the time of writing (August 2021), the proposal has not been adopted yet.

[184] Communication COM/2020/609 final.

[185] European Commission (2020). *Factsheet: New Pact on Migration and Asylum*.

[186] As underlined by Görentaş, the Pact introduced some positive novelties, such as the establishment of common principles for granting international protection and the improvement of reception conditions across member states.

[187] ROMEO (2021: 18).

first-line countries from the 'burden' of asylum seekers[188]. On the contrary, it risks establishing a "European asylum system of asymmetric interstate solidarity"[189]. Finally, a simulation on the case of Greece during the 2015 'crisis' suggested that "this Regulation would only worsen the management of the 'crisis' rather than improve it"[190].

Henceforth, the inability to efficiently reform Dublin III Regulation and the insufficient burden-sharing mechanisms across Europe have been constantly denounced by scholars and activists. Reviving the term 'crisis', they talked about a "crisis of (institutionalized) solidarity"[191] and "a crisis of democracy"[192]. Moreover, they have been criticizing the limited number of legal pathways to Europe, despite the fourth pillar in the 2015 European Agenda on Migration, setting a new policy on legal migration. This, they argue, leaves asylum seekers and migrants from the global South with no alternative than illegally crossing the borders risking their lives[193]. Finally, NGOs and activists offering humanitarian assistance to irregular migrants have joined well-esteemed institutions – like the UNHCR and the Council of Europe's Commissioner for Human Rights – in harshly criticizing the European cooperation with third countries, especially Turkey[194], in the management of migration flows. Ankara has been repeatedly condemned for its violations of human rights that led Amnesty International to define the EU-Turkey Statement as a "historic blow to rights"[195].

Hence, the open condemnation of European migration policy may suggest that often the civil society supporting irregular migrants has been not solely driven by the need to fill in the vacuum left by state institutions during the summer of 2015 and afterward. As demonstrated by empirical evidence, their engagement was also frequently perceived as a means to oppose migrants' social exclusion caused by restrictive migration policies within the broader process of migration criminalization and securitization[196]. Furthermore, despite admitting the existence of several forms of solidarity and ways to relate to refugees arriving in Europe, Agustín and Jørgensen argue that "all of them share the common interest in changing the established and exclusionary institutions and

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[188] CARRERA (2021); ROMEO (2021).
[189] CARRERA (2021: 18).
[190] ROMEO (2021: 25).
[191] The expression "crisis of solidarity" was used also in 2016 by Ban Ki-Moon, former Secretary-General at the UN, in a call to world political leaders for "a global sharing of responsibility".
[192] CHRISTOPOULOS (2016); KNODT, TEWS (2017); AGUSTÍN, JØRGENSEN (2018).
[193] ECRE (2017).
[194] RUHRMANN, FITZGERALD (2017).
[195] AMNESTY INTERNATIONAL (2016).
[196] SANDRI (2018); CANTAT, FEISCHMIDT (2019); KARAKAYALI (2019).

policies"[197]. This seems to confirm our hypothesis – postulated in Chapter 1 – that transnational solidarity actors, promoting a more inclusive concept of solidarity, are opposing the exclusive understanding of solidarity established by state institutions.

Moreover, analyzing European transnational solidarity toward irregular migrants from this angle, a new trend can be recognized in its recent evolution, e.g. the increasing politicization. Besides humanitarian concerns, political beliefs appear to have played an important role in European civic engagement in support of irregular migrants over the last decade. Underlining the importance of political orientations in this form of transnational solidarity, Maggini and Fernández argued that "solidarity toward refugees entails political commitment to libertarian values as opposed to authoritarian stances"[198]. Linking charity and politics in the study of civic assistance to refugees, Feischmidt and Zakariás[199] identified a process of 'politization of charity', when altruistic and humanitarian practices increase the awareness of political responsibilities. This is coupled with the '*charitization* of politics', whereby "certain actions understood previously as apolitical are enacted by social actors in a political way"[200]. In the latter case, charity becomes "a modality of revolt and a means of acting against politics"[201]. Both processes, according to their research, are closely connected to the escalating hegemony of securitization in the post-2015-crisis Hungarian political landscape.

Nonetheless, an objection may be raised here: claiming neutrality and acting on behalf of humankind, many solidarity actors are not driven by political reasons. Refusing any affiliation to political activism, many among the newly emerged supporters justify their engagement with humanitarian concerns[202]. However, mentioning a highly debated practice such as SAR missions in the Mediterranean as an instance, Hajer and Ambrosini suggest that the emphasis on the humanitarian and apolitical character of their activity may be often used as "a response to being accused of political activism"[203]. In fact, nowadays, there seems to be no clear-cut line of division between political and apolitical action in support of irregular migrants as "the increasing confusion between the humanitarian and the political is a structural feature of contemporary biopolitics"[204]. This is clearly shown by the above-mentioned concept of 'hybrid

[197] AGUSTÍN, JØRGENSEN (2018: 42).
[198] MAGGINI, FERNANDEZ (2019: 488).
[199] FEISCHMIDT, ZAKARIAS (2019).
[200] CANTAT, FEISCHMIDT (2019: 392-393).
[201] FEISCHMIDT, ZAKARIAS (2019: 89).
[202] FLEISCHMANN, STEINHILPER (2017).
[203] HAJER, AMBROSINI (2020: 203).
[204] FASSIN (2005: 382).

form of help', as well as by the 'direct social action' introduced by Zamponi. By the latter term, we mean those 'in-between' actions "that do not primarily focus upon claiming something from the state or other power-holders but that instead focus upon directly transforming some specific aspects of society by means of the action itself"[205]. Despite being framed and often perceived as purely humanitarian and apolitical, Zamponi argues, direct social actions such as solidarity practices to irregular migrants are far from being isolated by political claim-making. Indeed, as Hajer and Ambrosini suggest, recalling Fassin's 'politics of life'[206], "humanitarian help qualifies as political as it attributes value to the human lives the existing order does not deem valuable enough to help"[207].

In conclusion, regardless of any political claims, seeking to assist those left out by institutional welfare in a framework of growing securitization and criminalization, transnational solidarity toward irregular migrants represents an alternative to the European official approach to irregular migration. Eventually, providing an alternative to the official institutional assistance inherently translates into opposing that way of managing irregular migration flows and, thus, into political action. Therefore, the most defining feature in the changing interaction between the European civil society and the EU in the migration field, in recent times, seems to be an interesting combination of cooperation and conflict with strong political nuances. This ambiguity is even more evident in the interaction between European solidarity actors and the national governments of the states where they operate on which the following section will concentrate.

2.3. Transnational solidarity and the European national governments after the 'refugee crisis': from cooperation to criminalization

Despite the transnational nature of grassroots forms of solidarity to irregular migrants, these practices have been shaped within and in relation to the nation-state which has been directly influencing their *modus operandi*, underlying principles, and operational limits[208]. In fact, the rise of European transnational solidarity was – as demonstrated above – the direct effect of the European countries' unpreparedness and mismanagement in the 2015 'crisis'; "civil

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[205] ZAMPONI (2017: 1).
[206] FASSIN (2017).
[207] HAJER, AMBROSINI (2020: 203).
[208] SHUTES, ISHKANIAN (2021).

society stood in for the 'organized non-responsibility' of almost all EU member states"[209]. Since then, private humanitarian actors have been increasingly replacing the national governments as service providers to the marginalized groups[210]. At the same time, as in the case of the European institutions, an ambiguous relationship has been developing between the civil society and the official national authorities in the management of irregular migration flows, ranging from cooperation to opposition[211]. Whereas in the previous years, national governments had been more willing to cooperate with humanitarian actors, the growing securitized and exclusionary approach to migration following the 'crisis' changed consistently the interaction between public and non-public actors[212]. Further, although aware of the need to collaborate with the states on whose territory they were acting, over the last few years, transnational solidarity actors have been increasingly eager to frame their help to irregular migrants as a form of political action[213]. Condemning the governments' inactiveness and retreat, many supporters have criticized the nationalistic approach to the 'crisis' based on the exclusive understanding of solidarity[214]. More in general, by simply assisting irregular migrants left out by national welfare, they challenged the boundary between citizens and non-citizens in a two-fold attempt to expand social rights beyond the national community and to uphold a 'we-ness', a new form of being togetherness based on support and mutual help[215]. Regardless of their claims, the political implications inherent in similar simple acts of solidarity are clear.

Moreover, the growing politicization of these forms of solidarity may be indirectly confirmed by the new, criminalizing and illegalizing approach increasingly used by European national governments toward them[216]. As brilliantly explained by Escarcena, the so-called *solidarity crime* is "a term used to refer to the judicial prosecution of volunteers, activists and members of the civil society who exercise an activity of selfless assistance and are accused of a crime for facilitating the entry, transit or stay of irregular migrants"[217]. More broadly, it has also been used to define the oppression of any humanitarian activities or forms of support for migrants. This process is of crucial importance to understand the shift in the interaction between transnational

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[209] PRIES (2019: 2).
[210] AMBROSINI (2016).
[211] CANTAT, FEISCHMIDT (2019).
[212] FEKETE et al. (2019); PUSTERLA (2020); REGGIARDO (2019).
[213] HAJER, AMBROSINI (2020).
[214] AGUSTÍN, JØRGENSEN (2018).
[215] AGUSTÍN, JØRGENSEN (2018); CANTAT, FEISCHMIDT (2019).
[216] HAJER, AMBROSINI (2020).
[217] ESCARCENA (2021: 5243).

solidarity actors and state institutions over the last few years and, therefore, worth our close attention.

According to the data gathered by the Research Social Platform on Migration and Asylum (ReSOMA)[218], in fact, between 2015 and the first quarter of 2019 there were at least 49 cases of criminal prosecution and investigation in 11 European countries. As shown in *Figure 3*, the number of cases exponentially increased after 2015 when only 8 cases were taking place and the peak of cases was recorded in 2018[219]. In fact, "the increase in the number of cases has continued despite the nearly 90% decrease of irregular arrivals in the EU in 2018"[220]. Moreover, according to their latest report[221], as of December 2019, 171 individuals were being criminalized across 13 member states. The targets of such cases were mainly human rights defenders, volunteers, crew members of boats involved in SAR missions, as well as ordinary citizens, family members, mayors, and religious leaders. Indeed, as a direct consequence of the growing criminalization of migration, over the last decade, the basket of prosecutable crimes has been expanding, including also bona fide providers beyond volunteers and humanitarian organizations[222].
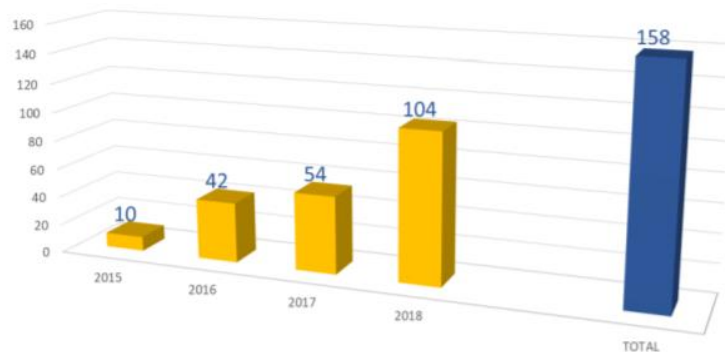
Figure 3. Number of individuals under ongoing investigation (2015-18). Source: VOSYLIŪTÉ & CONTE (2019b)

Carrera et al.[223] have proposed to deploy the term *solidarity crime* in relation to the broader concept of *policing humanitarianism* referring to the whole set

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[218] VOSYLIŪTÉ, CONTE (2019b).

[219] The report enlists the legal proceedings ongoing during each year of the period considered. However, it does not mention the year when the offence under investigation took place.

[220] VOSYLIŪTÉ, CONTE (2019b: 31).

[221] RESOMA (2020).

[222] ESCARCENA (2021); FEKETE et al. (2019).

[223] CARRERA et al. (2018a).

of practices and policies used by the EU and member states to limit support to irregular migrants as part of their broader anti-human smuggling policies. As a matter of fact, they argue, there are three main ways to police humanitarian actors: harassment, disciplining and criminalization. First, humanitarian actors have been progressively becoming the object of suspicion and intimidation through open verbal and physical attacks in political and media discourses. As recorded by a report elaborated by the Expert Council on NGO Law in the Council of Europe (CoE)[224], NGOs have been frequently and unjustifiably accused to be in collusion with human smugglers and traffickers by many European politicians. This had a negative impact on the reputation of all the human rights defenders in the field of migration. Moreover, Okafor[225] argues, another relevant obstacle is represented by the mass mobilization and group confrontation organized by certain extreme and far-right segments of the society aiming at limiting the humanitarian pro-refugee initiatives. Second, national institutions have been attempting to discipline the civil society through additional administrative and regulatory measures threatening their neutrality and impartiality[226], restraining their access to certain locations[227], and requiring higher levels of financial accountability and transparency regarding funding sources[228]. Finally, over the last decade, citizens and NGOs providing humanitarian aid to migrants have increasingly been involved in criminal prosecutions based on grounds of facilitating the entry, transit, and residence of migrants in the member states, e.g. formal criminalization[229]. Although only a minority of those cases ended by imposing punitive sanctions upon them, the initiation of criminal proceedings and the sole prospect of criminal sanctions have served to discourage solidarity toward irregular migrants[230].

Deterring these forms of solidarity was, indeed, part of the broader policies implemented by state institutions to discourage irregular migration through criminal tools[231]. The criminalization of solidarity may, thus, be ascribed to

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[224] CONF/EXP(2019)1.

[225] OKAFOR (2020).

[226] A clear example is the request to NGOs involved in SAR rescue to sign a Code of Conduct including provisions allowing military and police escorts to board their boats (Italy), or the request to humanitarian and government service providers to report irregular migrants to the authorities when they attempt to access food, medical care, shelter (Greece, United Kingdom) (CONF/EXP(2019)1).

[227] NGOs are usually prevented from entering certain hotspots, transit zones, detention or reception centers run by the state or intergovernmental organizations (CONF/EXP(2019)1).

[228] CARRERA et al. (2018a).

[229] CARRERA et al. (2018a).

[230] CARRERA et al. (2018a); CONF/EXP(2019)1; FEKETE et al. (2019).

[231] ALLSOPP (2012); FEKETE et al. (2019); PROVERA (2015); PUSTERLA (2019).

other practices such as the criminalization of migration, or *crimmigration*, and the so-called "European war on smuggling". Moreover, analyzing the crime of solidarity in Italy, Pusterla[232] explained it through the post-2015 growing securitization of border management in Europe; thanks to this phenomenon, he argues, the criminalization of solidarity moved from the political to the legal dimension. This "removes any possible (e.g. political or moral) distance between smugglers and citizens who help migrants in transit"[233]. As a matter of fact, the process of criminalization does not take place in a legal vacuum; it had been made possible and favored by the discretion left by the EU Facilitation Directive[234] to the member states[235]. Published in 2002, it represents the backbone of European policies tackling migrant smuggling and criminalizing the facilitation of unauthorized entry, transit, and residence. Contrarily to the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air that classifies as criminal smuggling only those activities pursued "in order to obtain, directly or indirectly, a financial or other material benefit"[236], the EU Facilitation Directive does not include the financial and material benefit in its definition of migrant smuggling. This involves "any person who intentionally assists a person who is not a national of a member state to enter, or transit across, the territory of a member state in breach of the laws of the State concerned on the entry or transit of aliens"[237]. It is recognized as a crime under EU law, but profit is envisioned only as an aggravating circumstance. Therefore, the EU leaves member states the discretionary possibility to exempt an individual from criminalization in situations "where the aim of the behaviour is to provide humanitarian assistance to the person concerned"[238]. Nonetheless, only seven member states appear to have adopted the so-called 'humanitarian clause', and empirical evidence shows that cases of criminalization of solidarity may be still found in five of them[239]. Hence, "in the construction of the European border regime the Facilitation Directive has become a cornerstone through which to impose criminal sanctions on civil society actors"[240]. In 2015, Provera[241] conducted a comparative analysis of the laws surrounding the criminalization of solidarity to irregular migrants in six European states –

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[232] PUSTERLA (2021).
[233] PUSTERLA (2021: 89).
[234] Council Directive, 28 November 2002, 2002/90/EC *defining the facilitation of unauthorised entry, transit and residence* (the Facilitation Directive).
[235] VOSYLIŪTÉ (2019a).
[236] United Nations, 2000, *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.*
[237] Facilitation Directive, art. 1(1a).
[238] Facilitation Directive, art. 1(2).
[239] CARRERA et al. (2018b: 31).
[240] ESCARCENA (2021: 5244).
[241] PROVERA (2015).

France, Germany, Italy, the Netherlands, Spain, the UK. He found out that both assisting irregular entry, and assisting irregular stay are punishable in all those countries; both fines and custodial sentences are contemplated. Moreover, the employment of irregular migrants – prohibited by the EU Employer Sanctions Directive – is sanctioned with either severe fines, or prison sentences in the analyzed countries[242]. In some European member states, if undocumented migrants attempt to access certain social or health services, as well as education, the service providers are required to report them to the authorities[243]. Finally, across Europe, new charges have been recently dropped[244], for instance against those taking part in hunger strikes in support of irregular migrants or in anti-deportation protests, those exposing conditions within detention centers or defending the rights of detainees [245].

Although the aim pursued by these laws, i.e. combating migrant smuggling, is legitimate, scholars seem to agree on their vagueness and lack of legal certainty. As demonstrated by the report elaborated by the Expert Council on NGO Law in the CoE, the restrictions placed on the activities of NGOs and, thus, on human rights such as the freedom of association are neither necessary nor proportionate. The same aim may be achieved through "more effective and less intrusive routes"[246]. Moreover, Provera demonstrated that in many member states, criminal law is used in the field of migration offenses selectively and instrumentally to supplement administrative measures, whereby these are unable to achieve the desired outcome. This threatens their institutional legitimacy. The pragmatic use of criminal law was confirmed also by Escarcena[247], according to whom the criminalization of solidarity and, more specifically, judicial prosecutions across Europe serve a purely political purpose, disrupting the dynamics of social interaction between migrants and civil society. Indeed, these are part of a wider strategy, the "politics of exhaustions" consisting in creating a considerable emotional burden for the prosecuted and the civil society movements to which they are associated. Although many of them would be eventually acquitted, the stigma of criminalization would serve to discourage their work, undermine their legitimacy before the public and spectacularize the state migration control.

In conclusion, due to the growing politicization of the civil society supporting irregular migrants and the new securitized approach deployed by state

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[242] PROVERA (2015).
[243] FRA (2011).
[244] FEKETE et al. (2019).
[245] A full list of each European state's legislation is provided in the annex to the EU Agency for Fundamental Rights Report (FRA 2014, Annex:1-29).
[246] CONF/EXP(2019)1, p. 40.
[247] ESCARCENA (2021).

institutions to tackle the 'migration crisis', since 2015 the relationship between states and transnational solidarity actors has become more politically nuanced and conflictual. Although transnational solidarity actors have been habitually replacing the state in many of its social functions, they have been increasingly subject to criminalization. This process consists of harassment in the political and media discourse, various administrative sanctions, and judicial prosecutions. Whether these measures are sufficient to substantially diminish and extinguish grassroots forms of solidarity to irregular migrants across Europe is an open question we will attempt to address in the following chapter. Our analysis will specifically focus on one of the most debated and criminalized humanitarian activities, SAR missions in the Mediterranean, where the line between humanitarians and smugglers seems to be most blurred. Studying their evolution in the latest decade and the interaction with the EU and state institutions might, indeed, help us assess the future of European transnational solidarity to irregular migrants.

Conclusion

Despite its ancient roots, transnational solidarity to irregular migrants across Europe has been growing in importance and scope since the 2015 'refugee crisis', turning into a significantly more heterogeneous and complex phenomenon. The interaction with more traditional actors such as European and state institutions has been further complicated by the emergency, moving from a cooperative to a more conflictual stance. Similar forms of solidarity paved the way for a new political, contentious dimension of humanitarianism, raising many open issues for the future. Nonetheless, a look back may help us shed a light on the way forward, as our analysis will attempt to do in the next chapter.

Chapter 3. The evolution of NGOs' SAR activities in the Mediterranean and the way forward

3.1. Legal framework governing migration at sea: SAR NGOs between international and European law

Due to the growing influx of irregular migrants crossing the Mediterranean on their way to Europe and the rising death toll between 2014-15[248] many transnational solidarity actors have come to the fore in a new field of action, Search and Rescue (SAR) operations[249]. Being traditionally an exclusive stage for sovereign states, over the past decade SAR regions turned out to be a new complex field of interaction between state and non-state actors, especially non-governmental organizations (NGOs). Furthermore, triggering public attention and scholarly interest, this phenomenon has been registered by a significant amount of data which allows us a more in-depth analysis of its evolution. Studying the role played by the NGOs in SAR activities and their interaction with the state institutions throughout the last decade might help us recognize certain trends that are likely to characterize European transnational solidarity in the upcoming future. This is the aim of this chapter.

According to the amended version of the 1979 International Convention on maritime SAR[250], search is "an operation, normally co-ordinated by a rescue coordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress"[251], while by rescue we mean "an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety"[252]. Although SAR activities may be carried out in various places, the sea has been the main theatre of rescuing operations conducted to help migrants in distress. Indeed, as Hugo Grotius suggested in his 1609 treaty *Mare Liberum*, the high seas are the truly international space regulated by no national jurisdiction, where the vessels of all nations are granted the right of passage, trade, and exploitation[253]. Nonetheless, the sea is not devoid of international regulation: all states have an obligation

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[248] According to the International Organization for Migration (IOM), the migrant deaths in the Mediterranean accounted for 1,643 in 2014, 2,361 in 2016 and 3,968 in 2017.

[249] IRRERA (2016); CUSUMANO, VILLA (2021a); CUSUMANO (2021b).

[250] International Maritime Organization (IMO), 20 May 2004, Resolution MSC.155(78), *Adoption of Amendments to the International Convention on Maritime Search and Rescue, 1979.*

[251] *Amendments to the International Convention on Maritime Search and Rescue*, art. 1.3(1).

[252] *Amendments to the International Convention on Maritime Search and Rescue*, art. 1.3(2).

[253] AALBERTS, GAMMELTOFT-HANSEN (2014: 440); MAINWARING, DEBONO (2020: 1032).

to respect "the law of hospitality which is of the highest sanctity"[254]. This translates into the obligation to save lives at sea[255]. This duty stems from international law and is considered a norm of customary international law applying to all states[256]. The regime governing the sea, though, has been mostly shaped in the mid-20th century, based on the Westphalian order and largely overlooking non-state actors such as NGOs that would become central players in the following century[257]. Thus, NGOs involved in SAR in the Mediterranean are operating in a complex field where the clashes between sovereign states are far from rare. Further, the international and European legal framework leaves several open issues often leading to conflicts between different sovereign states[258], as well as a high degree of confrontation between states and NGOs[259]. An overview of the international and European legal framework governing migration at sea, therefore, is crucial to understand the complex interaction of NGOs and states in the Mediterranean and the way it might evolve afterwards.

The maritime regime has been monitored by the International Maritime Organization (IMO) of the UN which advises and supports the states on matters regarding the application and implementation of the various international treaties concerning sea and refugee law. In fact, several international treaties are codifying the duty to help people in distress at sea, namely the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention)[260], the 1979 International Convention on Maritime Search and Rescue (SAR Convention), and the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[261].

Perceived as the main treaty on the safety and security of ships, the SOLAS Convention[262] comprises in Chapter V a set of provisions for rescue boats, including the obligation for a shipmaster, upon being informed about persons in distress at sea, to "proceed with all speed to their assistance"[263]. The

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[254] GROTIUS (1916: 1).
[255] AALBERTS, GAMMELTOFT-HANSEN (2014: 442).
[256] WILLHEIM (2002: 163-5).
[257] MARTIN (2021: 1).
[258] AALBERTS, GAMMELTOFT-HANSEN (2014: 445).
[259] IRRERA (2016); CUTTITTA (2018); CUSUMANO et al. (2021).
[260] UN General Assembly, 10 December 1982, *United Nations Convention on the Law of the Sea*.
[261] International Maritime Organization (IMO), 1 November 1974, 1184 UNTS 3, *International Convention for the Safety of Life At Sea*.
[262] First adopted in London in 1914, the SOLAS Convention was amended in four more versions in 1929, 1948, 1960, and finally in 1974. This last version has been in force since 25 May 1980. Today, it counts 146 contracting states.
[263] *International Convention for the Safety of Life At Sea,* ch. V, regulation 33.

UNCLOS[264] reiterates this duty in Article 98(1), highlighting that it is the responsibility of every state to require the master of a ship flying its flag to assist people found in danger of being lost or in distress. Moreover, Article 98(2) imposes a positive duty on all coastal states to "promote the establishment, operation and maintenance of an adequate and effective search and rescue service and […] to cooperate with neighbouring states for this purpose"[265]. Furthermore, the UNCLOS established a subdivision of the maritime space in different zones, each of which is subject to a specific legal regime. Beyond the internal waters, the coastal state holds full sovereignty in the territorial sea which can extend up to 12 nautical miles[266]. Additionally, the state can exercise some political functions, including immigration measures, in the contiguous zone – extending between 12 and 24 nautical miles –[267] and has exclusive sovereignty in its economic zone – extending up to 200 nautical miles[268]. Finally, we may find the high seas, waters located beyond the state sovereignty, and any national jurisdiction where international law applies[269]. Nowadays, the jurisdictional status of the Mediterranean Sea is interesting, since several coastal countries have not proclaimed their sovereignty and almost half of the Mediterranean waters remain high seas[270].

Another important treaty governing migration at sea at the international level is the 1979 SAR Convention[271]. It states that the shipmaster has the obligation to render assistance to people in distress at sea "regardless of the nationality or status of such a person or the circumstances in which that person is found"[272]. Moreover, the SAR Convention aimed at creating a coordination system of SAR operations at the international level. For this purpose, Chapter II established that the global maritime space would be divided into different SAR regions, in each of which a specific country is responsible for conducting SAR activities. The Mediterranean states discussed their responsibilities in the area during the IMO's Conference held in Valencia in 1997 when a General Agreement on a Provisional SAR Plan was adopted[273]. However, some issues

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[264] The UNCLOS was signed in Montego Bay on 10 December 1982 and has been in force since 16 November 1994. Today it counts 168 state parties, including the EU which signed and ratified it.

[265] *United Nations Convention on the Law of the Sea,* art. 98(2).

[266] *United Nations Convention on the Law of the Sea*, art. 3.

[267] *United Nations Convention on the Law of the Sea*, art. 33.

[268] *United Nations Convention on the Law of the Sea*, art. 55.

[269] *United Nations Convention on the Law of the Sea*, art. 88.

[270] DE VIVERO, MATEOS (2010: 13).

[271] The SAR Convention was signed in Hamburg on 27 April 1979 and entered into force on 22 June 1985. Today, it counts 112 state parties.

[272] *Amendments to the International Convention on Maritime Search and Rescue, 1979*, ch. II, para. 2.1.10.

[273] DI FILIPPO (2013: 61).

remained open such as the overlapping SAR zones between Italy, Libya and Malta[274]. On this occasion, a Maritime Rescue Coordination Centre (MRCC) was also established in each Mediterranean coastal state to monitor and coordinate the rescue operations together with the Coast Guard. Thus, the responsibility of the naval security forces and coast guards in coastal states is crucial[275]; however, the SAR Convention states that the obligation to rescue may be passed over another state party in case of necessity. Indeed,

> "unless otherwise agreed between the States concerned, a Party should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory of rescue units of other Parties solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties"[276].

Furthermore, to avoid clashes between different sovereign states, the SAR Convention was amended in 2004 to better define the duty of each state in its SAR region. The Amendments established that, after rescuing shipwrecked people in the SAR region of its competence, the state is also required to find a place of safety to disembark them, i.e. a harbor on its territory. Alternatively, it can cooperate with other states to find a harbor on their territory[277]. Nonetheless, as the IMO Facilitation Committee clarified later, "if disembarkation from the rescuing ship cannot be arranged swiftly elsewhere, the Government responsible for the SAR area should accept the disembarkation of the persons rescued"[278]. Thus, the primary responsibility rests upon the coastal state in whose SAR region the people have been rescued. In cases of clashes between the flagship state and the state in charge of the SAR zone where the people have been rescued, the 2004 Amendments seem to provide a good normative argument to the former state to shift the responsibility of disembarkation over the latter[279]. For this reason, Malta – whose SAR zone extends up to 250,000 square kilometers despite the small size – refused to accept the amendments considered a disproportionate disembarkation responsibility for first-line countries[280].

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[274] DI FILIPPO (2013: 62).
[275] KLEPP (2011: 544).
[276] *Amendments to the International Convention on Maritime Search and Rescue, 1979*, ch. III, para. 3.1.2.
[277] KLEPP (2011: 548).
[278] International Maritime Organization (IMO), 22 January 2009, FAL.3/Circ.194, *Principles Relating to the Administrative Procedures for Disembarking Persons Rescued at Sea*.
[279] AALBERTS, GAMMELTOFT-HANSEN (2014: 451).
[280] AALBERTS, GAMMELTOFT-HANSEN (2014: 451).

Figure 4. Search and Rescue Regions (SRR) in the Mediterranean according to the 2004 Amendments[281]

Finally, a SAR mission is considered ended only once the people rescued have been disembarked in a place of safety that – as explained by the IMO Guidelines on the Treatment of Persons Rescued at Sea[282] – is "a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met"[283]. If people on board are in potential need of asylum protection, they should not be disembarked in the territory of their origin country or another country where they would face the risk of persecution, torture, or other serious harm. As a matter of fact, here the law of the sea encounters the refugee law, incorporating the principle of non-refoulment of the 1951 Convention Relating to the Status of Refugees[284]. Enshrined in Article 33(1) of this Convention, the principle of non-refoulment establishes that:

> "no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion"[285].

Moreover, in case of potential asylum seekers among the people rescued, the shipmaster is required to inform both the next Rescue Coordination Center

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[281] AALBERTS, GAMMELTOFT-HANSEN (2014: 452).
[282] International Maritime Organization (IMO), 20 May 2004, Resolution MSC.167(78), *Guidelines on the Treatment of Persons Rescued At Sea*.
[283] *Guidelines on the Treatment of Persons Rescued At Sea*, para. 6.12.
[284] UN General Assembly, 28 July 1951, *Convention Relating to the Status of Refugees*.
[285] *Convention Relating to the Status of Refugees*, art. 33(1).

responsible for SAR actions and the United Nations High Commissioner for Refugees (UNHCR) for further support[286].

The international legal framework regulating SAR activities applies fully to the EU member states. Within the EU law, the right to life is protected by Article 2 of the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR). This fundamental obligation cannot be circumvented under any circumstances, including the enforcement of border control[287]. Further, in 2012, in *Hirsi v. Italy*[288] the European Court of Human Rights (ECtHR) extended the protection of migrants' human rights on the high seas. Italy was condemned for having returned two hundred Eritrean and Somalian asylum seekers rescued in international waters to Libya in 2009, without examining their individual circumstances[289]. Since the migrant boat was under the control of Italian agents, the Court stated, the people were under the "exclusive *de jure* and *de facto* control of the Italian authorities"[290]. By returning them to Tripoli and exposing them to the risk of being subjected to ill-treatment and repatriated, Italy had breached Article 3 of the ECHR which prohibits torture and inhuman or degrading treatment or punishment[291]. Thus, *Hirsi v. Italy* confirmed that the application of the non-refoulment principle and international law is not required only in the territory of the sovereign state, but it remains mandatory in international waters[292]. Finally, EU law combined the obligation to rescue and find a place of safety for people in distress at sea with the principle of non-refoulment in the Sea Borders Regulation[293], adopted in 2014. This forbids the disembarkation of rescued people in a country where the individual may face a risk of torture or ill-treatment. Most importantly, it applies regardless of any request for asylum by the individual[294].

Analyzing the evolution of European SAR provision in the last decade, we may find some major trends to a certain extent departing from the legal framework regulating SAR in the Mediterranean. First, although the Council declared that "search and rescue at sea is a competence of the member states

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[286] UNHCR, IOM (2006: 10).

[287] FRA (2021).

[288] Judgement of the European Court of Human Rights, 23 February 2012, Application no 27765/09, *Hirsi Jamaa and Others v Italy*.

[289] AMNESTY INTERNATIONAL (2012).

[290] *Hirsi v. Italy*, paras. 77, 81.

[291] KOKA, VESHI (2019 : 39).

[292] AMNESTY INTERNATIONAL (2012).

[293] Regulation No 656/2014 of the European Parliament and of the Council, 15 May 2014, *OJ L 189, 27.6.2014, establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*.

[294] FRA (2021).

which they exercise in the framework of international conventions"[295] since 2014 the EU has been playing an increasingly central role in the management of SAR due to its perceived impact on border control[296]. In 2014, the Italian rescue Operation Mare Nostrum (OMN) was closed[297] and replaced by Operation Triton, monitored by the European Border and Coast Guard Agency, Frontex. Although its role was to "assist member states to fulfil their obligations under international maritime law to render assistance to persons in distress"[298], Frontex was not aimed at replacing Italian obligations. Nonetheless, the former was given the responsibility to plan, initiate and strategically evaluate joint operations, whereas the states would be in charge of practically carrying out border control and translating the European ambitions into practice[299]. More importantly, Triton marked a turning point for the European management of SAR operations: unlike OMN, it primarily focused on border management, rather than rescuing people in distress. The following EU naval, Frontex and member state operations in the Mediterranean have operationally merged SAR with security issues, with the latter prevailing over the former. Their primary focus is on "border control, disrupting smuggling networks, and most recently, enforcing an arms embargo on Libya, rather than SAR provision"[300]. The growing militarization and securitization of European SAR operations clearly represented by Triton can be seen as part of the broader securitization of the European frontiers discussed in the previous chapter[301].

Moreover, analyzing the SAR missions recently carried out by European states, we may recognize another tendency in European border control, namely the externalization of borders. Cuttitta referred to it as the 'delocalization of humanitarian border', consisting in gradually moving the activities of border control beyond the official borders of a state into the territories of countries of transit or origin, or international waters[302]. This strategy has been often

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[295] Council of the EU, 10 October 2013, Doc 14612/13, *Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union.*

[296] GHEZELBASH et al. (2018: 323).

[297] Launched in 2013, the humanitarian/military operation Mare Nostrum was closed after one year due to the lack of financial support from some European member states that accused it to be a "pull-factor" for migrant smugglers.

[298] European Commission, 7 October 2014, Memo, *Frontex Joint Operation "Triton" – Concerted Efforts to Manage Migration in the Central Mediterranean.*

[299] GHEZELBASH et al. (2018: 325).

[300] GORDON, LARSEN (2020: 3).

[301] BASARAN (2014); CUTTITTA (2018); GHEZELBASH et al. (2018); SCHACK, WITCHER (2021).

[302] CUTTITTA (2018: 785).

pursued by European states by interpreting the international legal framework to their advantage[303]. As Aalberts and Gammelftoft-Hansen suggested, by delimiting the SAR region of each state and geographically defining states' rescue obligations, the 2004 Amendments to the SAR Convention reterritorialized the high seas. However, despite attempting to better divide the sovereign states' responsibility in the Mediterranean, those amendments resulted in "an increase of possibilities to disclaim sovereign responsibility"[304]. Indeed, according to EU law, when people in distress are intercepted in the contiguous zone of an EU member state, they should be disembarked within that coastal state[305]. When they are intercepted in the high seas, the disembarkation must happen in the territory of the third country of the ship's departure by the principle of non-refoulment and respect for fundamental rights[306]. Therefore, since both the Sea Border Regulation and the 2004 Amendments leave the primary responsibility on the coastal states, Frontex has been increasingly operating inside foreign SAR regions both in the Mediterranean and in the Atlantic Ocean off the Canary Islands[307]. By so doing, European operations are increasingly disembarking migrants rescued in the Mediterranean in Northern African countries or Turkey rather than receiving them on their territory[308]. Not only are these pushbacks illegal under the refugee and EU law and often carried out in a violent way[309], but the UNHCR has also repeatedly warned the European countries of the violations and abuses the refugees are exposed to upon disembarkation in third countries, especially in Libya[310]. Moreover, alongside externalization, there is also ship diversion. This is a new strategy increasingly implemented by the EU and allowed by the Sea Borders Regulation, consisting in altering the course of an intercepted ship, diverting it to international waters or a third country of origin[311]. Interception measures have been used as a tool to ensure the safety and security of air and maritime transportation, fight the smuggling of migrants by land, sea and air, and protect the victims of human trafficking[312]. This is a legitimate interest of European states, allowed by the 2000 Protocols to the UN Convention against

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[303] KLEPP (2011); AALBERTS, GAMMELTOFT-HANSEN (2014); MANN (2018); MAINWARING, DEBONO (2020).
[304] AALBERTS, GAMMELTOFT-HANSEN (2014: 464).
[305] *Sea Borders Regulation* (no 19), art. 10(1)(a).
[306] *Sea Borders Regulation* (no 19) art. 10(1)(b).
[307] AALBERTS, GAMMELTOFT-HANSEN (2014: 452).
[308] KOKA, VESHI (2019: 44).
[309] UNHCR (2021).
[310] ECRE (2018); INFOMIGRANTS (2019); UNHCR (2020).
[311] KOKA, VESHI (2019: 44).
[312] KOKA, VESHI (2019: 32).

Transnational Organized Crime[313] (Palermo Protocols). Nonetheless, disembarking migrants in non-EU countries might lead to the risk of ill-treatment and refoulment, a breach of international law.

Violations of migrants' human rights have occurred also due to the clashes between different European member states in the management of their SAR regions. The Conventions governing migration at sea have been interpreted by member states in diverging ways to renounce their sovereign responsibility and 'pass the buck' to another member[314]. For instance, Malta favors a stricter interpretation of the term 'distress', distinguishing between 'being in need of rescue' and 'unseaworthiness'[315]. Although the Sea Borders Regulation attempted to clearly define terms like 'rescue', 'distress', 'disembarkation', 'place of safety' to avoid the inconsistent national interpretations, scholars like Den Heijer and Basaran suggest that there is still no univocal interpretation accepted and applied by the European states[316]. Also, another common point of disagreement between them is where the rescued people should be disembarked. The overlapping SAR regions between Italy, Malta and Libya and the Aegean dispute between Greece and Turkey have often spurred disagreements and been used as an excuse for inaction[317]. In order to solve these issues, in 2010 the European Council approved a set of guidelines on Frontex operations[318] but, perceiving their borders under threat, the Southern states have refused to accept them. In fact, they established that "priority should be given to disembarkation in the third country from where the persons departed or through the territorial waters or search and rescue region of which the persons transited"[319]. Thus, they obliged the state hosting the Frontex operation to receive the people rescued. The guidelines were harshly condemned by Malta and Italy for creating an unfair burden to front-line countries with wide SAR zones[320].

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[313] UN General Assembly, 15 November 2000, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*.
[314] KLEPP (2011); AALBERTS, GAMMELTOFT-HANSEN (2014); MAINWARING, DEBONO (2020).
[315] MAINWARING, DEBONO (2020: 456).
[316] KOKA, VESHI (2019: 30).
[317] KOKA, VESHI (2019: 42).
[318] Council of the EU, 26 April 2010, 2010/252/EU, *Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*.
[319] Council Decision 2010/252/EU, Part II, principle 2.1.
[320] AALBERTS, GAMMELTOFT-HANSEN (2014: 453).

Although the guidelines were annulled by the CJEU[321] and a decade has passed, a solution is yet to be found. Clashes between member states about disembarkation continued, European states continued to maintain contradictory positions and to shift the responsibility on each other. This led to delays to disembark and higher risks for the people on board[322]. Mainwaring and DeBono argued that over the past decade there was a shift from socially constructing the Mediterranean as *mare nostrum* (our sea) to constructing it as *mare nullius* (nobody's sea), in an attempt to reject the European states' responsibility for deaths at sea[323]. Finally, the coastal states should not be blamed alone: their reluctance to receive migrants is also the result of the ineffective system of burden-sharing created by the Dublin III Regulation[324] within the EU.

To sum up, the Mediterranean is a very complex field of action and the stage of frequent conflicts between European sovereign states conducting SAR operations. Although certain legal loopholes may be found in the international and European legal framework regulating SAR, the core issue is represented by the political will to securitize and externalize the European border perceivably threatened by irregular migrants. The EU and the member states have a strong interest in exerting control over the Mediterranean to protect the 'gates' of 'Fortress EU'. However, when new players come into play like the NGOs started to do in 2014, the picture changes and becomes even more complex. Indeed, many scholars have recognized another recent evolution in the European management of SAR regions, namely the growing criminalization of NGOs involved in SAR in the Mediterranean[325]. The following sections will attempt at analyzing this phenomenon and its evolution.

3.2. NGOs and SAR in the Mediterranean: a historical overview

The non-governmental provision of maritime rescue is not a new phenomenon. The duty to rescue lives at sea is not an exclusive prerogative of states; it extends to all vessels, including private commercial ships[326]. Although NGOs

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[321] In 2012, the CJEU annulled the guidelines after they had been challenged by the European Parliament on formal grounds.
[322] KOKA, VESHI (2019: 42).
[323] MAINWARING, DEBONO (2020: 1043).
[324] An overview of the Dublin Regulation may be found in Chapter 2, section 2.
[325] IRRERA (2016); GHEZELBASH et al. (2018); CUSUMANO, VILLA (2021a); CUSUMANO (2021b).
[326] *Amendments to the International Convention on Maritime Search and Rescue, 1979*, Chapter II para. 2.1.10.

have not been recognized as having international legal personality, their status is recognized under the domestic law of the state where they are based and have their headquarters[327]. Thus, like any other private entity, NGOs are required to respect national law and to comply with obligations established by the UNCLOS, SAR, and SOLAS Conventions for all ships, including the duty to save lives at sea[328].

The first non-governmental SAR operation in the Mediterranean was conducted in 2004 by the German NGO *Cap Anamur* that rescued 37 African migrants in distress in the Strait of Sicily[329]. However, afterwards, instead of informing Italy and asking for permission to disembark, it continued to search for other people in distress at sea. The humanitarian operation was willingly turned into political action, a protest against the existing border regime: the Italian government reacted by confiscating the boat and charging the captain, first officer, and head of mission for aiding and abetting illegal immigration[330]. *Cap Anamur* would be remembered not only as the first example of non-governmental SAR in the Mediterranean but also as the first instance of a SAR mission resulting in legal prosecution and criminalization[331]. Nonetheless, apart from this isolated case, NGOs started to be actively engaged in SAR operations only in 2014, as a result of the growing death toll in the Mediterranean.

The summer of 2014 represented a turning point in this field for two major events. Firstly, in October 2013 almost 600 migrants drowned near Lampedusa, in the central Mediterranean, after the sinking of two boats departed from Libya[332]. Secondly, in response to the public outcry, in 2014 Italy launched the biggest single humanitarian operation, Mare Nostrum (OMN). It was closed one year later due to the lack of financial support by several European states accusing it to be a 'pull factor' for migrant smugglers[333]. OMN was replaced by Operation Triton which had a much smaller mandate and was not focused on SAR provision: in fact, it turned out to be ill-equipped to face the humanitarian crisis ongoing in the Mediterranean[334]. Therefore, the increasing number of migrants trying to reach Europe and the dismantling of Mare Nostrum led to a staggering rise in sea deaths in 2015[335]. The figures

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[327] MARTENS (2003: 19).
[328] CUSUMANO (2018: 390).
[329] STATEWATCH (2012).
[330] CUTTITTA (2018: 638).
[331] CUTTITTA (2018); MAINWARING, DEBONO (2020).
[332] GORDON, LARSEN(2020: 5).
[333] GORDON, LARSEN (2020: 5).
[334] CUSUMANO, VILLA (2021a: 25).
[335] See *supra* n. 245.

continued to rise in 2016[336], although the arrivals had decreased. Alongside the IOM and UNHCR, NGOs harshly criticized the European decision: a significantly more ambitious plan was required to address the growing deaths at sea which had turned the Southern Mediterranean Sea into the deadliest border worldwide[337]. Since the EU response was perceived as inefficient and largely dominated by the member states' interests and arbitrary application of international law, between 2014 and 2016 an increasing number of NGOs and humanitarian volunteers stepped in to fill the gap left by OMN [338].

In order to analyze the evolution of non-governmental provision of SAR in the Mediterranean between 2014 and the first three quarters of 2021, we have gathered the data collected by the EU Agency of Fundamental Rights (FRA)[339] in the past three years. Since the last FRA report is dated June 2021, we have complemented it with the data of the following two months retrieved from the NGOs' websites and online newspapers. The results are summarized in *Table 1*[340], which enlists the NGOs involved in SAR, the name of the vessel/aircraft(s) deployed, the country of registration, and the year(s) of actual operativity at sea.

Overall, between 2014 and 2021, 18 NGOs have been involved in SAR operations in the Mediterranean, deploying a total of 29 ships[341] and three aircraft. Indeed, especially in the past four years, reconnaissance aircraft have been deployed to monitor the situation at sea and assist the crew on board rescue ships to localize the people in distress. Moreover, *Table 1* clearly shows a good level of cooperation between SAR NGOs often collaborating in the same SAR operation (for instance, MSF with MOAS, Sea-Watch, and SOS Méditerranée) and acquiring vessels from each other. As for the country of registration, most SAR NGOs have their headquarters in Germany (7), followed by France (3), Spain (2), Italy (2), Malta (1), UK (1), US (1); there is only one international NGO, SOS Méditerranée. This seems to ascribe with the general trend in European transnational solidarity to irregular migrants which, despite being international ideologically, is predominantly local operationally[342].

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[336] See *supra* n. 245.
[337] CUSUMANO, VILLA (2021a).
[338] IRRERA (2016); GORDON, LARSEN (2020); CUSUMANO, VILLA (2021a); CUSUMANO (2021b).
[339] FRA (2018); FRA (2019); FRA (2020a); FRA (2020b); FRA (2021).
[340] See Tables p. 87.
[341] This number does not count those ships that were already operated by an NGO and then, acquired by another one, were named differently, namely Mare Liberum (ex-Sea-Watch-1), Lifeline (ex-Sea-Watch-2) and Sea-Watch 3 (ex-Dignity-I).
[342] DELLA PORTA et al. (1999).

In order to see the evolution of the phenomenon, we have summarized these data in *Figure 5* which shows the annual number of NGOs and vessels deployed during the period considered. The ships directed only to monitoring such as Josefa (RESQSHIP), Life (PROEM-AID), Mare Liberum (since 2021) and Mare Liberum 2 have not been included; further, this graph excludes non-governmental aircraft that, despite assisting the vessels in a significant way, are not providing SAR services *stricto sensu*.

	2014	2015	2016	2017	2018	2019	2020	2021
No. Vessels	1	4	14	13	11	10	11	9
No. NGOs	1	3	11	11	8	9	9	8
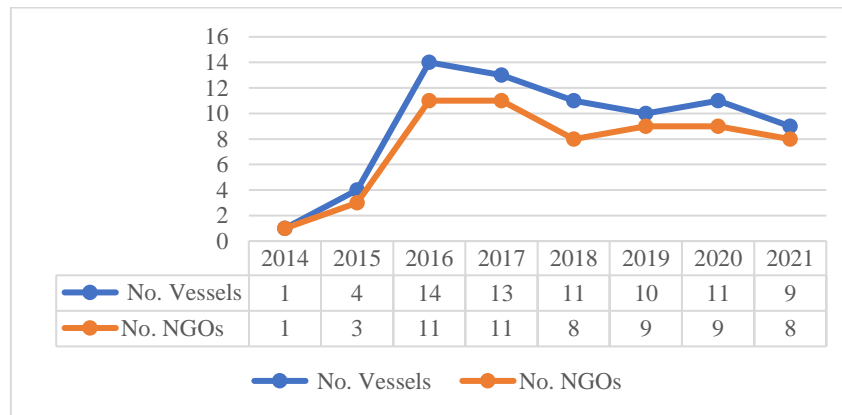
Figure 5. No. SAR NGOs and their vessels deployed in the Mediterranean (2014-21[343]).[344]

Thus, in 2014 only one NGO launched a SAR mission in the Mediterranean, the Maltese Migrant Offshore Aid Station (MOAS) with the vessel Phoenix. However, between 2015 and 2017 the number of vessels deployed grew significantly, reaching a peak of 14 and 13 ships operational respectively in 2016 and 2017. In 2016, the most active NGOs were Médecins Sans Frontières (MSF), MOAS and Open Arms with respectively three (Aquarius, Argos, Dignity I), two (Phoenix and Responder), and two vessels (Astral and Golfo Azzurro). In 2017, whereas MOAS closed Operation Phoenix in August and MSF remained operational only with Aquarius (operated alongside SOS Méditerranée) and Vos Prudence, some new SAR NGOs emerged. In particular, the German Sea-Watch launched the ship Sea-Watch 2, while Sea-Eye deployed the Sea-Eye and the Seefuch. Moreover, between 2016 and 2017, we

[343] Data concerning the year 2021 include only the first three quarters.
[344] The following data has been retrieved by the author from the reports published by FRA in 2018, 2019, June 2020, December 2020, June 2021. Moreover, additional data concerning July and August 2021 – not included in the latest FRA's report – has been retrieved from the websites of the NGOs that launched new missions during this period, namely Mare Liberum and ResQ People Saving People.

may find other five NGOs active with a vessel each: Jugend Rettet, Lifeboat Project, Mission Lifeline, Refugee Rescue and Save the Children.

However, between 2018 and 2019, the number of vessels decreased, accounting respectively for 11 and 10. In fact, in 2018, several NGOs closed their operations (Jugend Rettet, Lifeboat Project, Save the Children), while three new vessels were launched by Mare Liberum (Mare Liberum), Mediterranea Saving Humans (Mare Jonio), Open Arms (Open Arms). Open Arms and Sea-Eye remained the most active non-governmental actors with respectively three (Astral, Golfo Azzurro, Open Arms) and two (Sea-Eye and Seefuchs) operational vessels. Further, the following year, new operations were initiated by Mediterranea Saving Humans (Alex Mediterranea), Open Arms (Alan Kurdi), Salvamiento Maritimo Humanitario (Aita Mari), SOS Méditerranée with MSF (Ocean Viking). In 2020, the number of vessels rose again, accounting for 11, with a new operation launched by MSF (Geo Barents), M.V. Louise Michel (Louise Michel), and Sea-Watch (Sea-Watch 4). Nonetheless, our analysis shows that between 2018 and 2020, a new trend emerged: throughout the year a rising number of NGOs had to suspend their activities and were, thus, active only for half of the year, or few months. Indeed, this is the case of several vessels deployed by traditionally active NGOs such as MSF, Open Arms, Sea-Watch in 2020[345]. Therefore, although the number of non-governmental vessels deployed did not decrease considerably in the past four years, their days of effective presence at sea did. Finally, throughout the first three quarters of 2021, there have been nine operative vessels, six of which launched by traditionally active NGOs such as MSF and SOS Méditerranée (Geo Barents and Ocean Viking), Open Arms (Astral), SMH (Aita Mari), Sea-Watch (Sea-Watch 3 and Sea-Watch 4). Moreover, three new vessels were deployed by ResQ People Saving People (ResQ), RESQSHIP (Nadir), and Sea-Eye (Sea-Eye 4). More specifically, as of the time of writing (August 2021), all the above-mentioned vessels are operational with the exception of Geo Barents – detained in the port of Augusta since July[346] – and Sea-Eye 4 – released in late August after a three-month detention in Palermo[347]. Furthermore, Mediterranea Saving Humans and Sea-Eye declared to be planning to resume their operations in the following months[348].

Overall, our analysis has shown a slight decline in the number of NGOs delivering SAR activities in 2018, after a stable increase during the previous

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[345] It is important to mention that, during the first months of 2020, many SAR NGOs had to suspend their activities due to the emergency following the COVID-19 outbreak.
[346] INFOMIGRANTS (2021).
[347] This information has been retrieved from a press release published on the website of Sea-Eye on August 18, 2021.
[348] Mediterranea Saving Humans and Sea-Eye expressed their will to resume operations respectively in September and "before the end of August" on their websites.

three years. Except for the year 2020, we may notice a downward trend regarding the non-governmental SAR provision at sea. This change may be partially explained by the decrease in the number of boat arrivals to the EU due to the more restrictive migration policy[349]. Nonetheless, it has been often argued that the major obstacle to civil society's engagement in this field can be found in the criminalization of solidarity increasingly carried out by state institutions in the past few years[350]. Henceforth, analyzing the interaction between NGOs and states in the Mediterranean is necessary to understand the most recent evolution of solidarity to irregular migrants at sea.

Irrera underlined that between the summer of 2014 and September 2015 traditional and non-traditional actors were able to operate in the same environment "without coordination, but also without significant frictions, with the unintended but paradoxically fruitful consequence of mitigating the effects of the emergency"[351]. Indeed, the Italian and Hellenic coastguards, as well as the British HMS Bulwark, the Belgian Godetia, and the Irish Le Eithne continued to play a crucial role in SAR provision in 2015[352]; as showed by *Figure 6*, between 2014 and 2018, most of the people rescued at sea had been assisted by state-owned vessel. Nonetheless, the peak of rescues was reached in 2016, when a much higher number of NGOs got involved. Although their impact was quantitatively much lower, data show that non-governmental efforts complemented governmental intervention especially in 2016 – with almost 26% of the total rescues – and in the first half of 2017 – with 40%[353]. Between 2014 and 2017, they rescued over 110,000 people[354]. By the end of 2017, however, the role played by NGOs in SAR operations shrank dramatically as a result of the changing state approach to irregular migrants and solidarity toward them. Although after the summer of 2015, the European states had already started to increasingly introduce barriers, the following years have been marked by the tightening of border control and the rise of bilateral agreements with countries of transit or origin[355]. This growing securitized approach toward migration intensified the process of criminalizing NGOs and humanitarians providing maritime 'escape aid'[356].

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[349] CUSUMANO, VILLA (2021a: 27).
[350] CUTTITTA (2018); GORDON, LARSEN (2020); CUSUMANO, VILLA (2021a).
[351] IRRERA (2016: 31).
[352] IRRERA (2016: 28).
[353] IRRERA (2019: 282).
[354] CUSUMANO, VILLA (2021a: 27).
[355] IRRERA (2019: 266).
[356] GHEZELBASH et al. (2018: 347).
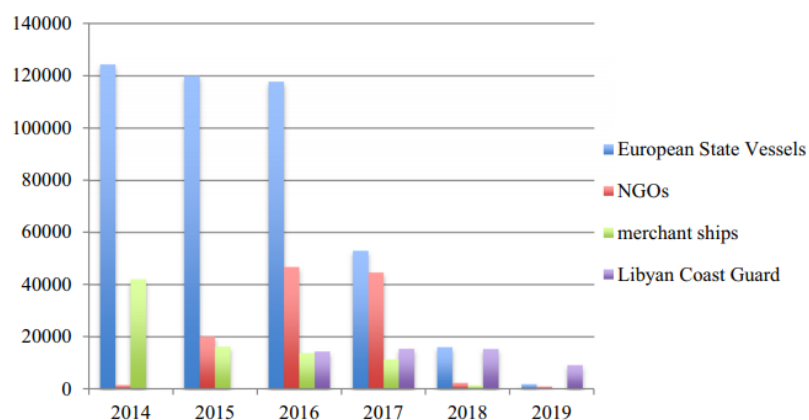
Figure 6. No. of Rescues by all SAR Operations (2014-19)[357]

In fact, as in the case of the broader criminalization of solidarity discussed in the previous chapter, SAR NGOs were criminalized in three ways, through intimidation, disciplining and judicial investigation[358]. First, since 2016 SAR NGOs have started to be increasingly blamed for acting as 'pull factors', encouraging migrants' influx, and colluding with migrant smugglers[359]. The controversy was spurred in December 2016 after the Financial Times published a leaked confidential report[360] by Frontex that suggested collusion between NGOs and Libyan smugglers. The atmosphere of suspicion was, then, fueled by several politicians such as Italian prosecutor Carmelo Zuccaro claiming the same concept[361]; although the 'pull factor' argument has been repeatedly confuted[362], it is still informing the debate over SAR NGOs nowadays. Notwithstanding, studying the Central Mediterranean route from Libya to Italy, Cusumano and Villa have recently shown that there is little evidence of a connection between the number of arrivals and the SAR NGOs operational at sea, underlining that in 2019 the former did not reduce significantly despite the decline of the latter[363]. Moreover, Mavelli argued that the popularity of the 'pull factor' argument is a way to neglect the "political causes of suffering – 'push factors' such as extreme poverty, persecution, war, famines, genocide, and European political responsibilities"[364]. Finally, by blaming humanitarian organizations for encouraging the migrant smugglers to use unseaworthy

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[357] CUSUMANO, VILLA (2021: 28).
[358] CARRERA et al. (2018b).
[359] MAVELLI (2017); CUTTITTA (2018); CUSUMANO, VILLA (2021a).
[360] ROBINSON (2016).
[361] CUTTITTA (2018: 648-649).
[362] MAVELLI (2017); PEZZATI, HELLER (n.d.); CUSUMANO, VILLA (2021a).
[363] CUSUMANO, VILLA (2021a: 27).
[364] MAVELLI (2017: 824).

vessels and, thus, endangering the migrants' life, European states are trying to shift their responsibility for those deaths. On the contrary, several scholars warned that the smugglers' eagerness to use dinghies instead of better-equipped boats might be the unintended consequence of the destruction of more than 545 boats by the European warships deployed by Frontex between 2015 and 2018[365].

Moreover, since 2016 new regulations started to be imposed to discipline SAR NGOs. For instance, Italy required those operating in the Central Mediterranean to sign a Code of Conduct; many of them refused, perceiving it as an obstacle to their independence and neutrality[366]. Finally, in the past few years, an increasing number of people were put under investigation on grounds of abetting illegal migration or colluding with smugglers[367]. Although in almost all the cases they have been acquitted, the trials damage the humanitarians' public image, besides being financially and emotionally burdening. As suggested by Basaran, with the emergence of the 'crime of solidarity', SAR became an activity that "small fishing boats and even larger commercial vessels cannot afford"[368]. Further, more and more often the NGOs' vessels are being seized and detained at the port, leading to several months of inaction for the crew[369]. This process may explain the reason why, although the number of SAR NGOs has not changed significantly in the past four years, their impact in terms of people saved has been significantly lower. Many of them were able to launch a lower number of missions and be present at sea only for a limited number of months each year. Finally, both the members of the crew and the vessels can be fined under some member states' jurisdiction. In fact, not only the 2002 Facilitators Package[370] does not include material benefit in its definition of migrant smuggling and blurs the line between smugglers and humanitarians, but several European states have also recently tightened the national laws in this field[371].

This process of criminalization evidently undermined the cooperation between states and NGOs[372]. Clearly, a certain level of collaboration is still necessary since the NGOs cannot start a SAR mission and disembark without the

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[365] CUSUMANO, VILLA (2021a: 35).

[366] FEKETE (2018: 14).

[367] FEKETE (2018); VOSYLIŪTÉ, CONTE (2019b).

[368] BASARAN (2014: 376).

[369] FRA (2018); FRA (2019); FRA (2020a); FRA (2020b); FRA (2021).

[370] An overview of the 2002 Facilitators Package and the national laws surrounding the criminalization of solidarity to irregular migrants in Europe may be found in Chapter 2, section 3.

[371] A clear example of national legislation adopted to criminalize pro-migrant solidarity is represented by the 2018 and 2019 Security decrees adopted in Italy during Salvini's presidency.

[372] ESPERTI (2020: 446).

permission granted by the MRCC in charge of the SAR region where the people were rescued[373]. Moreover, non-governmental SAR missions are often funded also by the EU and the European states[374]. Nonetheless, over the past decade, as in the case of transnational solidarity actors to irregular migrants, many NGOs involved in SAR missions became increasingly political actors. Criminalization made it extremely difficult for them to present themselves as neutral, impartial, and independent actors[375]. Garelli and Tazzioli described this process as the 'politicization of humanitarianism', consisting in "strategically appropriating the non-neutrality of rescue and humanitarian interventions and translating it in the present context as a support to migrants' obstructed passage"[376]. Whereas the first SAR NGO, MOAS, maintained a diplomatic position, avoiding strong political slogans and accepting to cooperate with Frontex[377], the following NGOs were increasingly critical toward the European and state approach to the humanitarian crisis in the Mediterranean. Many organizations, especially smaller ones, combined SAR provision with advocacy and whistleblowing, by constantly monitoring the situation at sea, denouncing the violence at the European border, and framing the migrants' deaths as the result of European policies[378]. By conducting SAR operations, they "reminded the public, both directly and indirectly, of the relative ease of conducting more robust SAR missions"[379] and held the European states accountable. Indeed, by refusing the European border management, SAR NGOs have been trying to shape new communities glued by an inclusive type of solidarity transcending the national borders[380], opposed to the exclusive understanding of European solidarity.

Analyzing the websites and social media pages of the above-mentioned 18 SAR NGOs, we found that all of them blame the European states for their inefficient presence at sea and explain their own rescue missions as a way to fill in that gap. *Table 2* shows the level of political engagement and contestation of each NGO. With the only exception of Lifeboat Project[381] and MOAS, all the NGOs considered openly criticize the EU migration policies defined 'inadequate', 'damaging', 'failed': the European border regime is blamed for the growing deaths at sea, the violations of migrants' human rights during the

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[373] CUSUMANO (2017: 391).
[374] CUSUMANO (2017: 382).
[375] CUSUMANO (2017: 390).
[376] GARELLI, TAZZIOLI (2020: 9).
[377] MOAS aided the Italian state's investigations by handing over drone footage.
[378] CUSUMANO (2017); CUTTITTA (2018); MAINWARING, DE BONO (2020).
[379] MAINWARING, DEBONO (2020: 1040).
[380] SCHWIERTZ, SCHWENKEN (2020).
[381] Data concerning Lifeboat Project are not available; thus, we excluded it from the following analysis.

pushbacks and the growing criminalization of SAR NGOs. This degree of criticism has been classified as 'moderate'. Interesting is the case of MSF that, after the adoption of the 2016 Turkey-EU deal, has refused the funds from the EU and European states "in opposition to their damaging deterrence policies and intensifying attempts to push people and their suffering away from European shores"[382].

Level of criticism	Main messages	NGOs
Moderate	Criticism of EU migration policy	Association Pilotes Volontaire MSF Save the Children SOS Méditerranée
Medium	The above and criticism of Frontex	Jugend Rettet Mission Lifeline ResQ People Saving people
High	All the above and call for defunding Frontex	M.V. Louise Michel Sea-Eye SMH
Very high	All the above and call for abolishing Frontex	Mare Liberum Mediterranea Open Arms Refugee Rescue RESQSHIP Sea-Watch

Table 2. Level of political engagement and contestation of SAR NGOs.[383]

Furthermore, a medium degree of politicization is demonstrated by the social media of 11 NGOs (Jugend Rettet, Mare Liberum, Mediterranea Saving Humans, M.V. Louise Michel, Open Arms, Refugee Rescue, ResQ People Saving people, RESQSHIP, Sea-Eye, Sea-Watch, SMH) openly denouncing Frontex. Here, there are references to 'Fortress EU' and the violations of human rights perpetrated by Frontex. Interestingly enough, in opposition to the EU Coast Guard, Jugend Rettet named one of its last missions after the Frontex CEO F. Leggeri since "he should do more with his authority for the people in distress"[384]. Moreover, our analysis showed that some NGOs such as Open Arms and SOS Méditerranée maintain a more neutral position on their website, while using social media to advocate against the European border policy. On the contrary, Mediterranea Saving Humans openly claims its political position on the very first page of the website, stating that its action constitutes

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[382] CISSE (2016: no pagination).
[383] Source: author.
[384] From the Facebook page of Jugend Rettet.

"moral disobedience and civil obedience"[385]. In fact, this is among those nine NGOs (Mare Liberum, Mediterranea Saving Humans, M.V. Louise Michel, Open Arms, Refugee Rescue, RESQSHIP, Sea-Eye, Sea-Watch, SMH) that joined the campaign "Defund Frontex" in August 2021: their level of political engagement and contestation is 'high'. With the other signatories, they require the EU to defund it and allocate a part of those funds for the creation of a public-led European Search and Rescue Program operated by non-military actors. They claim this would need only one-third of the budget allocated to Frontex and be much more efficient in facing the humanitarian crisis ongoing in the Mediterranean[386]. Finally, six of these NGOs – namely Mare Liberum, Mediterranea Saving Humans, Open Arms, Refugee Rescue, RESQSHIP, Sea-Watch – went one step further by also joining the campaign "Abolish Frontex". Launched in July 2021, it calls for the abolishment of the agency together with the end of the EU border regime and the crime of solidarity[387]. Indeed, they argue, reforming Frontex would not be sufficient: it is necessary to dismantle it. Thus, we classified this degree of political activism and contestation as 'very high'.

Finally, although some are more radical compared to others, 16 out of 18 NGOs considered are contesting European securitized migration policies and criticizing the exclusive understanding of solidarity which frames irregular migrants only as a security threat against which member states should cooperate in solidarity with each other.

To sum, non-governmental provision of SAR in the Mediterranean emerged as a new consistent phenomenon in 2014, reaching a peak between 2016-17. Despite their important contribution in reducing the deaths at sea during those years, NGOs were not welcomed by the states that, after few years of tolerance, started to marginalize them. In fact, according to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, criminalization of NGOs is used by state institutions to tackle irregular crossing of EU borders and reduce non-governmental presence at sea[388]. Clearly, alongside the decline in migrant flows crossing the Mediterranean, criminalizing NGOs has managed to reduce their level of engagement at sea over the past four years. Our analysis showed that the months when they were actually operative have been decreasing since 2018. However, throughout 2021, nine SAR NGOs have been still active. Hence, it is crucial to analyze why certain NGOs decided to close their SAR operations and, perhaps more importantly, why

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[385] From the website of Mediterranea Saving Humans.

[386] FRAGDENSTAAT (2021: no pagination).

[387] ABOLISHFRONTEX.ORG (2021).

[388] Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, 27 September 2018, (A/73/314), *Saving lives is not a crime,* p. 13.

others resumed them despite having been involved in legal proceedings. This might suggest whether we may expect the disappearance of SAR NGOs and, more generally, civil society's solidarity to irregular migrants in the following decade as a consequence of the process of criminalization carried out by state authorities against them.

3.3. From SAR NGOs to transnational solidarity toward irregular migrants: the way forward

The non-governmental provision of SAR in the Mediterranean is only one of the diverse and numerous forms of European transnational solidarity to irregular migrants. Studying its evolution in the past decade may indicate certain trends expected to unfold in the following decade both in this specific context and in the broader context of civil society's assistance to irregular migrants. For this purpose, we will focus especially on the impact that state criminalization has had on them in order to assess the effectiveness of this strategy and whether it is advisable to pursue it in the foreseeing future. This is the final aim of the following section.

Between 2016 and 2021, eight NGOs[389] have ceased their SAR activities, while 10[390] have continued or initiated new operations. In order to assess to what extent criminalization has been able to discourage NGOs from delivering SAR activities in the Mediterranean, we have analyzed the number of legal proceedings initiated by European states against SAR NGOs between 2017 and 2021[391] and their response to them.

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[389] Jugend Rettet, Lifeboat Project, Mare Liberum, Mission Lifeline, MOAS, M.V. Louise Michel, Refugee Rescue, Save the Children.
[390] Association Pilotes Volontaires, Mediterranea, MSF, Open Arms, ResQ, RESQSHIP, Sea-Eye, Sea-Watch, SMH, SOS Méditerranée.
[391] All legal proceedings were initiated in the same year when the offences occurred.

No. legal proceedings against SAR NGOs
(2017-2021)

	2017	2018	2019	2020	2021
No. measures against vessels	1	8	14	10	3
No. measures against crew	3	5	9	2	1
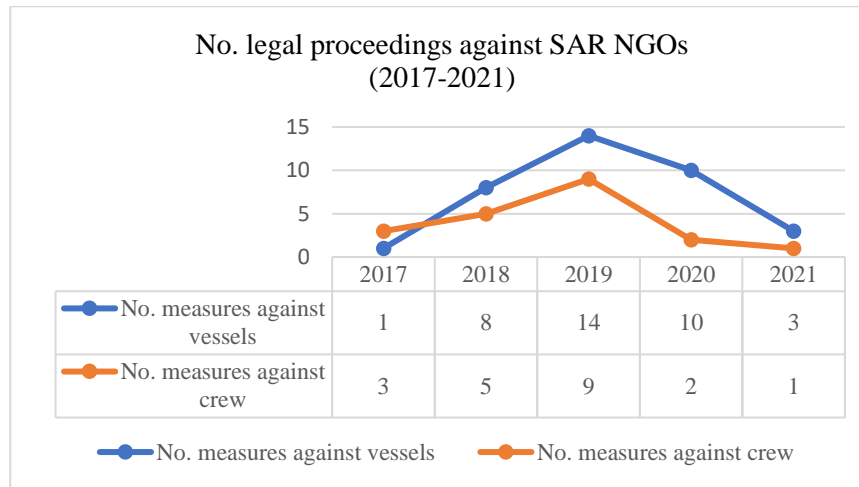
Figure 7. No. of legal proceedings initiated by European states against SAR NGOs (2017-21)[392].

Figure 7 summarizes the data gathered by FRA in its reports[393] and shows how formal criminalization of solidarity has been evolving since the first case initiated in 2017. Our analysis showed that among the above-mentioned 18 SAR NGOs, 14 were involved in at least one legal proceeding during the period considered; the exceptions are MOAS, Refugee Rescue, RESQSHIP, ResQ people saving people. Overall, the number of cases accounted for 56. In particular, 36 cases regarded measures moved against the vessels/aircraft deployed for SAR activities that were either seized at the port, or prohibited to disembark, or – more rarely – de-flagged. The remaining 20 cases regarded the crew members of SAR vessels that were fined and, more often, involved in criminal investigations on the ground of facilitating or abetting illegal immigration. Of all the above-mentioned cases, only two ended up being condemned[394], while most of them have been acquitted[395]; 22 cases are still pending. The vast majority of legal proceedings were initiated by Italy (43), followed by Malta (6), Spain (3), Germany (2), and the Netherlands (2). Furthermore, *Figure 7* shows two important findings. Firstly, although the legal

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[392] The data has been gathered by the author. As for the data concerning the year 2021, it refers only to the first three quarters.

[393] FRA (2018); FRA (2019); FRA (2020a); FRA (2020b); FRA (2021).

[394] There were two cases of condemnation in 2018. After having been confiscated by the Maltese authorities, the Lifeline (Mission Lifeline) was eventually impounded. Moreover, after the preventive seizure by the prosecutor, the seizure of Iuventa (Jugend Rettet) was confirmed by the Supreme Court of Cassation in Rome.

[395] Cusumano and Villa underlined that very often it was impossible to find sufficient incriminating evidence to even start a trial.

proceedings against SAR NGOs had been increasing between 2017 and 2019, a downward trend settled in 2020, hitting a low of four legal proceedings during the first three quarters of 2021. This might be the result of the changing Italian cabinet in September 2019: whereas the former Minister of Interior Salvini engaged in many standoffs with NGOs, refusing to allow them to disembark, and initiated several cases against their crew members between 2018 and 2019, the new Minister Lamorgese largely refrained from doing so[396]. Thus, the formal criminalization of SAR NGOs seems to have been in decline throughout the past two years. Secondly, our analysis showed that the most criminalized NGOs have been, quite intuitively, those deploying more vessels and aircraft for SAR provision such as Sea-Eye, Sea-Watch, and Open Arms. They have been involved respectively in 13, seven, and five cases during the period considered. An interesting exception is represented by Mediterranea Saving Humans that, despite deploying only two vessels, has been involved in 13 legal proceedings in the past three years. Such a high level of criminalization might be explained by the fact that it has been the first Italian-flagged SAR ship and very politically active[397], openly opposing to the "toxic politics of Italy, Europe and the US"[398].

Therefore, considering that almost all SAR NGOs were criminalized but only some of them are not operational anymore, we may wonder to what extent criminalization contributed to discourage them from providing rescue to migrants in distress at sea. *Table 3* analyzes the different responses to state criminalization.

We have investigated which NGOs are still operational as of August 2021 and which have suspended SAR provision in the past five years, as well as the reasons behind this decision. Lifeboat Project has been excluded because of the lack of relevant information, while RESQSHIP and ResQ People Saving People have not been involved in the study since they have started to deliver SAR operations respectively in June and August 2021.

NGOs	Response to criminalization	Effect of criminalization
Jugend Rettet Save the Children	Suspension of SAR activities	Effective
Mare Liberum Mission Lifeline M.V. Louise Michele	Shift to monitoring and lobbying activities	Partially effective

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[396] CUSUMANO, VILLA (2021a: 30-32).
[397] LUCIBELLO (2020: 9-10).
[398] These words are used to describe Mediterranea's mission on its website.

Refugee Rescue MOAS*	Temporary suspension of SAR activities	Partially effective
Ass. Pilotes Vo-lontaires Mediterranea MSF Open Arms Sea-Eye Sea-Watch SMH SOS Méditerranée	Continuation of SAR activities	Ineffective

Table 3. Effect of criminalization on SAR NGOs (2017-21)[399]

Hence, we may find four different cases. Among the NGOs not operational at present, some suspended SAR activities, some shifted to monitoring and lobbying activities. Among the former, we may find Jugend Rettet which, since the 2018 seizure of Iuventa, has been practically unable to operate, and Save the Children which declared the cessation of rescue activities in 2017. This decision was motivated by the decrease in migration influx to Europe and the "changing security and effectiveness of sea-going search and rescue operations in the area"[400]. In both cases, the states' attempt to discourage SAR NGOs through criminalization seems to have worked: nowadays, they are completely inactive in this field. Afterwards, there are other three NGOs that halted SAR provision, Mare Liberum, Mission Lifeline, and M.V. Louise Michele. In 2020, Mare Liberum declared that fearing possible repercussions of conducting SAR operations, it would focus on monitoring operations offshore Lesvos and in the escape route between Greece and Turkey. As for M.V. Louise Michele, since October 2020, it has had its ship blocked at the port of disembarkation and, like Jugend Rettet, been unable to operate at sea. However, unlike it, M.V. Louise Michele has been actively engaged in whistle-blowing and lobbying activities through social media; it also participated in campaigns such as "Defund Frontex". Similarly, Mission Lifeline had its vessel confiscated by the Maltese authorities in 2018 and has since been unable to operate in the Mediterranean. However, it has continued to cooperate with other aid and rescue organizations. Thus, despite not delivering proper SAR, these three NGOs are still contributing to it and actively opposing the European migration policies. The impact of criminalization on them has been partial.

Similar is the case of those NGOs which have only temporarily suspended SAR provision. Here, we may find Refugee Rescue that, after closing its SAR

[399] Source: author.
[400] THEMARITIMEEXECUTIVE (2017: no pagination).

operations in 2020 because of the 'irrefutable threat'[401] posed by the criminalization of solidarity on its staff, returned on board of the Sea-Eye 4 in May 2021. Further, the case of MOAS might also be ascribed to this group: despite not being involved in any criminal proceedings, in 2016 it declared it would suspend SAR activities and focus instead on aid delivery and medical care for the Rohingya refugees. This decision was justified by the decrease of migrant arrivals and the challenging environment in the Central Mediterranean. However, in 2020 MOAS announced a partnership with Sea-Eye. Although it was later closed because of diverging ideologies and methodologies between them, this decision suggests MOAS' desire to return to SAR provision. Thus, criminalization worked only partially on them. Finally, in the last group we have enlisted those NGOs that are either still operational (Association Pilotes Volontaires, MSF, Open Arms, Sea-Watch, SMH) or, despite not being active at the moment, are planning their next operation (Mediterranea Saving Humans and Sea-Eye). Thus, for seven out of 15 SAR NGOs criminalization seems to have been completely ineffective.

Henceforth, our analysis leads us to one important preliminary conclusion. Despite representing an obstacle and reason for delays in delivering SAR activities, legal proceedings against SAR NGOs seem to be unable to extinguish this phenomenon. Criminalization has, indeed, reduced the time spent at sea by the NGOs, but, in most cases, has not impacted their willingness to launch SAR operations and save lives in the Mediterranean. This is even more evident by analyzing the figures regarding the years of 2018-19: although the number of legal proceedings initiated in these years reached the peak of respectively 13 and 23 (*Figure 7*), the number of operational SAR NGOs did not decrease dramatically, accounting respectively for nine and eight (*Figure 5*). Therefore, if at that time criminalization was not able to reduce non-governmental presence at sea despite the high number of legal proceedings, given its ongoing decline it is even less likely to work in the upcoming years.

The broader discursive stigmatization and delegitimation of solidarity toward irregular migrants are, nonetheless, still lingering at the European level[402]. Thus, discussing its impact and consequences is still topical and timely. Several scholars have already demonstrated that this process is not beneficial neither for the migrants nor for the host countries. In fact, criminalizing SAR NGOs might contribute to the growing death tolls at sea[403], while the broader process of criminalizing pro-migrant solidarity might bring to the rising exclusion of irregular migrants from accessing basic services upon arrival in

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[401] Retrieved from the website of Refugee Rescue.
[402] CUSUMANO, VILLA (2021a: 34).
[403] HELLER, PEZZANI (2016: no pagination); GORDON, LARSEN (2020: 19).

Europe[404]. Moreover, another unintended and often overlooked consequence of this phenomenon is the growing polarization in European society[405]. Not only might stigmatizing pro-migrant solidarity bring a racist and xenophobic backlash among the anti-migrant segments of the society, but it is also likely to further strengthen the humanitarians' civil disobedience[406]. Indeed, the determining factors of transnational solidarity to irregular migrants are the need to fill in the gap left by state institutions and the perceived feeling to be on the right side. These will not be washed out by state criminalization in the foreseeing future. In fact – as shown in the previous chapters –, the current European migration policy, based on a securitized and exclusive understanding of solidarity, does not seem to suggest the member states' political will to take more responsibility for the welfare of irregular migrants. Moreover, grassroots forms of solidarity are driven by a strong moral justification or Fassin's 'humanitarian reason'[407], i.e. the sense of solidarity for humankind[408] and the perceived need to protect human life and dignity[409] regardless of national citizenship. Thus, the moral reasons prevail over the fear of legal repercussions in a system that is perceived as unjust and causing suffering[410]. As demonstrated by an empirical study conducted by Gordon and Larsen with volunteers working with refugees in Greece, "there is a certainty amongst those we interviewed, regardless of age, gender or seniority, that they are doing the right thing, regardless of what the law says or how the justice system regards them"[411]. Similarly, if our analysis suggests that criminalization of solidarity is not diminishing their commitment to the cause, their study can explain the reason behind. Stigmatization is able sometimes to "enhance group cohesion and individual commitment, especially when the labeller or stigmatiser is regarded as aggressor or oppressor"[412]. Thus, criminalization seems to motivate civil society's solidarity toward irregular migrants even more. If the process is continued in the following decade, we may expect further polarization and politicization among humanitarians, meaning enhanced contestation of perceivably unjust and inhumane state policies.

Nonetheless, our analysis showed that political activism plays a smaller role in motivating SAR NGOs: although almost all of them are openly contesting the European approach to irregular migration, among those that continued

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[404] FONTANARI, AMBROSINI (2018: 590).
[405] FEKETE et al. (2019: 26-27).
[406] DADUSC, MUDU (2020: 20).
[407] FASSIN (2012).
[408] LAHUSEN (2020: 305-306).
[409] PICUM (2002: 1); CUTTITTA (2018: 636); CUSUMANO, VILLA (2020a: 32).
[410] GORDON, LARSEN (2020: 15).
[411] GORDON, LARSEN (2020: 14).
[412] GORDON, LARSEN (2020: 16).

their operation despite state criminalization in *Table 3*, three are of very high political engagement (Mediterranea, Open Arms, Sea-Watch) and three of moderate (Association Pilotes Volontaires, MSF, SOS Méditerranée). Thus, there seems to be no significant difference in the level of engagement on the basis of political activism. Finally, besides the moral and political justification, there is one more legal aspect motivating pro-migrant social movements: the respect of the law of the sea imposing an obligation to save lives in distress[413] (for SAR NGOs) and, more in general, the protection of basic human rights such as the right to life and dignity[414]. These motivations seem to prevail over states' efforts to reduce civic engagement in the field of irregular migration and are likely to continue to do so in the upcoming years.

Conclusion

European grass-roots forms of solidarity to irregular migrants are expected to not decrease significantly in the following decade and to become further politicized as a result of continued states' criminalization. Further, although they cooperate ideologically by sharing information and participating in transnational awareness and political campaigns, transnational solidarity actors across Europe will probably remain mostly local.

Despite continued efforts to reduce civil society's engagement and solidarity to irregular migrants, the criminalization of solidarity has proved to be neither effective nor beneficial, while significantly contributing to the confrontation between the EU and the member states with the civil society. Nonetheless, in the upcoming future, they will inevitably be in interaction with each other: discussing possible ways to improve this interaction seems more crucial than ever. Our analysis showed that the first necessary step toward a more fruitful and less confrontational interaction between them is for the states to understand the ineffectiveness of criminalizing solidarity. This will not succeed in reducing migrant influx to Europe, since the causes of this phenomenon are structural. Likewise, criminalization will not manage to discourage humanitarians, while potentially leading to undesired and unintended consequences.

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[413] CUSUMANO (2017: 390); CUSUMANO, VILLA (2020a: 32); BEN-ARIEH, HEINS (2021: 208).
[414] PICUM (2002: 1); CUTTITTA (2018: 636); CUSUMANO, VILLA (2020a: 32).

Conclusion

In the Conclusion of this research, it is time to summarize the main findings and attempt at answering our research question.

In Chapter 1, we have investigated the different understandings of European solidarity, after defining the broader concept of 'solidarity'. Combining Stjernø's and Weber's definition, solidarity has been defined as a group-bound social relationship characterized by an internal tension between inclusion and exclusion, between the 'We' involved in the group and 'the Other' excluded by it. Whereas this tension is clearly displayed by the state-centered understanding of solidarity binding the national community of a state, new phenomena such as supranational and transnational solidarity are harder to be explained through this lens. Thus, we have wondered about the 'glue' at the basis of these communities spanning beyond national borders. From an overview of the normative basis and the scholarly criticism of solidarity within the EU, we found that European solidarity is a projection of national solidarity stretched to fit a supranational context but largely based on the same logic. Despite being legally defined as a guiding principle that should inspire the member states to act on behalf of it, European solidarity seems to be based on reciprocity and self-interest rather than common identity and values. In fact, it reflects the same internal tension between 'We' and 'the Other' inherent in national solidarity, where third-country nationals, especially irregular migrants, represent 'the Other' not included in the institutionalized form of solidarity. In the European legal and political discourse, they are depicted, instead, as a potential security threat 'against' which European states and institutions are united. Opposed to this state-centered, securitized and exclusionary form of solidarity we may find transnational solidarity, a grassroots form of solidarity binding European citizens with third-country nationals; one of its expressions is pro-migrant solidarity. Following the Arendtian theory of 'inclusive' and 'exclusive' solidarity, European transnational solidarity has been described as inclusive, i.e. inspired by a universal feeling of belonging to humankind or a pressing desire to restore human justice. However, like in the previous case, the 'glue' binding this newly emerged community is not only represented by the sense of togetherness, but also by a form of antagonism. This is the – more or less hostile – opposition to the exclusive understanding of European solidarity and the increasingly restrictive migration policies at the European and state level, perceived as unjust and causing inhumane sufferings. Finally, we have concluded the first Chapter with an important clarification. Although it has been often argued that a form of universally inclusive solidarity is rarely possible in a post-colonial world fraught with power relations and asymmetries,

the following research did not aim at investigating this question. Our focus was, instead, the way European transnational solidarity actors have aspired to inclusive solidarity and attempted to realize it over the last decade.

Therefore, in Chapter 2, we have studied the recent evolution of this phenomenon both in the broader migration field, and more specifically in support of irregular migrants. Indeed, having entered the destination country illegally, irregular migrants are the main beneficiaries of alternative types of solidarity provided by non-traditional actors, or intermediaries. Combining quantitative and qualitative data retrieved from existing empirical studies on European transnational solidarity, our analysis shed a light on several trends in the evolution of the phenomenon throughout the last decade. Although it had been constantly increasing since the mid-1980s, the 2015 'refugee crisis' seems to have represented a major turning point in the evolution of European transnational solidarity both in quantitative, and qualitative terms. It led, in fact, to the growing importance of new actors – such as unaffiliated citizens and corporate actors – alongside more traditional ones – such as the Church and NGOs. The result is an interesting combination of formal and informal actors mobilized to help irregular migrants arriving in the EU both during their journey (by obtaining documents, offering transport, or favoring the illegal crossing of borders) and after the migrants' arrival to Europe (by meeting their most basic needs). Alongside practical help, we may also find several instances of political help consisting in advocating and lobbying for the cause of irregular migration in local politics.

Focusing on intermediaries who act for humanitarian reasons rather than profit, our analysis showed that they are mainly driven by the urgency of the situation and the necessity to solve the insufficient response from state and EU institutions. Thus, over the 2010s, new informal types of solidarity emerged even in those Northern European countries, such as Germany, traditionally dominated by formalized organizations. Overall, the phenomenon appeared to be more intense in those countries most severely affected by the crisis, such as Greece and Germany. As for the expansion beyond national borders, European transnational solidarity actors in the migration field are still mostly acting at the local level; we may talk of "soft transnationalism", consisting mainly in "cross-national cooperation between local groups". Finally, a growing Europeanization of transnational solidarity is the immediate effect of the increasing financial support from the EU, which is more stable and reliable than national funding.

Another important tendency highlighted by the following analysis is the increasing politicization of European transnational solidarity: besides

humanitarian concerns, political beliefs appear to have played an important role in European pro-migrant engagement over the last decade. The European institutional response to the 2015 'refugee crisis' seems to have contributed significantly to this change. In fact, depicting the growing influx of irregular migrants to the EU as a crisis requiring emergency measures, European institutions managed to introduce significantly stricter migration policies aiming at consolidating 'Fortress EU', based on an exclusionary and securitized understanding of solidarity. Meanwhile, those measures revealed the fragility of the internal dimension of European solidarity, leading to a "race to the bottom" where most member states would be reluctant to share the 'burden' of asylum seekers with the countries of the first arrival. Thus, the inability to efficiently reform Dublin III Regulation and the insufficient burden-sharing mechanisms across Europe have been constantly denounced by scholars and activists. Consequently, as shown by our research, their engagement began to be more frequently perceived as a means to oppose migrants' social exclusion caused by EU migration policies. Even the most neutral actors, by simply assisting irregular migrants left out by national welfare and providing an alternative to it, challenged the boundary between citizens and non-citizens in a two-fold attempt to expand social rights beyond the national community and to uphold a new form of community based on support and mutual help. This confirmed our hypothesis – postulated in Chapter 1 – that transnational solidarity actors, promoting a more inclusive concept of solidarity, are also opposing the exclusive understanding of solidarity established by state institutions.

Finally, our analysis in Chapter 2 showed that the most defining feature in the changing interaction of civil society with the EU and European states in the migration field is an interesting combination of cooperation and conflict with strong political nuances. Despite continuing to cooperate, when necessary, since 2015 the relationship between states and transnational solidarity actors has become significantly more conflictual. Moreover, despite habitually replacing the state in many of its social functions, transnational solidarity actors have been increasingly subject to criminalization. This process consists of a whole set of practices and policies used by the EU and the member states to limit support to irregular migrants as part of their broader anti-human smuggling policies. Three main ways to police humanitarian actors have been developed, namely harassment, disciplining and legal proceedings.

Whether these measures are sufficient to substantially diminish and extinguish grassroots forms of solidarity to irregular migrants across Europe is a question we attempted to address in Chapter 3. In order to better define the field of action of SAR NGOs in the Mediterranean, we have first provided a general overview of the international and European legal framework regulating SAR

and migration at sea. Our analysis showed that the Mediterranean is a very complex field of action and the stage of frequent conflicts between European sovereign states conducting SAR operations. Although certain legal loopholes may be found in the legal framework regulating SAR, the core issue is represented by the political will to securitize and externalize the European border perceivably threatened by irregular migrants. The EU and the member states have a strong interest in exerting control over the Mediterranean to protect the gates of 'Fortress EU'. Thus, understandably, they felt threatened by the arrival of new players like the NGOs started to do in 2014.

In fact, in the second part of the Chapter, the evolution in the role played by SAR NGOs in the Mediterranean in the past seven years has been studied. Overall, our analysis has shown that, like European transnational solidarity since 2015, they began to increasingly mobilize due to the need to fill in the gap left by European states, in particular by the dismantling of SAR Operation Mare Nostrum leading to a staggering rise in sea deaths between 2014-15. Overall, between 2014 and 2021, 18 NGOs have been involved in SAR operations in the Mediterranean, deploying a total of 29 ships and three aircraft. Like European transnational actors, SAR NGOs have been mostly organized locally, while transnational cooperation is still limited. According to our analysis, there was a slight decline in the number of NGOs delivering SAR activities in 2018, after a stable increase during the previous three years. With the exception of the year 2020, we noticed a downward trend in the non-governmental SAR provision at sea which may be partially explained by the decrease in the number of boat arrivals to the EU as a result of the more restrictive migration policy.

Nonetheless, it has been often argued that the major obstacle to civil society's engagement in this field can be found in the criminalization of solidarity. Indeed, apart from increasingly blaming the rescuers of collusion with migrant smugglers, since 2016 new regulations started to be imposed to discipline SAR NGOs and an increasing number of people were put under investigation on grounds of abetting or facilitating illegal migration. Further, more and more often the NGOs' vessels have been seized and detained at the port, leading to several months of inaction for the crew. This process may explain the reason why, although the number of SAR NGOs has not changed significantly in the past four years, their impact in terms of people saved has been significantly lower since the end of 2017. Many of them were able to launch a lower number of missions and be present at sea only for a limited number of months each year. Furthermore, criminalization led to the growing 'politicization of humanitarianism'. Appropriating the commonly perceived non-neutrality of SAR interventions, many organizations, especially smaller ones, combined SAR provision with advocacy and whistleblowing, by constantly monitoring

the situation at sea and denouncing the violence at the European border. Indeed, our analysis showed that 16 out of 18 NGOs have been criticizing the exclusive understanding of solidarity by refusing the European border management and stringent migration policies. Moreover, analyzing each NGO's level of political contestation, we found that one-third of them have been very highly politically engaged, campaigning for the abolishment of the EU Coast Guard, Frontex.

Thus, in the final section of Chapter 3, we have investigated whether formal criminalization has been effective in discouraging non-governmental presence at sea by studying the number of legal proceedings initiated by European states against SAR NGOs between 2017 and 2021 and their response to them. Our analysis showed that among the above-mentioned 18 SAR NGOs, 14 were involved in at least one legal proceeding; the number of cases moved against the vessels, or the crew members accounted for 56. However, a significant decrease in state criminalization characterized the past two years, probably as a result of the changing cabinet in Italy, where the vast majority of cases in the previous years had been initiated. Moreover, analyzing the different responses to state criminalization, our study showed that the states' attempt to discourage SAR NGOs through criminalization has worked in very few cases (13%), whereas in more than half of the cases (53%) it has been completely ineffective, and the NGOs continued to operate in the Mediterranean. Finally, one third of them have been partially impacted by criminalization either temporarily suspending SAR operations or shifting to monitoring operations.

Henceforth, our analysis leads us to an important conclusion. Despite representing an obstacle and reason for delays in delivering SAR activities, legal proceedings against SAR NGOs seem to be unable to extinguish this phenomenon. Criminalization has, indeed, reduced the time spent at sea by the NGOs, but, in most cases, has not impacted their willingness to launch SAR operations and save lives in the Mediterranean. Thus, given its ongoing decline, criminalization is even less likely to work in the upcoming years both for the non-governmental provision of SAR, and for the broader phenomenon of European transnational solidarity largely characterized by the same trends as the former.

We have wondered about the reasons for this result. While the level of political contestation turned out to play a smaller role in motivating SAR NGOs, the main determining factors of transnational solidarity to irregular migrants appeared to be the need to fill in the gap left by state institutions and the perceived feeling to be on the right side. Both were commonly mentioned in the websites and social media of the NGOs analyzed. These motivations will not be washed out by state criminalization in the foreseeing future. Immigration

flows from the global South are moved by more structural causes and are not likely to disappear despite the securitizing and externalizing strategies deployed by the EU. Further, it has been demonstrated that stigmatizing the humanitarians, criminalization seems to motivate civil society's solidarity toward irregular migrants even more, enhancing group cohesion and individual commitment. If the process is continued in the following decade, we may expect further polarization and politicization among humanitarians, meaning enhanced contestation of perceivably unjust and inhumane state policies.

In conclusion, our findings confirm the hypothesis postulated in the introduction, suggesting that European transnational solidarity is not likely to disappear or substantially decrease in the next decade as a consequence of criminalization. However, whereas civil society is strongly motivated by the need to help irregular migrants left out by the institutional welfare and moral reasons, the political engagement seems to be less relevant, motivating only a part of them. Moreover, the phenomenon studied is relatively recent, and the timespan and available data of our research is limited; further evolution in the process of criminalization should be monitored by the scholars and further researched in the upcoming years.

Studies on the topic are crucial to informing European policymakers over the effectiveness of the strategies pursued in the migration field, one of the most contested points on the political agenda. A significantly more fruitful cooperation between state institutions and civil society could be initiated, based on a common commitment to hold less politicized and more neutral positions. Nonetheless, for this purpose, the European policymakers should accept that transnational solidarity, like irregular migration flows, has deeper roots and driving forces that cannot be easily demolished. It might be argued whether criminalization is moral, it has demonstrated not to be effective.

On a positive note, a first step forward seems to have been taken in *Mr. Cédric H. et al.*, a case brought before the French Constitutional Council and involving a farmer accused of facilitating irregular entry, transit, and stay in the Roya Valley on the French-Italian border[415]. In 2018, the Council ruled that "the freedom to help one another, for humanitarian reasons, without consideration as to whether the assisted person is legally residing or not within the French territory"[416] may be inferred from the principle of *fraternité* – very close to that of solidarity – which has a constitutional value. Thus, the Council upheld the freedom of humanitarian assistance to migrants regardless of their status, declaring that it is the responsibility of the legislator to find a fair balance

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[415] EDAL (2018).
[416] Constitutional Council, 6 July 2018, Decision no. 2018-717/718 QPC, *Mr. Cédric H. et al.*, para. 8.

between the principle of fraternity and the safeguarding of public security. Hopefully, this pivotal judgement might open the way for a new, more informed debate about European solidarity which balances short-term political goals with a long-term assessment of the reality. Not only should this discussion consider the values and guiding principles that inspired the European founding fathers, but, perhaps more realistically, the actual feasibility and effectiveness of certain strategies in the long run, beyond merely political purposes.

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Tables

Table 1. NGOs involved in SAR operations in the Mediterranean (2014-21).
Source: author

NGO	Vessel/ air-craft(s)	2014	2015	2016	2017	2018	2019	2020	2021 (Jan-Aug)
Association Pilotes Volontaire (FR)	Colibri (aircraft)	NO	NO	NO	NO	YES	YES (unt. July)	NO	NO
	Colibri 2 (aircraft)	NO	NO	NO	NO	NO	NO	YES (only Dec.)	YES
Jugend Rettet (DE)	Iuventa	NO	NO	YES (2nd half)	YES (unt. Aug)	NO	NO	NO	NO
Lifeboat Project (DE)	Minden	NO	NO	YES	YES	NO	NO	NO	NO
Mare Liberum (DE)	Mare Liberum (ex-Sea-Watch)	NO	NO	NO	NO	YES	YES	YES (2nd half)	YES (only monitoring)
	Mare Liberum 2 (monitoring)	NO	NO	NO	NO	NO	NO	NO	YES (from July)
Mediterranea Saving Humans (IT)	Alex Mediterranea	NO	NO	NO	NO	NO	YES	NO	NO
	Mare Jonio (supported by Sea-Watch and Open Arms)	NO	NO	NO	NO	YES (from Oct.)	YES	YES	NO
Mission Lifeline (DE)	Eleonore	NO	NO	NO	NO	NO	YES (only Aug.)	NO	NO
	Lifeline (ex- Sea-Watch 2)	NO	NO	YES	YES	YES (1st half)	NO	NO	NO
MOAS (MT)	Phoenix (with MSF)	YES	YES	YES	YES (unt. Aug.)	NO	NO	NO	NO
	Responder	NO	NO	YES	NO	NO	NO	NO	NO
MSF (FR)	Argos	NO	YES	YES	NO	NO	NO	NO	NO
	Dignity I (then Sea-Watch 3)	NO	YES	YES	NO	NO	NO	NO	NO
	Geo Barents	NO	NO	NO	NO	NO	NO	YES	YES

								(unt, July)
	Vos Prudence	NO	NO	NO	YES	NO	NO	NO	NO
M.V. Louise Michel (DE)	Louise Michel	NO	NO	NO	NO	NO	NO	YES (Aug.-Oct.)	NO
ProActiva Open Arms (ES)	Astral	NO	NO	YES (from June)	YES	YES	YES (1st half)	YES (Aug.-Nov.)	YES
	Golfo Azzurro	NO	NO	YES	YES	YES (unt. Sep.)	NO	NO	NO
	Open Arms	NO	NO	NO	NO	YES	NO	YES (2nd half)	NO
RESQSHIP (DE)	Josefa (monitoring)	NO	NO	NO	NO	NO	YES (Apr.-Aug.)	NO	NO
	Nadir	NO	NO	NO	NO	NO	NO	NO	YES (from June)
Refugee Rescue (UK)	Mo Chara	NO	NO	YES	YES	YES	YES	NO	NO
RESQ people saving people (IT)	ResQ (ex-Alan-Kurdi)	NO	NO	NO	NO	NO	NO	NO	YES (from Aug.)
SHM (ES)	Aita Mari	NO	NO	NO	NO	NO	YES	YES	YES
Save the Children (US)	Vos Hestia	NO	NO	YES	YES	NO	NO	NO	NO
Sea-Eye (DE)	Alan Kurdi (then ResQ)	NO	NO	NO	NO	NO	YES	YES	NO
	Sea-Eye	NO	NO	YES	YES	YES (1st half)	NO	NO	NO
	Sea-Eye 4	NO	NO	NO	NO	NO	NO	NO	YES (May-June)
	Seefuchs (then Life[417])	NO	NO	NO	YES	YES (1st half)	NO	NO	NO
Sea-Watch (DE)	Sea-Watch 1 (then Mare Liberum)	NO	YES	NO	NO	NO	NO	NO	NO
	Sea-Watch 2 (then Lifeline)	NO	NO	YES	NO	NO	NO	NO	NO

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[417] Today, Life is used by the NGO PROEM-AID to train volunteers and to raise awareness on the cause of refugees and their problems, not for SAR provision.

	Sea-Watch 3 (ex-Dignity-I)	NO	NO	NO	YES	YES (only 1st half)	YES (only 1st half)	YES	YES
	Sea-Watch 4 (with MSF)	NO	NO	NO	NO	NO	NO	YES (2nd half)	YES
	Moonbird (aircraft) (with Humanitarian Pilots Initiative)	NO	NO	NO	YES	NO	YES	YES	YES
	Seabird (aircraft) (with Humanitarian Pilots Initiative)	NO	NO	NO	NO	NO	NO	YES	YES
SOS Méditerranée (FR – DE – IT - CH)	Aquarius (with MSF)	NO	NO	YES	YES	YES	NO	NO	NO
	Ocean Viking (with MSF)	NO	NO	NO	NO	NO	YES	YES	YES

Table 2. Level of political engagement and contestation of SAR NGOs. Source: author

Level of criticism	Main messages	NGOs
Moderate	Criticism of EU migration policy	Association Pilotes Volontaire MSF Save the Children SOS Méditerranée
Medium	The above and criticism of Frontex	Jugend Rettet Mission Lifeline ResQ People Saving people
High	All the above and call for defunding Frontex	M.V. Louise Michel Sea-Eye SMH

Very high	All the above and call for abolishing Frontex	Mare Liberum Mediterranea Open Arms Refugee Rescue RESQSHIP Sea-Watch

Table 3. Effect of criminalization on SAR NGOs (2017-21). Source: author

NGOs	Response to criminalization	Effect of criminaliza-tion
Jugend Rettet Save the Children	Suspension of SAR activi-ties	Effective
Mare Liberum Mission Lifeline M.V. Louise Michele	Shift to monitoring and lob-bying activities	Partially effective
Refugee Rescue (MOAS)	Temporary suspension of SAR activities	Partially effective
Ass. Pilotes Vo-lontaires Mediterranea MSF Open Arms Sea-Eye Sea-Watch SMH SOS Méditerranée	Continuation of SAR activi-ties	Ineffective

Figures

Figure 5. Type of transnational solidarity actor per field. Source: KOUSIS et al. (2020: 60)
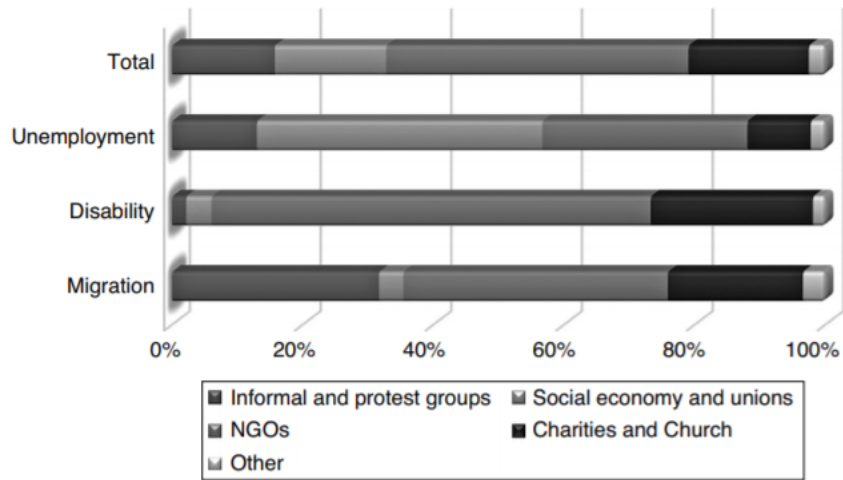
Figure 6. Starting year of transnational solidarity organizations per field. Source: KOUSIS et al. (2020: 62)
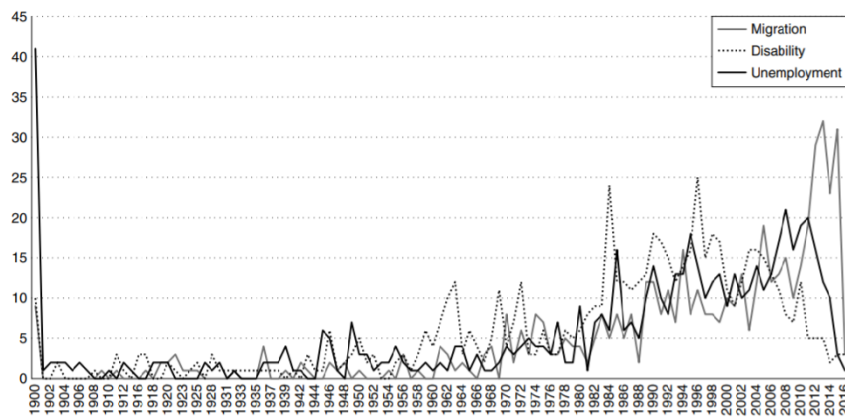
Figure 7. Number of individuals under ongoing investigation (2015-18). Source: VOSYLIŪTÉ & CONTE (2019b)
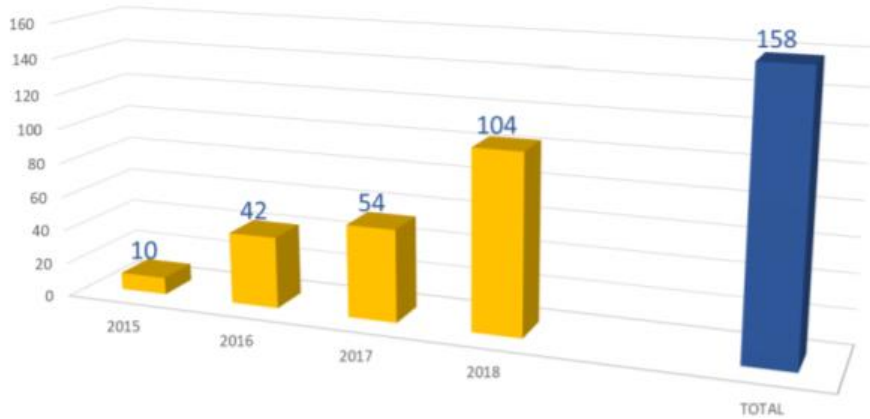
Figure 8. Search and Rescue Regions (SRR) in the Mediterranean according to the 2004 Amendments. Source: AALBERTS, GAMMELTOFT-HANSEN (2014: 452)
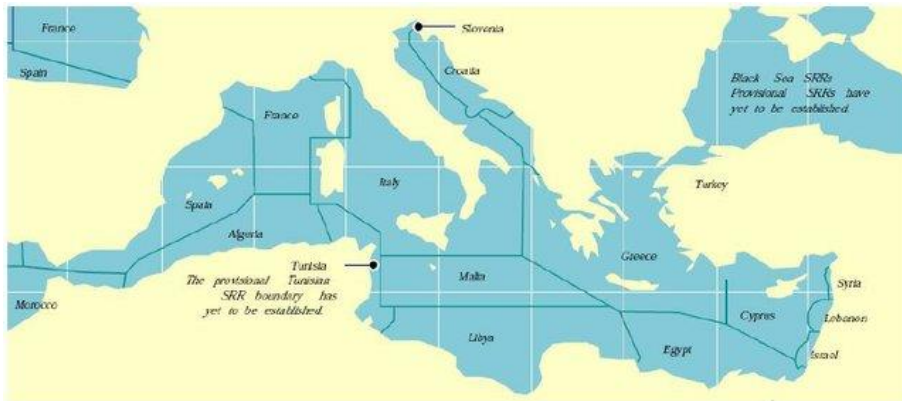
Figure 5. No. SAR NGOs and their vessels deployed in the Mediterranean (2014-21[418]). Source: author

	2014	2015	2016	2017	2018	2019	2020	2021
No. Vessels	1	4	14	13	11	10	11	9
No. NGOs	1	3	11	11	8	9	9	8
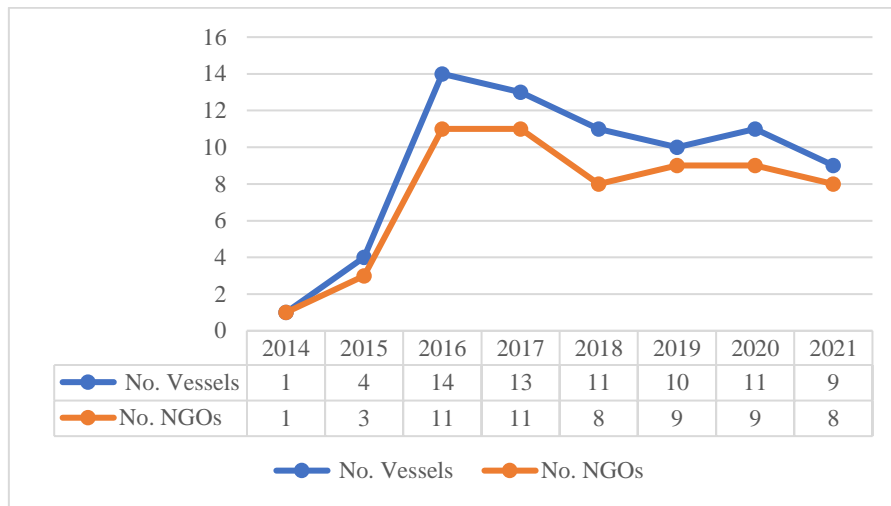
Figure 6. No. of Rescues by all SAR Operations (2014-19). Source: CUSU-MANO, VILLA (2021: 28)

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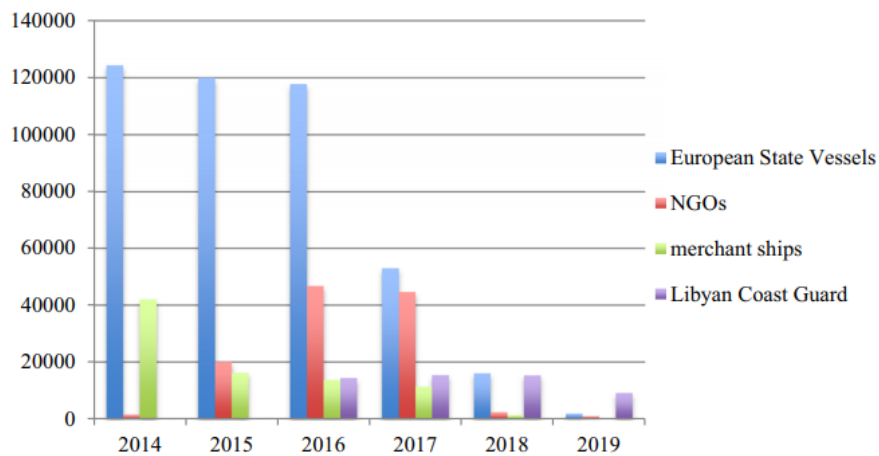
[418] Data concerning the year 2021 include only the first three quarters.

Figure 7. No. of legal proceedings initiated by European states against SAR NGOs (2017-21[419]). Source: author

No. legal proceedings against SAR NGOs (2017-2021)

	2017	2018	2019	2020	2021
No. measures against vessels	1	8	14	10	3
No. measures against crew	3	5	9	2	1

No. measures against vessels   No. measures against crew
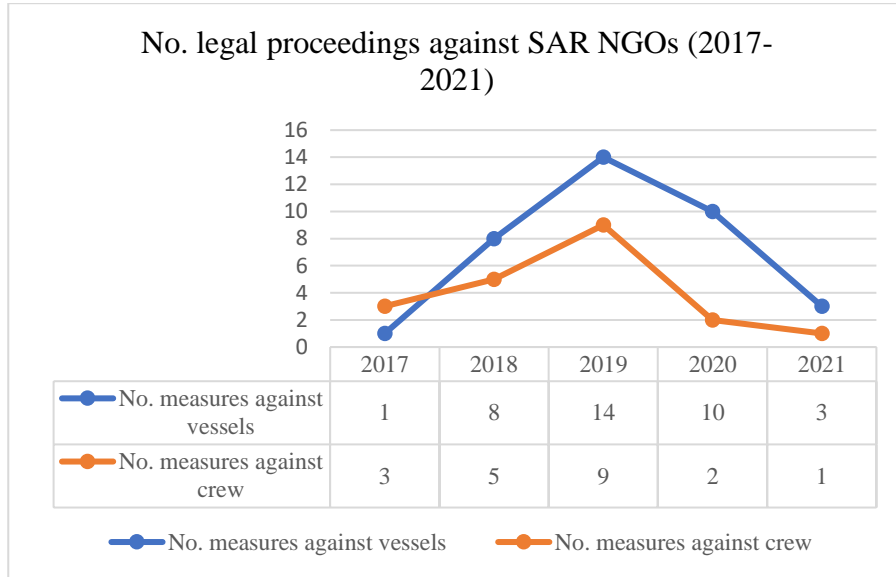
[419] The data regarding 2021 include only the first three quarters.

Executive summary

Introduction

The following research aims at studying European solidarity from a historical perspective, focusing on the way this concept has been changing over the past decade under the influence of growing migration flows to the EU. In particular, we will analyze the impact of the 2015 'refugee crisis' on two forms of European solidarity, namely the EU official approach, and more grassroots forms of solidarity toward irregular migrants (or transnational solidarity).

Despite the widespread scholarly interest in this phenomenon, a wider historical analysis of its evolution and long-term effects has been missing. Nonetheless, this issue is topical and timely since irregular migration to the EU is very high on the political agenda. More importantly, the management of migration flows to Europe is not an exclusive prerogative of state institutions anymore; civil society has been playing an increasingly active role in the field. However, state- and non-state actors hold different understandings of solidarity which have often led to divergences and fractions in their daily encounters. This might lead to new challenges in the following decades. One of the most recent outcomes of this divergence is the 'criminalization of solidarity', a strategy used by the EU and European states to discourage civil society from aiding irregular migrants and, by so doing, interfering with the states' legitimate interest to secure their borders. Nonetheless, criminalization has been proved to not be beneficial, leading to several unintended consequences such as migrants' social exclusion and increasing polarization in European society. The following thesis aims at proving whether it is effective, a question European policymakers should investigate before defining the future strategy to pursue in the management of irregular migration flows.

Therefore, the main research question is the following: *considering the evolution of European transnational solidarity to irregular migrants throughout the latest decade, is criminalization likely to eventually extinguish this phenomenon in the upcoming decade?*

Our hypothesis, before conducting the research is that, *despite the criminalization process moved toward it by the EU and European states, being driven by the urgent need to fill the vacuum left by state institutions, and by a strong civic and political engagement, transnational solidarity is unlikely to disappear or substantially decrease in the upcoming decade.*

Thus, the above-mentioned thesis statement will be investigated through a historical and analytical approach. Hence, the following thesis is divided into three Chapters and a conclusion. Chapter 1 will introduce the concept of

solidarity examining its historical evolution from the Greek polis to the Westphalian sovereign state until its recent expansion beyond national borders. After the theoretical part, Chapter 2 will then focus on the empirical part, investigating the main trends in the evolution of transnational solidarity to irregular migrants during the latest decade, especially after the 'refugee crisis'. Finally, Chapter 3 will go deeper in the analysis of transnational solidarity, focusing specifically on one of its forms, the non-governmental provision of SAR in the Mediterranean. The reason behind this choice is twofold. First, this is one of the most contested fields of action where the phenomenon of securitization and criminalization of civil society is most clearly displayed. At the maritime gates of 'Fortress EU', a vibrant clash is ongoing between state- and non-state actors holding different perceptions of borders and understandings of European solidarity. Second, NGOs involved in SAR operations have drawn a high degree of public and scholarly attention in the last seven years and a significantly higher volume of data registering this phenomenon is available than that regarding the broader transnational solidarity. Thus, a forecast of the main trends expected to characterize European transnational solidarity in the next decade will conclude the Chapter.

Chapter 1

Despite having been widely deployed in a myriad of disciplines and contexts, the concept of solidarity is notwithstanding hard to define. Tracking down the existence of this phenomenon to the ancient Greek and Roman times, long before the formulation of both the idea and the term, Stjernø has recently offered the most illustrative conceptualization of solidarity. Solidarity, he states, may be understood as "being norms contributing to social integration", or, alternatively, as "being a relationship between members of a more or less specified group"[420]. Thus, we may conclude that there are "two necessary values, that an individual should identify with others, to some degree, and that a feeling of community should exist between the individual and (at least some) others, and as a consequence it can be argued that all these ideas of solidarity imply some sort of inclusiveness"[421].

In fact, the history of this phenomenon confirms that, since its very first emergence, solidarity has been closely connected to the harmony binding the members of a social group. However, moving from classical to modern times, the boundaries of that group have been expanding from the Greek polis and Roman gens to the Christian friars in medieval times, and to the modern nation-state in the mid-19th century. Indeed, being the welfare state an advanced in-

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[420] STJERNØ (2009: 85).
[421] STJERNØ (2009: 88-89).

stance of institutionalized solidarity, in modern times solidarity has been increasingly associated with the sense of togetherness shared by the citizens of the same state. Nonetheless, as underlined by Weber, inclusiveness and the feeling of community always involve a certain level of exclusiveness. Solidarity is characterized by the internal struggle between 'We', the members of the group bound by a feeling of mutual support and responsibility toward each other, and 'the Other' outside that group. Whether it is possible to overcome the boundary between 'insiders' and 'outsiders', and promote a different, more inclusive form of solidarity is a question that many scholars have investigated. Among them, philosopher Hannah Arendt offered a clear example of 'inclusive' solidarity which binds those who suffer with those who make common cause with them. Inspired by a universal feeling of belonging to mankind or a pressing desire to restore human justice, Arendtian 'inclusive solidarity' reached the maximum extension, encompassing the whole of humankind.

Similar forms of 'global' solidarity have been increasingly emerging as the result of globalization in opposition to more traditional understandings of the concept. However, even in a form of inclusive solidarity, it is not unlikely that the members of the group will be bound together by some sort of antagonism toward another social group perpetrating – more or less willingly – some form of discrimination toward the oppressed people. Thus, not only the power of their shared beliefs and goals binds them together, but also the feeling of being "other" than those who commit such undesirable actions. Whereas this tension is clearly displayed by the state-centered understanding of solidarity binding the national community of a state, new phenomena such as supranational and transnational solidarity are harder to be explained through this lens. Because of the co-existence of different forms of solidarity, the European context is of particular interest to study the expansion of solidarity beyond the national borders. Thus, we will focus on the form of solidarity officially promoted by EU institutions and that realized by European civil society

First, since its emergence, the EU has attempted to extend an institutionalized form of solidarity to the whole community of 27 member states. The first conceptualization of European solidarity can be dated back to 1950, long before the Maastricht Treaty, when the French Minister of Foreign Affairs Robert Schuman proposed the foundation of the European Coal and Steel Community in the Schuman Declaration. He declared that Europe "will be built through concrete achievements which first create a de facto solidarity"[422]. Further, several are the references to the concept of European solidarity in EU law, both in the Treaty on the European Union (TEU), and in the Treaty on the Functioning of the European Union (TFEU). This concept is perceived as a guiding

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[422] DI NAPOLI, RUSSO (2018: 202).

principle for the member states expected to act on behalf of a feeling of to-getherness with the others; yet it also constitutes "a specific provision in stra-tegic policy areas or in paradigmatic situations, such as asylum, immigration, energy, foreign policy, and natural or manmade disasters"[423]. In particular, it is Article 80 of the TFEU that defines that the policies of the Union regarding immigration, border checks, asylum and their application "shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the member states"[424]. Finally, there are many references to European solidarity in the EU Charter of Fundamental Rights in whose preamble it is enlisted among the indivisible, universal values on which the Union is founded. Although the European legal system provides the mem-ber states with a fully-fledged set of rules and procedures regulating solidarity among member states, individuals and generations, complaints about the inef-fectiveness of such system have been constantly expressed. Indeed, despite the founding fathers' intention to create a supranational solidarity among members, a strongly state-centered approach to solidarity was applied to the Union. Reciprocity and self-interest are the primary sources of bindingness, whereas European identity plays a significantly minor role.

The strong state-centered approach to solidarity within the EU is particularly evident with regard to the management of migration flows and, specifically, of irregular migrants. Here, solidarity is defined only in terms of intergovern-mental solidarity. Whereas under EU law member states are supposed to assist each other in the management of migration flows, irregular migrants are de-picted mainly as a potential security threat 'against' which European states and institutions are united. Therefore, European solidarity reflects the same internal tension between 'We' and 'the Other' inherent in national solidarity, where third-country nationals, especially those who entered illegally, repre-sent 'the Other' not included in institutionalized solidarity. In sum, European solidarity is perceived in a securitized and exclusionary way; it only means protection for the front-line countries facing the influx of irregular mi- grants from the other member states.

Unlike the supranational form which is strictly linked to "the sense of belong-ing as European citizens to a political community with specific rights and du-ties"[425], throughout the latest decades many grassroots and less formal types of solidarity have been emerging from the European civil society. They rep-resent a form of transnational solidarity, based on a feeling of commonality

[423] DI NAPOLI, RUSSO (2018: 204).
[424] European Union, 7 June 2016, OJ C202/1, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.
[425] KNODT, TEWS (2017: 52).

shared among the group members and extended beyond the borders of the European Union to involve third-country nationals as well. One of its expressions is pro-migrant solidarity. This is 'project-oriented': rather than in a pre-existing common identity, the group's unity is rooted in a common goal such as promoting justice or alleviating human suffering. Transnational forms of pro-migrant solidarity have been recently growing due to the unprecedented influx of irregular migrants to Europe during the latest decade and especially after the so-called 2015 'refugee crisis'. They promote a horizontal approach based on reciprocity and mutualism, rather than a vertical, top-down approach based on a philanthropic call. However, like in the previous case, the 'glue' binding this newly emerged community is not only represented by the sense of togetherness, but also by a form of antagonism. This is the – more or less hostile – opposition to the exclusive understanding of European solidarity and the increasingly restrictive migration policies at the European and state level, perceived as unjust and causing inhumane sufferings. Although it has been often argued that a form of universally inclusive solidarity is rarely possible in a post-colonial world fraught with power relations and asymmetries, the following research does not aim at investigating this question. Our focus, is, instead, the way European transnational solidarity actors have aspired to inclusive solidarity and attempted to realize it over the last decade.

Chapter 2

Although early instances of European transnational solidarity can be dated back to the early 1900s, there is a lack of up-to-date empirical data regarding this phenomenon, in particular in fields subject to continuous changes such as migration. This is even more evident for solidarity practices targeted to irregular migrants, a grouping that may include several categories of migrants such as refugees, victims of trafficking, or unaccompanied minors who have entered illegally the destination country. Their status often prevents them from accessing the services provided by state and local authorities, turning them into the main beneficiaries of alternative types of solidarity provided by non-traditional actors.

Solidarity in the broader migration field is not a recent phenomenon: it can be dated back to the early 1900s, although increasing waves emerged after the 1950s-60s and escalated more recently, from the 1990s to the present, as a result of the growing global migration flows. In particular, the 2015 'refugee

crisis'[426] seems to have represented a major turning point in the evolution of European transnational solidarity both in quantitative, and qualitative terms. It led, in fact, to the growing importance of new actors – such as unaffiliated citizens and corporate actors – alongside more traditional ones – such as the Church and NGOs. The result is an interesting combination of formal and informal actors mobilized to help irregular migrants arriving in the EU both during their journey and after the migrants' arrival to Europe. In the first place, transnational solidarity actors may favor the illegal entry or transit of migrants crossing the European borders either by land or by sea, through the so-called 'escape aid' which includes obtaining documents, offering transport, and calling for legal pathways for asylum seekers. In the second place, an important role is played by the European civil society upon migrants' arrival to Europe, for instance in meeting their most basic and urgent needs by providing shelter, clothing, and medical services. Alongside practical help, we may also find several instances of political help consisting in advocating and lobbying for the cause of irregular migration in local politics.

As for the motives behind the growing mobilization to irregular migrants, the urgency of the situation and the necessity to solve the insufficient response from state and EU institutions seem to have been the main drivers of transnational solidarity in the past decade. Thus, over the 2010s, new informal types of solidarity emerged even in those Northern European countries traditionally dominated by formalized organizations. Overall, the phenomenon appeared to be more intense in those countries most severely affected by the crisis, such as Greece and Germany. Similar principles and experiences shared by transnational solidarity actors across Europe might suggest a good level of transnationalism among organizations supporting irregular migrants in different countries. However, despite thinking globally, they mostly act locally. Hence, we may talk of "soft transnationalism", consisting mainly in cross-national cooperation between local groups. Finally, transnational solidarity is becoming more Europeanized due to the increasing financial support from the EU, which is a more stable and reliable source than national funding.

Another important tendency in the evolution of the phenomenon is the increasing politicization of European transnational solidarity: besides humanitarian concerns, political beliefs appear to have played an important role in European pro-migrant engagement over the last decade. The European institutional response to the 2015 'crisis' and the following restrictive migration policies seems to have contributed significantly to this change. More in general, it had

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[426] Like other scholars on the topic, we are critical of the use of 'refugee crisis' which entails an alarmistic connotation and risks stigmatizing migrants and refugees. Henceforth, we deliberately use it in scare quotes.

a direct impact on the evolution of European transnational solidarity to irregular migrants and their interaction with traditional actors. In fact, due to the growing influx of refugees in the latest months, in May 2015, the European Commission developed the European Agenda on Migration. It significantly enhanced the cooperation with third countries in fighting human trafficking and smuggling, strengthening the readmission agreements, and reinforcing the European border regime. This was part of the broader strategy aiming at securitizing and externalizing the European frontiers in the past few years. A crucial role in this process was played by Frontex, the European agency responsible for coordinating the management of the external borders, and by neighboring third countries like Turkey and several African countries. Therefore, depicting the growing influx of irregular migrants to the EU as a crisis requiring emergency measures, European institutions managed to introduce significantly stricter migration policies aiming at consolidating 'Fortress EU', based on an exclusionary and securitized form of solidarity.

Meanwhile, those measures revealed the fragility of the internal dimension of European solidarity, leading to a "race to the bottom" where most member states would be reluctant to share the 'burden' of asylum seekers with the countries of the first arrival. In fact, in EU law, the Dublin system establishes the criteria and mechanism for defining the member state responsible for examining an application for international protection lodged in one of the states by a third-country national or a stateless person. However, since, in the case of illegal entry the country responsible for examining the admission is – with very few exceptions – the country of first entry, the system burdens the European states at the external borders such as Cyprus, Greece, Italy, Malta, Spain. Since 2015, several proposals to reform Dublin III Regulation have been discussed by the Commission in an attempt to solve the geographic asymmetry within the Union; as of 2021, no major changes have been adopted.

Meanwhile, since 2015, European pro-migrant supporters have been increasingly become critical of the European migration policy, condemning the crisis of institutionalized solidarity among the member states, the cooperation with third countries violating migrants' human rights, the limited number of legal pathways to Europe. Hence, the civil society supporting irregular migrants has been not solely driven by the need to fill in the vacuum left by state institutions during the summer of 2015 and afterward. As demonstrated by empirical evidence, their engagement was also frequently perceived as a means to oppose migrants' social exclusion caused by restrictive migration policies within the broader process of migration criminalization and securitization. Even the most neutral actors, by simply assisting irregular migrants left out by national welfare and providing an alternative to it, challenged the boundary between citizens and non-citizens in a two-fold attempt to expand social rights beyond the

national community and to uphold a new form of community based on support and mutual help. Promoting a more inclusive concept of solidarity, transnational solidarity actors are also opposing the exclusive understanding of solidarity established by state institutions.

Thus, analyzing European transnational solidarity toward irregular migrants from this angle, a new trend can be recognized in its recent evolution, e.g. the increasing politicization. The most defining feature in the changing interaction of civil society with the EU and European states in the migration field is, in fact, an interesting combination of cooperation and conflict with strong political nuances. Despite continuing to cooperate, when necessary, since 2015 the relationship between states and transnational solidarity actors has become significantly more conflictual and the latter has been increasingly subject to criminalization. This process consists of a whole set of practices and policies used by the EU and the member states to limit support to irregular migrants as part of their broader anti-human smuggling policies. Three main ways to police humanitarian actors have been developed, namely harassment, disciplining and legal proceedings. First, humanitarian actors have progressively become the object of suspicion and intimidation in political and media dis- courses. Second, national institutions have been attempting to discipline civil society through additional administrative and regulatory measures threatening their neutrality and impartiality and requiring higher levels of financial ac- countability and transparency. Finally, over the last decade, citizens and NGOs providing humanitarian aid to migrants have increasingly been in- volved in criminal prosecutions based on grounds of facilitating the entry, transit, and residence of migrants in the member states. Although only a minority of those cases ended by imposing punitive sanctions upon them, the initiation of criminal proceedings and the sole prospect of criminal sanctions have served to discourage solidarity toward irregular migrants.

According to the data gathered by the Research Social Platform on Migration and Asylum (ReSOMA) between 2015 and the first quarter of 2019, there were at least 49 cases of criminal prosecution and investigation in 11 European countries. Moreover, according to their latest report, as of December 2019, 171 individuals were being criminalized across 13 member states. The targets of such cases were mainly human rights defenders, volunteers, crew members of boats involved in SAR missions, as well as ordinary citizens, family members, mayors, and religious leaders. Indeed, as a direct consequence of the growing criminalization of migration, over the last decade, the basket of prosecutable crimes has been expanding.

It is important to mention that the process of criminalization does not take place in a legal vacuum; it had been made possible and favored by the discre-

tion left by the EU Facilitation Directive to the member states. This represents the backbone of European policies tackling migrant smuggling and criminalizing the facilitation of unauthorized entry, transit, and residence. Contrarily to the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, the EU Facilitation Directive does not include the financial and material benefit in its definition of migrant smuggling, and profit is envisioned only as an aggravating circumstance. Therefore, the EU leaves the member states the discretionary possibility to exempt an individual from criminalization in situations of humanitarian assistance.

Although the aim pursued by these laws, i.e. combating migrant smuggling, is legitimate, scholars seem to agree on their vagueness and lack of legal certainty. The restrictions placed on the activities of NGOs and, thus, on human rights such as the freedom of association are neither necessary nor proportionate. The same aim may be achieved through "more effective and less intrusive routes"[427]. Moreover, criminal law is used in the field of migration offenses selectively and instrumentally to supplement administrative measures, whereby these are unable to achieve the desired outcome. Thus, the pragmatic use of criminal law suggests that the criminalization of solidarity and, more specifically, judicial prosecutions across Europe serve a purely political purpose, disrupting the dynamics of social interaction between migrants and civil society. Whether these measures are sufficient to substantially diminish and extinguish grassroots forms of solidarity to irregular migrants across Europe is a question we attempt to address in Chapter 3.

Chapter 3

Search and Rescue (SAR) has recently become one of the main fields of action of transnational solidarity actors, mainly NGOs. In order to better understand this context, a general overview of the international and European legal framework regulating SAR and migration at sea is crucial.

Today, several international conventions are codifying the duty to help people in distress at sea, namely the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention), the 1979 International Convention on Maritime Search and Rescue (SAR Convention), and the 1982 United Nations Convention on the Law of the Sea (UNCLOS). They establish that it is the responsibility of every state to require the master of a ship flying its flag to assist people found in danger of being lost or in distress, regardless of their status and nationality. In order to create a coordinated system of rescue, the SAR Convention divided the global maritime space into different SAR regions, in each of which a specific country is responsible for conducting SAR

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[427] CONF/EXP(2019)1, p. 40.

activities. The Convention established that, although the responsibility of the naval security forces and coast guards in coastal states is crucial, the obligation to rescue may be passed over another state party in case of necessity. However, the 2004 Amendments to the SAR Convention seem to suggest that the primary responsibility rests upon the coastal state in whose SAR region the people have been rescued; for this reason, Malta refused to sign it claiming it would create a disproportionate burden for first-line countries.

Finally, a SAR mission is considered ended only once the people rescued have been disembarked in a place of safety. If people on board are in potential need of asylum protection, they should not be disembarked in the territory of their origin country or another country where they would face the risk of persecution, torture, or other serious harm. As a matter of fact, here the law of the sea encounters the refugee law, incorporating the principle of non-refoulment of the 1951 Convention Relating to the Status of Refugees.

The international legal framework regulating SAR activities applies fully to the EU member states. Within the EU law, the right to life is protected by Article 2 of the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR). This fundamental obligation cannot be circumvented under any circumstances, including the enforcement of border control. Further, in 2012, in Hirsi v. Italy the European Court of Human Rights (ECtHR) extended the protection of migrants' human rights on the high seas, stating that the application of the non-refoulment principle and international law remains mandatory in international waters. Finally, EU law combined the obligation to rescue and find a place of safety for people in distress at sea with the principle of non-refoulment in the Sea Borders Regulation, adopted in 2014. This forbids the disembarkation of rescued people in a country where the individual may face a risk of torture or ill-treatment. Most importantly, it applies regardless of any request for asylum by the individual.

However, analyzing the evolution of European SAR provision in the last decade, we may find some major trends to a certain extent departing from the legal framework regulating SAR in the Mediterranean. First, since 2014, the EU naval, Frontex and member state operations in the Mediterranean have operationally merged SAR with security issues, primarily focused on border management rather than rescuing people in distress. Moreover, throughout the latest decade, the activities of border control have been gradually externalized. Frontex has been increasingly operating inside foreign SAR regions and disembarking migrants rescued in the Mediterranean in Northern African countries or Turkey, rather than in the European territory. Moreover, alongside externalization, there is also ship diversion, a new strategy consisting in altering the course of an intercepted ship and diverting it to international waters or a

third country of origin. Despite responding to the legitimate need to secure state borders against human smuggling, interception measures might lead to the risk of ill-treatment and refoulment, a breach of international law. Violations of migrants' human rights have occurred also due to the clashes between different European member states in the management of their SAR regions. The Conventions governing migration at sea have been interpreted by the member states in diverging ways to renounce their sovereign responsibility and 'pass the buck' to another member. To sum, the EU and the member states have a strong interest in exerting control over the Mediterranean to protect the 'gates' of 'Fortress EU'. However, when new players come into play like the NGOs started to do in 2014, the picture changes and becomes even more complex.

The non-governmental provision of maritime rescue is not a new phenomenon. Like any other private entity, NGOs are required to respect national law and to comply with obligations established by the law of the sea, including the duty to save lives at sea. Although the first non-governmental SAR operation in the Mediterranean was conducted in 2004 by the German NGO Cap Anamur, between 2014-15 NGOs began to increasingly mobilize in the field due to the need to fill in the gap left by European states, in particular by the dismantling of SAR Operation Mare Nostrum leading to a staggering rise in sea deaths. Overall, between 2014 and 2021, 18 NGOs have been involved in SAR operations in the Mediterranean, deploying a total of 29 ships and three aircraft. Thus, in 2014 only one NGO launched a SAR mission in the Mediterranean, the Maltese Migrant Offshore Aid Station (MOAS) with the vessel Phoenix. However, between 2015 and 2017 the number of vessels deployed grew significantly, reaching a peak of 14 and 13 ships operational respectively in 2016 and 2017. Between 2018 and 2019, the number of vessels decreased, accounting respectively for 11 and 10, while it started to rise again between 2020, accounting for 11. Nonetheless, between 2018 and 2020, a new trend emerged: throughout the year a rising number of NGOs had to suspend their activities and were, thus, active only for half of the year, or few months. Therefore, although the number of non-governmental vessels deployed did not decrease considerably in the past four years, their days of effective presence at sea did. Finally, throughout the first three quarters of 2021, there have been nine operative vessels and two more NGOs declared to be planning to resume their operations in the following months. Throughout this period, there was a good level of cooperation between SAR NGOs often collaborating in the same SAR operation and acquiring vessels from each other. However, like European transnational actors, SAR NGOs have been mostly organized locally, while transnational cooperation is still limited.

Therefore, except for the year 2020, we may notice a downward trend regarding the non-governmental SAR provision at sea. This change may be partially explained by the decrease in the number of boat arrivals to the EU due to the more restrictive migration policy. Nonetheless, it has been often argued that the major obstacle to civil society's engagement in this field can be found in the criminalization of solidarity increasingly carried out by state institutions in the past few years. In fact, whereas in the previous years, traditional and non-traditional actors were able to operate without coordination and without significant frictions, by the end of 2017, the state approach to irregular migrants and solidarity toward them changed dramatically. The growing securitized approach toward migration, implemented after the 2015 'refugee crisis', intensified the process of criminalizing NGOs and humanitarians providing maritime 'escape aid'. Indeed, apart from increasingly blaming the rescuers of collusion with migrant smugglers, since 2016 new regulations started to be imposed to discipline SAR NGOs and an increasing number of people were put under investigation on grounds of abetting or facilitating illegal migration. Further, more and more often the NGOs' vessels have been seized and detained at the port, leading to several months of inaction for the crew. This process may explain the reason why, although the number of SAR NGOs has not changed significantly in the past four years, their impact in terms of people saved has been significantly lower since the end of 2017.

Furthermore, criminalization led to the growing politicization of humanitarianism. Appropriating the commonly perceived non-neutrality of SAR interventions, many organizations, especially smaller ones, combined SAR provision with advocacy and whistleblowing, by constantly monitoring the situation at sea and denouncing the violence at the European border. Indeed, analyzing the websites and social media of SAR NGOs, we have found that 16 out of 18 have been criticizing the exclusive understanding of solidarity by refusing European restrictive migrations policies. We have classified this degree of criticism as 'moderate'. Furthermore, a 'medium' degree of politicization has been demonstrated by 11 NGOs openly denouncing Frontex for the violations of human rights perpetrated. Nine NGOs went further by joining the campaign "Defund Frontex" requiring the EU to allocate a part of those funds for the creation of a public-led European Search and Rescue Program operated by non-military actors ('high' level of political activism). Finally, six of these also joined the campaign "Abolish Frontex", calling for the abolishment of the agency together with the end of the EU border regime and the crime of solidarity ('very high' level of political activism).

Clearly, alongside the decline in migrant flows crossing the Mediterranean, criminalizing NGOs has managed to reduce their level of engagement at sea over the past four years. However, throughout 2021, nine SAR NGOs have

been still active. Hence, it is crucial to analyze why certain NGOs decided to close their SAR operations and, perhaps more importantly, why others resumed them despite having been involved in legal proceedings. Between 2016 and 2021, eight NGOs have ceased their SAR activities, while 10 have continued or initiated new operations. Analyzing the number of legal proceedings initiated by European states against SAR NGOs between 2017 and 2021, we found that among 18 SAR NGOs, 14 were involved in at least one legal proceeding during the period considered. Overall, the number of cases accounted for 56. In particular, 36 cases regarded measures moved against the vessels/aircraft deployed for SAR activities that were either seized at the port, or prohibited to disembark, or – more rarely – de-flagged. The remaining 20 cases regarded the crew members of SAR vessels that were fined and, more often, involved in criminal investigations on the ground of facilitating or abetting illegal immigration. Of all the above-mentioned cases, only two ended up being condemned, while most of them have been acquitted; 22 cases are still pending. The vast majority of legal proceedings were initiated by Italy, followed by Malta, Spain, Germany, and the Netherlands. Thus, although the legal proceedings against SAR NGOs had been increasing between 2017 and 2019, a downward trend settled in 2020, hitting a low of four legal proceedings during the first three quarters of 2021. This might be the result of the changing cabinet in Italy, where most cases in the previous years had been initiated.

Moreover, analyzing the different responses to state criminalization, our study shows that the states' attempt to discourage SAR NGOs through criminalization has worked in very few cases when the NGOs stopped SAR operations (13%), whereas in more than half of the cases (53%) it has been completely ineffective, and the NGOs continued to operate in the Mediterranean. Finally, one-third of them have been partially impacted by criminalization either temporarily suspending SAR operations or shifting to monitoring operations. Despite not delivering proper SAR, these NGOs are still contributing to it and actively opposing the European migration policies. Thus, for seven out of 15 SAR NGOs criminalization seems to have been completely ineffective. Despite representing an obstacle and reason for delays in delivering SAR activities, legal proceedings against SAR NGOs seem to be unable to extinguish this phenomenon. Criminalization has, indeed, reduced the time spent at sea by the NGOs, but, in most cases, has not impacted their willingness to launch SAR operations and save lives in the Mediterranean. This is even more evident by analyzing the figures regarding the years of 2018-19: although the number of legal proceedings initiated in these years reached the peak of respectively 13 and 23, the number of operational SAR NGOs did not decrease dramatically, accounting respectively for nine and eight. Therefore, if at that time criminalization was not able to reduce non-governmental presence at sea

despite the high number of legal proceedings, given its ongoing decline it is even less likely to work in the upcoming years.

The broader discursive stigmatization and delegitimation of solidarity toward irregular migrants are, nonetheless, still lingering at the European level. Thus, discussing its impact and consequences is still topical. Several scholars have already demonstrated that this process is not beneficial neither for the migrants nor for the host countries. In fact, criminalizing SAR NGOs might contribute to the growing death tolls at sea, while the broader process of criminalizing pro-migrant solidarity might bring to the rising exclusion of irregular migrants from accessing basic services upon arrival in Europe. Moreover, another un-intended and often overlooked consequence of this phenomenon is the grow-ing polarization in European society. Not only might stigmatizing pro-migrant solidarity bring a racist and xenophobic backlash among the anti-migrant seg-ments of the society, but it is also likely to further strengthen the humanitari-ans' civil disobedience. Indeed, the determining factors of transnational soli-darity to irregular migrants are the need to fill in the gap left by state institu-tions and the perceived feeling to be on the right side. These will not be washed out by state criminalization in the foreseeing future. The current Eu-ropean migration policy, based on a securitized and exclusive understanding of solidarity, does not seem to suggest the member states' political will to take more responsibility for the welfare of irregular migrants. Moreover, grass-roots forms of solidarity are driven by a strong moral justification, i.e. the sense of solidarity for humankind and the perceived need to protect human life and dignity regardless of national citizenship. Thus, the moral reasons pre-vail over the fear of legal repercussions in a system that is perceived as unjust and causing suffering. In fact, stigmatization is able sometimes to "enhance group cohesion and individual commitment, especially when the labeller or stigmatiser is regarded as aggressor or oppressor"[428]. Criminalization seems to motivate civil society's solidarity toward irregular migrants even more. If the process is continued in the following decade, we may expect further po-larization and politicization among humanitarians, meaning enhanced contes-tation of perceivably unjust and inhumane state policies.

As for political motives, our analysis showed that political activism plays a smaller role in motivating SAR NGOs: although almost all of them are openly contesting the European approach to irregular migration, among those that continued their operation despite state criminalization, there seems to be no significant difference between those with a 'moderate' and 'very' high level of contestation. Finally, there is one more legal aspect motivating pro-migrant social movements: the respect of the law of the sea imposing an obligation to

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[428] GORDON, LARSEN (2020: 16).

save lives in distress (for SAR NGOs) and, more in general, the protection of basic human rights such as the right to life and dignity. These motivations seem to prevail over states' efforts to reduce civic engagement in the field of irregular migration and are likely to continue to do so in the upcoming years.

Conclusion

In conclusion, our findings confirm the hypothesis postulated in the introduction, suggesting that European transnational solidarity is not likely to disappear or substantially decrease in the next decade as a consequence of criminalization. However, whereas civil society is strongly motivated by the need to help irregular migrants left out by the institutional welfare and moral reasons, the political engagement seems to be less relevant, motivating only a part of them. Moreover, the phenomenon studied is relatively recent, and the timespan and available data of our research is limited; further evolution in the process of criminalization should be monitored by the scholars and further researched in the upcoming years.

Studies on the topic are crucial to informing European policymakers over the effectiveness of the strategies pursued in the migration field, one of the most contested points on the political agenda. A significantly more fruitful cooperation between state institutions and civil society could be initiated, based on a common commitment to hold less politicized and more neutral positions. Nonetheless, for this purpose, the European policymakers should accept that transnational solidarity, like irregular migration flows, has deeper roots and driving forces that cannot be easily demolished. It might be argued whether criminalization is moral, it has demonstrated not to be effective.