

CURRENT DEVELOPMENTS

WHEN NO ONE ANSWERS THE CALL: HOW THE SHIPPING INDUSTRY IS SUSTAINING SEARCH AND RESCUE OPERATIONS IN THE MEDITERRANEAN

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INTRODUCTION

In August 2020, the commercial vessel *Maersk Etienne* rescued twenty-seven migrants off a sinking vessel in the Mediterranean Sea.¹ Over the next thirty-eight days, the Maersk shipping company searched for a country willing to accept the migrants; however, the ship was denied permission to dock in any nearby country.² Finally, as supplies on the ship began to run low, the *Maersk Etienne* was able to transfer the migrants to a non-governmental organization (NGO) rescue vessel, where they had access to shelter, food, and proper medical care.³ Two days later, Italy permitted the migrants to disembark in Sicily.⁴ Then, in March 2020, following a £125,000 payment from the Maersk shipping company to the NGO that accepted the migrants, Italy launched an investigation alleging that the two parties completed a commercial transaction in exchange for search and rescue (SAR) services.⁵ This

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1. *Migrants Allowed Off Maersk Tanker After 40 Days at Sea*, BBC NEWS (Sept. 13, 2020), <https://perma.cc/Y25M-QHRD>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *NGO Accused of Taking on Maersk Etienne's Rescued Migrants for Pay*, MAR. EXEC. (Mar. 1, 2021), <https://perma.cc/3AQ7-9JQZ>; *Italian NGO Investigated for Maersk Payment After Migrant Rescue*, DAILY SABAH (Mar. 2, 2021), <https://perma.cc/6REC-UHWW>.

unprecedented investigation involving a commercial shipping company is an example of the recent hostility shown by European Union (EU) Member States towards any SAR mission that assists migrants in the Mediterranean Sea, despite more than 20,000 migrants perishing since 2014.⁶

This Current Development explains how EU Member States have intentionally created a deadly gap in SAR coverage in the central Mediterranean Sea and explores how the maritime shipping industry is being penalized for fulfilling its SAR obligations under international law.

DEADLY CROSSINGS

Over the past decade, the Mediterranean Sea has become a graveyard for migrants. One of the most prevalent and most dangerous ways to cross this body of water is through the central Mediterranean route, where migrants and refugees typically depart from Libya in an attempt to arrive at the shores of Malta or Italy safely.⁷ Transportation for the journey, which can extend beyond 100 nautical miles, is typically arranged by smugglers who overcrowd unseaworthy vessels and rubber dinghies without providing life jackets or other survival gear.⁸ Even a single mishap on these vessels can cost hundreds of lives.⁹ Since 2014, over 17,620 migrants and refugees have perished at sea on the central Mediterranean route alone.¹⁰

Large numbers of migrants and refugees attempt to cross the Mediterranean Sea each year, though the precise number may vary according to different push factors. For example, between 2015 and 2020, maritime migration in the Mediterranean ranged anywhere from roughly 100,000 to over 1,000,000 persons each year.¹¹ Poverty, persecution, family reunification, and armed conflict are among the most common push factors driving these migrants and refugees to leave countries throughout Africa.¹² Many do not leave their home country intending to settle in Europe, but inadequate conditions in countries along the way and the profit-seeking behaviors of smugglers often push the migrants to cross the Mediterranean.¹³ The

6. See KATE DEARDEN, MARTA SANCHEZ DIONIS, JULIA BLACK & FRANK LACZKO, INT'L ORG. FOR MIGRATION, CALCULATING "DEATH RATES" IN THE CONTEXT OF MIGRATION JOURNEYS 3 (2020), <https://publications.iom.int/system/files/pdf/mortality-rates.pdf>.

7. See UNITED NATIONS HIGH COMM'R FOR REFUGEES, ROUTES TOWARDS THE MEDITERRANEAN: REDUCING RISKS AND STRENGTHENING PROTECTION 7 (2019) [hereinafter MEDITERRANEAN ROUTES], <https://perma.cc/T6TX-WHCA>; DEARDEN ET AL., *supra* note 6, at 9.

8. See, e.g., 'Deadly Sea Crossings': 41 Migrants Drown in the Mediterranean, AL JAZEERA (Feb. 24, 2021), <https://perma.cc/X3RU-223P>.

9. For example, in April 2015, nearly 800 migrants and refugees perished off the coast of Libya after a single vessel capsized. See Alessandra Bonomolo & Stephanie Kirchgassner, *UN Says 800 Migrants Dead in Boat Disaster as Italy Launches Rescue of Two More Vessels*, GUARDIAN (Apr. 20, 2015), <https://perma.cc/HJW5-5RV6>.

10. See INT'L ORG. FOR MIGRATION, MISSING MIGRANTS PROJECT DATA 2014-2021 (2021) (calculations on file with author), <https://missingmigrants.iom.int/downloads> (last visited Apr. 18, 2021).

11. See *Operational Portal: Refugee Situations*, UNITED NATIONS HIGH COMM'R FOR REFUGEES, (Mar. 18, 2021, 2:48 PM), <https://perma.cc/74NP-AB5Y>.

12. MEDITERRANEAN ROUTES, *supra* note 7, at 10.

13. *Id.* at 11-12.

COVID-19 pandemic exacerbated the demand for irregular maritime migration after many European countries closed their borders and ports to asylum seekers.¹⁴

CREATING A GAP IN SAR COVERAGE

Although the large number of migrants crossing the Mediterranean might suggest that the alarming death rate is a product of constrained government resources to conduct SAR operations, a complete picture of the data suggests otherwise. For example, in 2016, there were about 201,000 attempted crossings on the central Mediterranean route, with a death rate of 2.27%.¹⁵ However, in 2019, the death rate more than doubled to 4.78%, although there were only about 26,400 attempted crossings on the same route.¹⁶

Many factors can play a role in explaining the number of lives lost at sea in any given year; however, the increasing death rate since 2015 undeniably reflects the declining SAR presence of EU Member States and NGOs along the central Mediterranean route. Specifically, in 2012, the landmark ruling issued by the European Court of Human Rights (ECtHR) in *Hirsi Jamaa and Others v. Italy*¹⁷ significantly changed the SAR landscape in the Mediterranean Sea. In *Hirsi*, the ECtHR held that because refugees held onboard Italian naval vessels were considered under Italy's territorial jurisdiction,¹⁸ Italy violated the principle of *non-refoulement* when it returned the refugees to Libya, where they were likely to face human rights violations.¹⁹ The court ruled that instead, Italy should have provided an opportunity for the migrants to make asylum claims, even if the claims would result in the migrants' admission into Italy.²⁰

Since the ECtHR's ruling in *Hirsi*, Italy and other frontline EU Member States have been disincentivized to conduct SAR operations.²¹ Initially, in 2013, Italy zealously fulfilled its SAR obligations by launching operation

14. See, e.g., Joana Kakissis, *Asylum-Seekers Make Harrowing Journeys in Pandemic, Only to Be Turned Back*, NAT'L PUB. RADIO (Feb. 13, 2021), <https://perma.cc/SF2G-S3L6>.

15. See INT'L ORG. FOR MIGRATION, *DATA ON ATTEMPTED CROSSINGS OF THE MEDITERRANEAN SEA 2016–2021* (2021), <https://missingmigrants.iom.int/downloads> (last visited Apr. 18, 2021).

16. See *id.* Near the end of 2018, the EU ceased nearly all maritime rescue efforts, while various Member States began routinely seizing NGO rescue vessels. See *supra* notes 27–31 and accompanying text.

17. *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09 (Feb. 23, 2012), <https://hudoc.echr.coe.int/spa#%7B%22itemid%22:%7B%22001-109231%22%7D>.

18. See *id.* at ¶ 81.

19. See *id.* at ¶ 134–38. In contrast, the U.S. Supreme Court has held that the prohibition against *refoulement* does not apply when refugees are interdicted on the high seas by the U.S. Coast Guard and subsequently repatriated. See *Sale v. Haitian Ctrs. Council*, 509 U.S. 155, 187 (1993).

20. See *Hirsi*, at ¶ 201–03.

21. See Anja Radjenovic, *Search and Rescue in the Mediterranean*, EUR. PARLIAMENTARY RSCH. SERV. 1 (2021), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442/EPRS_BRI\(2021\)659442_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659442/EPRS_BRI(2021)659442_EN.pdf). In addition to reducing its SAR coverage, Italy has also provided significant funding and resources to the Libyan Coast Guard to support interdiction efforts prior to the migrants departing Libyan waters, which some human rights advocates have alleged implicates Italy in Libya's human rights violations. See, e.g., *Italy Shares Responsibility for Libya Abuses Against Migrants*, UNITED NATIONS OFF. FOR COORDINATION OF HUMANITARIAN AFFS. (Nov. 14, 2019), <https://perma.cc/NT76-BTHB>.

Mare Nostrum, a highly successful and coordinated SAR effort that rescued more than 130,000 people in its first year.²² However, the operation was discontinued at the end of 2014 after it was heavily criticized for creating a “pull factor” that encouraged large numbers of migrant crossings by providing a safety net for dangerous attempts to reach Europe.²³ The EU responded to the end of Mare Nostrum with operation Triton, which intentionally decreased SAR coverage along the central Mediterranean route to deter migrants from attempting the dangerous crossing.²⁴ Following this decision, the death rate of migrant crossings increased from 1.8% in 2014 to 6.2% in the first four months of 2015.²⁵

The EU responded to this increasing death rate by temporarily reinforcing rescue efforts along the central Mediterranean route; however, it has since reverted to a deterrence strategy. Specifically, in 2015, the EU helped stabilize rescue efforts by increasing operation Triton’s SAR resources and coverage along the central Mediterranean route.²⁶ However, the EU replaced operation Triton with operation Themis in 2018, which currently prioritizes resources towards border security rather than SAR.²⁷ Also, in 2015, the EU military launched the anti-smuggling operation Sophia,²⁸ which initially assisted in rescuing more than 35,000 migrants between January 2016 and July 2018.²⁹ However, by August 2018, Italy and the EU once again quietly adopted a deterrence strategy, ceasing operation Sophia’s rescue efforts altogether and instead prioritizing resources towards border security efforts.³⁰ The EU formally replaced operation Sophia in April 2020 with operation Irini, which provides almost no SAR coverage along the central

22. Adam Taylor, *Italy Ran an Operation That Saved Thousands of Migrants from Drowning in The Mediterranean. Why Did it Stop?*, WASH. POST (Apr. 20, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/04/20/italy-ran-an-operation-that-save-thousands-of-migrants-from-drowning-in-the-mediterranean-why-did-it-stop/>.

23. See *id.*

24. DEATH BY RESCUE, <https://deathbyrescue.org/> (last visited Mar. 18, 2021). Specifically, a document released by the EU Border and Coast Guard agency Frontex stated that the decreased SAR coverage “could become a deterrence for facilitation networks and migrants that can only depart . . . with favourable weather conditions and taking into account that the boat must now navigate for several days before being rescued.” *JO Triton 2015 Tactical Focused Assessment*, FRONTEx 2 (Jan. 14, 2015), https://deathbyrescue.org/assets/annexes/7.Frontex_Triton%202015%20Tactical%20Focused%20Assessment_14.01.2015.pdf.

25. AMNESTY INT’L, *A PERFECT STORM: THE FAILURE OF EUROPEAN POLICIES IN THE CENTRAL MEDITERRANEAN* 9 (2017), <https://www.amnesty.org/download/Documents/EUR0366552017ENGLISH.PDF>.

26. See *id.* at 10.

27. See *Operation Themis*, FRONTEx, <https://frontex.europa.eu/we-support/main-operations/operation-themis-italy/> (last visited Mar. 19, 2021); Emmanuel Jackson Foltz, *The Frontex Paradox: Operation Themis in Historical Context*, PENN POL. REV. (May 16, 2020), https://pennpoliticalreview.org/2020/05/the-frontex-paradox-operation-themis-in-historical-context/#_ftn9.

28. Operation Sophia is also known as “EUNAVFOR MED.” See AMNESTY INTERNATIONAL, *supra* note 25, at 6.

29. COUNCIL OF EUR., COMM’R FOR HUMAN RIGHTS, *A DISTRESS CALL FOR HUMAN RIGHTS, FOLLOW-UP REPORT TO THE 2019 RECOMMENDATION 14* (2021), <https://rm.coe.int/a-distress-call-for-human-rights-the-widening-gap-in-migrant-protection/1680a1abcd>.

30. See *EU Recalls Ships Helping in Mediterranean Refugee Rescues*, AL JAZEERA (Mar. 27, 2019), <https://perma.cc/FZ49-NTPK>.

Mediterranean route.³¹ Thus, since 2018, the EU has provided scarce SAR coverage along the central Mediterranean route.

FILLING THE GAP IN SAR COVERAGE

As SAR coverage in the Mediterranean continued to decrease, NGOs assumed a more proactive role in conducting SAR operations. For example, during Italy's highly effective SAR operation Mare Nostrum, NGO vessels only rescued approximately 1,450 persons, representing less than 2% of all rescues.³² By 2017, the number of migrants rescued by NGOs had sharply increased to more than 46,000 annually,³³ representing roughly 40% of all rescues.³⁴ However, since 2017, Italian and Maltese authorities have been routinely seizing NGO vessels, alleging that the NGOs facilitate irregular migration.³⁵ Additionally, some EU Member States have characterized NGO rescue efforts as incentivizing maritime migration, which Italy's 2015 policy shift explicitly intended to eliminate.³⁶ Recently, these vessel seizures have left a small number of NGO rescue vessels available to conduct rescue operations throughout 2020.³⁷

Given the unpredictable SAR coverage provided by EU Member States and NGOs, commercial shipping vessels have offered one of the most sustained sources of SAR coverage along the central Mediterranean route. Under the United Nations Convention on the Law of the Sea (UNCLOS), commercial vessels are required to "render assistance to any person found at sea" and "proceed with all possible speed to the rescue of persons in distress."³⁸ Similarly, under the International Convention for the Safety of Life at Sea (SOLAS), commercial vessels are required to "proceed with all speed to the assistance of the persons in distress" upon receiving a call for help from any source.³⁹

The EU and its Member States have continually relied on commercial vessels to supplement their SAR efforts.⁴⁰ For example, following the termination of operation Mare Nostrum, commercial ships rescued 11,954 people in the first four months of 2015, accounting for 30% of the total people rescued.⁴¹ Indeed, following the operation's termination, an EU tactical

31. COUNCIL OF EUR., *supra* note 29, at 10.

32. RADJENOVIC, *supra* note 21, at 5.

33. *See id.*

34. *See Fundamental Rights Considerations: NGO Ships Involved in Search and Rescue in the Mediterranean and Criminal Investigations - 2018*, EUR. UNION AGENCY FOR FUNDAMENTAL RTS., <https://fra.europa.eu/en/publication/2019/fundamental-rights-considerations-ngo-ships-involved-search-and-rescue>, (last visited Mar. 20, 2021).

35. *See id.*

36. *See* RADJENOVIC, *supra* note 21, at 6.

37. *See* EUR. UNION AGENCY FOR FUNDAMENTAL RTS., *supra* note 34.

38. United Nations Convention on the Law of the Sea, art. 98, Dec., 10, 1982, 1833 U.N.T.S. 397.

39. International Convention for the Safety of Life at Sea, ch. 5, Reg. 10, Jan. 11, 1974, 1184 U.N.T.S. 278, 414.

40. *See, e.g.*, DEATH BY RESCUE, *supra* note 24.

41. *Id.*

assessment predicted that “facilitation networks will continue to exploit the presence of civilian/merchant ships in the central Mediterranean.”⁴² Since 2014, commercial vessels have been responsible for assisting in rescuing more than 80,000 distressed persons along the central Mediterranean route.⁴³

Though heavily relied upon, commercial vessels provide an inadequate substitute for dedicated SAR resources. International certification requirements only require professional mariners to complete limited SAR training, which is primarily focused on personal survival rather than caring for others.⁴⁴ Additionally, commercial vessels are not designed or well-suited to care for rescued persons for long periods of time. For example, after the *Maersk Etienne* rescued the group of twenty-seven migrants, including one pregnant woman, they were all kept on the deck outside in makeshift housing conditions, as the ship had no capacity to carry passengers.⁴⁵ During their thirty-eight days onboard, the migrants became increasingly frustrated, with three jumping overboard and others threatening a hunger strike.⁴⁶ Thus, although commercial vessels may be a convenient and resourceful platform to utilize for initial at-sea rescues, they are by no means an adequate substitute for professional SAR resources.

STATE OBLIGATIONS UNDER INTERNATIONAL LAW

Policies recently implemented by Italy and Malta make the *Maersk Etienne*'s extended waiting period an increasingly common occurrence.⁴⁷ Specifically, both Italy and Malta have adopted a “closed ports” strategy, where the countries deny entry to any migrants or refugees rescued on the high seas by NGOs, commercial vessels, or private mariners.⁴⁸ These policies often lead to standoffs between Italy and Malta over who will accept responsibility for the migrants, forcing private vessels to care for the rescuees for long periods of time.

The International SAR Convention requires state parties to coordinate rescue efforts for persons in distress within the state's established SAR region “regardless of the nationality or status of such a person or the circumstances

42. *Id.*

43. *Shipping Bodies Call EU to Act on Mediterranean Migrant Rescues*, SAFETY4SEA (Sept. 23, 2020), <https://safety4sea.com/shipping-bodies-call-eu-to-act-on-mediterranean-migrant-rescues/>.

44. *See generally* International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, ch. VI., Jul. 7, 1978, 1361 U.N.T.S. 190 (describing training requirements for professional mariners performing emergency, medical care, and survival functions).

45. *See NGO Accused of Taking on Maersk Etienne's Rescued Migrants for Pay*, *supra* note 5.

46. *Id.* The *Maersk Etienne* was able to rescue the three migrants who jumped overboard. *Id.*

47. *See* Eugenio Cusumano & Matteo Villa, *From “Angels” to “Vice Smugglers”: The Criminalization of Sea Rescue NGOs in Italy*, EUR. J. CRIM. POL'Y RSCH. 8–9 (2020), <https://link.springer.com/content/pdf/10.1007/s10610-020-09464-1.pdf> (finding a nine-day average waiting period to disembark migrants in Italy or Malta from June 2018 to February 2020); *see also* ICS, UNCHR and IOM *Call on States to End Humanitarian Crisis Onboard Ship in the Mediterranean*, UNITED NATIONS HIGH COMM'R FOR REFUGEES (Sept. 7, 2020).

48. *See* Violeta Moreno-Lax, *Between Life, Security and Rights: Framing the Interdiction of “Boat Migrants” in the Central Mediterranean and Australia*, 32 LEIDEN J. INT'L L. 715, 726 (2019).

in which that person is found.”⁴⁹ However, states are not generally bound under maritime or human rights law to accept migrants rescued by a commercial vessel on the high seas. Under maritime law, states are only required to coordinate the disembarkation of rescued persons within their designated SAR region, but they are not required to receive the rescued persons themselves.⁵⁰ This coordination requirement was codified in a 2004 amendment to the SAR Convention following an incident where a commercial vessel was initially unable to disembark 433 rescued persons.⁵¹ However, because Malta objected to this requirement being included in the 2004 amendments, it is exempted from the international obligation to coordinate disembarkation.⁵²

Under human rights law, states generally only have an obligation to those within their territorial jurisdiction.⁵³ Migrants who are rescued by a commercial vessel on the high seas usually will not fall under the jurisdiction of the country that has assumed SAR coordination responsibilities for the purposes of human rights law.⁵⁴ Thus, because Italy and Malta are not necessarily under any legal obligation to accept migrants rescued by commercial vessels, coordinating disembarkation can easily result in an extended standoff between them. Additionally, this flexibility in the law further incentivizes states to push SAR responsibilities onto private actors rather than facing additional legal obligations if the migrants had been rescued by a government vessel.⁵⁵

IMPACTS ON THE MARITIME SHIPPING INDUSTRY

When states are unable to coordinate the disembarkation of rescuees efficiently, commercial shipping companies incur significant losses. For example, even when the global demand for oil is extremely low, smaller tankers that often transit the Mediterranean can typically still earn about \$3,800 per

49. See International Convention on Maritime Search and Rescue, ch. 2.1.10, Apr. 4, 1979, 1405 U.N.T.S. 119.

50. International Maritime Organization Res. MSC.155(78), at ch. 3.1.9 (May 20, 2004); see also David Osler, *Shipping and the Law on Rescuing Migrants*, LLOYD'S LIST (Sept. 7, 2020), <https://lloydslist.maritimeintelligence.informa.com/LL1133803/Shipping-and-the-law-on-rescuing-migrants>.

51. Niels Frenzen, *10th Anniversary of Australia's Tampa Affair*, MIGRANTS AT SEA (Aug. 26, 2011, 04:42 AM), <https://migrantsatsea.org/tag/mv-tampa/>.

52. Melanie Fink, Kristof Gombeer, & Jorrit Rijpma, *In Search of a Safe Harbour for the Aquarius: The Troubled Waters of International and EU Law*, EU IMMIGR. & ASYLUM L. & POL'Y (Jun. 9, 2018), <https://eumigrationlawblog.eu/in-search-of-a-safe-harbour-for-the-aquarius-the-troubled-waters-of-international-and-eu-law/>.

53. See, e.g., *id.*

54. See Kristof Gombeer & Melanie Fink, *Non-Governmental Organisations and Search and Rescue at Sea*, 4 MAR. SAFETY & SEC. L.J. 1, 22 (2018), http://www.marsafelawjournal.org/wp-content/uploads/2018/06/MarSafeLaw-Journal_Issue-4_Gombeer-and-Fink.pdf. However, a liberal interpretation of the ECtHR's ruling in *Hirsi* could imply that a state who exercises continuous and exclusive control over a private vessel during SAR operations has exercised jurisdiction over that vessel. See Moreno-Lax, *supra* note 48, at 731–33.

55. For example, under *Hirsi*, an Italian vessel would be required to process the migrants' asylum claims. See *supra* notes 18–20 and accompanying text. Additionally, EU regulations require that migrants rescued by government vessels be “rapidly and effectively” disembarked to a “place of safety.” See 2014 O.J. (L 189) 93, 105.

day.⁵⁶ Depending on market conditions, the same small tanker could earn near \$20,000 per day,⁵⁷ and a larger tanker could earn near \$74,000 per day.⁵⁸ Accordingly, any delay in the vessel's schedule can seriously damage its profits. Further, commercial vessels must provide food, shelter, and medical care to the rescuees, adding to their costs. Though some insurance providers cover expenses related to the care of refugees, they typically do not cover lost profits caused by the rescue.⁵⁹

These losses incentivize commercial vessels to take coordinating disembarkation into their own hands, often leading to undesirable outcomes for the migrants. For example, instead of waiting for Italy, Malta, and other Mediterranean coastal states to coordinate disembarkation, some commercial vessels have recently begun to return the migrants and refugees to Libya, where they are likely to face inhumane treatment.⁶⁰ Between 2011 and 2018, only one commercial ship returned migrants to Libya; however, since 2018, at least thirty ships have returned migrants to the country.⁶¹ Additionally, the maritime industry has reported that some ships have begun to shut off their radios and Automatic Identification Systems when transiting through the central Mediterranean route to avoid being diverted to a search and rescue case.⁶²

RAISING THE STAKES FOR THE MARITIME SHIPPING INDUSTRY

In the case of *Maersk Etienne*, while the tanker was transiting through the central Mediterranean route, the Malta Rescue Coordination Center directed the tanker to assist twenty-seven migrants on board a vessel in distress.⁶³ However, after the rescue, Malta shirked any responsibility to accept or care for the rescuees.⁶⁴ Because the migrants were rescued by a commercial vessel in international waters, Malta, as an objector to the 2004 amendments to the SAR Convention, was arguably under no legal obligation to coordinate

56. See *Tanker Shipping: A Tough Year Ahead as Virus Mutations and Slow Vaccine Rollout Hampers Recovery*, HELLENIC SHIPPING NEWS WORLDWIDE (Feb. 26, 2021), <https://www.hellenicshippingnews.com/tanker-shipping-a-tough-year-ahead-as-virus-mutations-and-slow-vaccine-rollout-hampers-recovery>.

57. See *id.*

58. See *Frontline Sees Tanker Demand Rebound in 2021*, ARGUS (May 20, 2020), <https://www.argusmedia.com/en/news/2107062-frontline-sees-tanker-demand-rebound-in-2021>.

59. See *Refugee Rescue – P&I Cover and Assistance*, GARD (May 29, 2015), <https://www.gard.no/web/updates/content/20844660/refugee-rescue-pi-cover-and-assistance>.

60. Patrick Kingsley, *Privatized Pushbacks: How Merchant Ships Guard Europe*, N.Y. TIMES (Mar. 20, 2020), <https://www.nytimes.com/2020/03/20/world/europe/mediterranean-libya-migrants-europe.html>.

61. *Id.*

62. Janet Porter, *Maersk Etienne Ordeal Will Not Compromise Migrant Rescues*, LLOYD'S LIST (Sept. 12, 2020), <https://lloydslist.maritimeintelligence.informa.com/LL1133880/Maersk-Etienne-ordeal-will-not-compromise-migrant-rescues>; The Lloyd's List Podcast, *Shipping Stuck in the Middle of Europe's Migrant Crisis*, LLOYD'S LIST (Sept. 11, 2020), <https://lloydslist.maritimeintelligence.informa.com/LL1133870/The-Lloyds-List-Podcast-Shipping-stuck-in-the-middle-of-Europes-migrant-crisis>.

63. Kingsley, *supra* note 60.

64. *Id.*

disembarkation.⁶⁵ To further complicate matters, although Malta initially coordinated the rescue efforts, the rescue actually occurred within the Tunisian Rescue Region.⁶⁶ However, Tunisia simply rejected any responsibility to coordinate disembarkation or accept the migrants.⁶⁷

Maersk remained actively engaged in attempting to find a safe port for the migrants to disembark, but it appeared that no country would accept them.⁶⁸ Citing urgent medical needs, the *Maersk Etienne* transferred the migrants to a vessel operated by the NGO Mediterranean Saving Humans.⁶⁹ Days later, Italian authorities permitted the migrants to disembark the NGO vessel in a Sicilian port.⁷⁰

Maersk did not disclose the expenses it incurred as a result of the rescue operation and subsequent delay, though its costs were likely substantial.⁷¹ However, after learning that Maersk made a £125,000 payment to Mediterranean several months after the incident, Italy launched an investigation, alleging that the payment concluded a pre-arranged commercial agreement with Mediterranean to provide search and rescue services.⁷² Maersk denies the allegations and characterizes the payment as a post-hoc contribution, while Mediterranean has labeled the investigation as just another attack on NGO SAR operations.⁷³

CONCLUSION

Italy's unprecedented investigation implicating a major shipping company adds yet another significant disincentive for commercial vessels to assist in SAR operations. Policies from Italy and other EU Member States have created the current predicament where commercial vessels are forced to assume a significant share of the responsibility and costs of SAR operations in the central Mediterranean Sea. The large number of migrants and refugees fleeing to Mediterranean coastal states understandably creates concern for countries like Italy. However, a "deterrence by death" strategy is not an acceptable solution to address the current crisis. While EU Member States continue to debate the most appropriate response,⁷⁴ they should immediately increase the efficiency and effectiveness of SAR operations in the central Mediterranean Sea and stop penalizing private actors who have made significant efforts to save lives.

65. See *supra* notes 51–53 and accompanying text.

66. Jan. M. Olsen, *Denmark, Tunisia Tussle Over Taking in Rescued Med Migrants*, ASSOCIATED PRESS (Sept. 8, 2020), <https://apnews.com/article/north-africa-tunisia-denmark-malta-africa-48830b3a984b025c54c9a07c1bcd0827>.

67. *Id.*

68. See *id.*

69. *Migrants Allowed Off Maersk Tanker After 40 Days at Sea*, *supra* note 1.

70. See *id.*

71. See Osler, *supra* note 50.

72. *NGO Accused of Taking on Maersk Etienne's Rescued Migrants for Pay*, *supra* note 5; *Italian NGO Investigated for Maersk Payment After Migrant Rescue*, *supra* note 5.

73. *Italy: Police Operation Against Life-Saving Civil Society Organisation*, STATEWATCH (Mar. 2, 2021), <https://www.statewatch.org/news/2021/march/italy-police-operation-against-life-saving-civil-society-organisation/>.

74. See, e.g., RADJENOVIC, *supra* note 21, at 6.