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MIGRATION AND THE SHRINKING HUMANITARIAN SPACE IN EUROPE

From maritime search and rescue operations to contested humanitarian action in EU countries

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Abstract

As of October 10th, 1071 deaths of migrants were recorded in the Mediterranean in 2019.[1] In their attempt to save lives, civilian maritime search and rescue organisations like Sea Watch or Proactive *Open Arms* have gained high levels of media attention over the last years. Cases such as the arrest of the captain of the *Sea Watch 3*, Carola Rackete, in June 2019 or the three weeks odyssey of Open Arms in August 2019 dominate the media and public discourse in Europe. The closing of ports in Italy, Spain and Malta, the confiscation of vessels, legal proceedings against crew members alongside tight migration policies and anti-trafficking laws have led to a shrinking space for principled humanitarian action in Europe. While maritime search and rescue (SAR) activities receive most of the attention, focusing solely on them prevents one from seeing the bigger picture: a general shrinking of humanitarian space in Europe. In the following, the analysis will shed some light on patterns in which the space for assisting and protecting people on the move is shrinking both on land and at sea.

Migration and humanitarian action

Migration is not a new phenomenon. Throughout history people have left their homes to seek safety and pursue a better life. Yet, due to increasing human mobility and mounting crisis migration the number of people on the move is consistently rising (Martin, Weerasinghe, and Taylor 2014). In 2019, The International Organisation for Migration (IOM) documents more than 258 million international migrants worldwide, compared to 214 million in 2009.[2]

This number is composed of a variety of different migrant groups, such as students, international labour migrants or registered refugees. Based on a distinction between voluntary and involuntary migration, not all these groups are considered people in need of international protection and humanitarian assistance (Léon 2018). Accordingly, unlike refugees or internally displaced persons (IDPs) migrants generally fall out of the humanitarian architecture.[3] Yet, notwithstanding the reasons for migrating, people on the move can become vulnerable to human trafficking, sexual exploitation and other forms of abuse during their journey. They strand at borders and live in deplorable conditions (Léon 2018).

The UN Secretary General's Agenda for Humanity therefore stresses the importance of addressing the vulnerabilities of migrants. This entails providing more regular and legal pathways for migration but also requires "a collective and comprehensive response to displacement, migration and mobility", including the provision of humanitarian visas and protection for people on the move who do not fall under the narrow confines of the 1951 Refugee Convention.[4] The view that specific vulnerabilities of migrants are to be integrated into humanitarian response plans is reflected in the International Red Cross and Red Crescent Movement's approach to migration, which is strictly humanitarian and focuses on the needs and vulnerabilities of migrants irrespective of their legal status, type, or category (Linde 2009).

Thereby, the term 'migrant' is deliberately kept broad to include the needs of labour migrants, vulnerabilities due to statelessness or being considered irregular by public authorities (ibid.). Despite this clear commitment to the protection of people on the move, migrants remain a vulnerable group with a high number losing their lives on migratory routes or going missing. Home to three main migratory routes, the Mediterranean is considered one of the world's deadliest migration routes.[5]

When in 2015 an unprecedented number of people made their way into Europe this exposed the unpreparedness of the EU and its member states in reacting quickly and effectively to the needs of people on the move. A report by the Overseas Development Institute (ODI) on refugees and vulnerable migrants in Europe concludes that "Europe's actual humanitarian response must be judged a failure in many respects; basic needs have not been met and vulnerable people have not been protected" (De Largy 2016).

For humanitarian organisations with experience in setting up and managing camps in countries of the Global South, managing the humanitarian response in their own backyard seems to have posed significant challenges. When more than one million people arrived in 2015, most international humanitarian organisations had no operational agreement with European states, no presences in affected areas, no funding lines for European activities and no established channels to mobilise resources (ibid.). This has led to protection gaps in the humanitarian response, which, in many cases, have been filled by activists, volunteers and civil society actors. Despite a number of factors, including the EU-Turkey deal, arrangements with Libya and toughening border controls, have since lead to a decline in the number of people arriving in Europe, sustained humanitarian action is needed and these actors continue to provide essential services to refugees and vulnerable migrants. However, with hostile attitudes towards migrants on the rise, and the marked effects of several successful smear campaigns, a number of organisations and civil society actors have taken it upon themselves to bring much needed attention to the shrinking space for civil society.

Figure A:
Refugees in Edirne on the Turkish-Greek border.
Source: Diakonie Katastrophenhilfe.

Shrinking Humanitarian Space in Europe

The shrinking space for civil society action is also impacting on the space for principled humanitarian action in Europe. While no agreed upon definition of humanitarian space[6] exists, the concept is used in reference to the physical access that humanitarian organisations have to the affected population, the nature of the operating environment for the humanitarian response including security conditions, and the ability of humanitarian actors to adhere to the core principles of humanitarian action (Collinson and Elhawary 2012: 2). Moreover, the concept includes the ability of affected people to reach life-saving assistance and protection. The independence of humanitarian action from politics is central to this definition of humanitarian space, emphasising the need to adhere to the principles of humanity, neutrality, impartiality and independence as well as to maintain a clear distinction between the roles and functions of humanitarian in contrast to those of military and political actors (OCHA, 2003). Humanitarian actors within this space strive to achieve their mission of saving lives and alleviating suffering by seeking ongoing access to the affected population.

Though the many organisations, volunteers and individuals that work on migration issues in Europe would not all self-identify or be considered purely humanitarian organisations, many of them provide life-saving services to people on the move. Thus, the humanitarian space is occupied by a diversity of actors, including human rights organisations, solidarity networks, and concerned individuals alongside more traditional humanitarian actors (Léon 2018).

Referring to the limited room for agency and restricted access to the affected population, the shrinking humanitarian space in Europe has been linked to the spreading of populism, restrictive migration policies, the securitisation of migration and the criminalisation of humanitarian action (Hammerl 2019). These developments are by no means limited to Europe. Other regions of the world witness a similar shrinking of the humanitarian space for assisting people on the move. In Europe and elsewhere migration and asylum policies have to a great extent determined the humanitarian space. Indeed, EU migration policies have negatively affected the ways in which humanitarian actors are able to carry out their work along the migration routes, limiting the space for principled humanitarian action (Atger 2019). These policies are primarily directed at combatting human trafficking and smuggling, protecting European borders and national security interests. Through prioritising security over humanitarian action, they have contributed to the criminalisation of individuals and organisations that work with people on the move (ibid.). As has been particularly visible in the context of civilian maritime SAR activities, the criminalisation of humanitarian action, bureaucratic hurdles, and attacks on and harassment of aid workers and volunteers have limited the access to the affected population in Europe.

Criminalisation

The criminalisation of migration that has limited the space for principled humanitarian action is a process that occurs along three interrelated lines: first, the discursive criminalisation of migration; second, the interweaving of criminal law and policing for migration management purposes; and finally, the use of detention as a way of controlling people on the move (Hammerl 2019, citing Parkin). With media and public discourse asserting that migrants are 'illegal', people assisting them have been prosecuted on the grounds of facilitating illegal entry, human trafficking and smuggling.

Already back in 2002, the Cypriot NGO Action for Equality, Support and Anti-Racism (KISA) was prosecuted under criminal law after it had launched a financial appeal to cover healthcare costs for a migrant worker (Fekete 2009). This is just been one of six cases in which the Director of an organisation has been arrested for his work with migrants.[7] While KISA takes a clear human rights stance, these trends are also observable for humanitarian activities such as providing food or shelter. Individuals and organisations providing assistance and transportation to migrants have faced legal prosecution in France and Belgium for human smuggling in 2018. Offering shelter to migrants in transit has led to arrests of individuals accused of human trafficking (Atger 2019)[8]. The criminalisation of civilian maritime SAR activities has led to the arrest and prosecution of crew members and the seizing of rescue vessels.

The tension between anti-smuggling and anti-trafficking laws and humanitarian action is a result of the European 'Facilitators' Package' from 2002 that defines the facilitation of unauthorised entry, transit and residence.[9] Though the Directive and its implementation in national legislatures foresees humanitarian exemptions[10], the impact of these laws and regulations on the humanitarian space has been critical. Lacking clarity, these laws have been implemented differently by EU member states and created a sense of uncertainty for individuals and organisations assisting migrants, who now risk criminal prosecution (Carrera et al. 2018). In several EU member states with humanitarian exemptions, humanitarian actors were reportedly prosecuted (ibid.). A case in point is Greece, which has a specific humanitarian exemption applying to maritime SAR activities and the facilitation of entry for asylum seekers rescued at sea. Despite sounding promising at first, this has not prevented the prosecution of volunteer crew members of the Emergency Response Centre International (ERCI) due to the existence of two legal loopholes. The first of these works on the basis that rescuers are not able to identify who is in need of international protection, and second, the legal framework contains an exemption from punishment, but not prosecution.[11]

Bureaucratic hurdles

Besides the criminalisation of humanitarian activities, across Europe - predominantly at borders - administrative decisions and rules have narrowed the space for humanitarian action (Atger 2019). In countries such as France, Germany, Hungary, Spain and Italy, laws and regulations prevent organisations from accessing reception centres or transit zones between borders (Hammerl 2019, Amnesty 2019). A reduction of financial support and tighter legal requirements for operation further hinder organisations to assist people on the move (Atger 2019). In the case of maritime SAR operations, NGOs had to stop their operations due to de-flagging of rescue ships as ordered by EU member state authorities.[12]

Access to people on the move is obstructed in manifold ways and organisations face a mix of intimidations strategies and bureaucratic obstacles in their mission to deliver aid (Léon 2018). In Germany, new asylum policies in 2015 changed the provision of the previous cash-based assistance to in-kind aid.[13] This is inconsistent with German humanitarian policy in other migrant and refugee hosting countries, where the German Foreign Ministry promotes cash-based programming as an efficient, effective and dignified way of assisting people in need.

Apart from instructions and orders by public authorities and law enforcement entities, other tactics range from frequent ID checks, parking fines to threats of arrest (Amnesty 2019). In Calais, humanitarian action was obstructed when the municipality of Calais prohibited the distribution of food as well as the delivery of temporary showers to the site by a local charity with two municipal orders in March 2017 (Amnesty 2019). In 2017, the Hungarian Parliament passed the so-called LEX NGO. Like the foreign agent law in Russia, it includes provisions for NGOs that receive more than EUR 23 000 per year from abroad (including EU member states) to register as "organisations receiving foreign funding". Coupled with a draft bill of a new Tax Law that establishes a 25% punitive tax to be paid for "propaganda activities that indicate positive aspects of migration", these attempts to curtail work with migrants has a chilling effect both on NGOs and donors. As the punitive tax is to be paid by the donor organisation, or by the NGO itself in case the donor fails to do so, organisations risk bankruptcy.[14]

Figure B:
A woman is sitting at the border fence
in the refugee camp in Idomeni (Greece, 2016).
Source: Thomas Lohnes/ Diakonie Katastrophenhilfe.

Policing humanitarianism[15]

An increasingly hostile environment towards migration, fuelled by anti-immigrant sentiments and public discourse, has led to suspicion, intimidation and harassment of individuals and organisations working to assist and protect them. The securitisation of migration (Lazaridis and Wadia 2015), in which migrants are constructed as a potential security threat and a general atmosphere of fear is created, has given impetus to a general policing of humanitarian action. Even when not criminalised, humanitarian actors have been hindered in their work by a whole range of dissuasion and intimidation strategies. Civilian maritime SAR organisations in particular have been targets of defamation and anti-immigration rhetoric. Though analyses of migratory trends have proved that a correlation between SAR operations and an increase of migrant crossings was indeed erroneous (Cusumano and Pattison, Crawley et al. 2016, Cummings et al. 2015), organisations are still being accused of both constituting a pull-factor for migration (Fekete 2018) and of working together with human traffickers. In some instances, this has led to them being labelled as taxis for 'illegal' migrants (Hammerl 2019). In Greece, and elsewhere, volunteers assisting migrants have been subject to police harassment. Smear campaigns, especially in the context of SAR operations in the Mediterranean, have affected the humanitarian sector as a whole "by creating suspicion towards the work of humanitarians" (Atger 2019). Consequently, organisations have encountered difficulties in recruiting volunteers and seen a decline in donations. This prevented some organisations from publicly announcing their participation in maritime SAR or their work with migrants.[16] In severe cases, humanitarian actors suffered physical threats by security personnel or "self-proclaimed vigilante groups" (Hammerl 2019).

Moreover, having to work alongside security forces and within a policy framework that primarily aims at border policing and migration deterrence (justified on humanitarian grounds), humanitarian actors risk being associated with migration control techniques in the management of 'humanitarian borders' (Moreno-Lax 2018, Pallister-Wilkins 2018). When Italy in 2017 urged search and rescue organisations to sign a controversial Code of Conduct in order to continue disembarkation at Italian ports, some organisations refused to do so. The Code of Conduct endangered humanitarian principles by making life-saving activities conditional on collaborating in the fight against smugglers and the presence of law enforcement personnel on board (Cusumano 2019).

Beyond the maritime space, the politicisation of EU aid jeopardises the neutrality of humanitarian actors, forcing them to either disengage or be associated with a political agenda of migration deterrence. Humanitarian organisations are increasingly requested to grant immigration authorities access to their premises, services and data (Atger 2019). In Greece, a legislation was introduced in 2016 which entailed the close monitoring of, and restrictive access for, volunteers and NGOs assisting asylum seekers, thereby placing humanitarian action under the supervision of security forces (Hammerl 2019). As a consequence of the EU-Turkey Deal in 2016, MSF announced[17] that it would no longer accept funding by EU states and institutions "only to treat the victims of their policies" (Atger 2019).

The way ahead

The shrinking space poses a fundamental challenge for principled humanitarian action in Europe. The shrinking humanitarian space can only be understood against the backdrop of a general shrinking civil space in Europe (Strachwitz 2019, Wachsmann and Bouchet 2019). However, the ways in which the shrinking space affects humanitarian action in Europe has so far received little attention in the humanitarian sector. The problem goes well beyond the widely discussed obstacles to civilian maritime SAR operations.

Humanitarian organisations across Europe assist people arriving at ports, staying in official or unofficial camps or being in transit. An increasingly hostile environment that is fuelled by populist and securitisation discourses limits access to, and protection of, people on the move both on land and at sea. The criminalisation of aid, bureaucratic hurdles and harassment of individuals and organisations assisting migrants are just some of the ways in which humanitarian access is obstructed in Europe.

A defining feature of humanitarian action in Europe has been the important and essential role of volunteers, civil society organisations and solidarity networks both at the grassroots' level and across national borders. Large humanitarian actors, on the other hand, took time to position themselves (Léon 2018) or have shied away from a situation that is unfamiliar and could also jeopardize the financial support of their main donors – EU member states.

Since then, the humanitarian space has been encroached upon in many ways and it has become increasingly difficult for volunteers or (small) humanitarian organisations to assist and protect people on the move. The criminalisation of humanitarian action is particularly visible in the context of civilian maritime SAR activities in the Mediterranean, but also bureaucratic hurdles and the co-optation of the humanitarian response into other political objectives have limited the space for principled humanitarian action. In order to protect people on the move, national, regional and international responses are needed to offer protection and assistance to migrants in countries of origin, transit and destination. Thereby, the humanitarian response needs to be in line with the principles of impartiality, neutrality, and independence to ensure access to the affected population. While the interests of states to counter organised crime, including human trafficking, is legitimate, this should not restrict humanitarian access to vulnerable migrants and refugees.

In Europe, the biggest obstacle for effective humanitarian action is a lacking political will and the inability of the EU to achieve consensus on migration policies (DeLargy 2016). The Malta Agreement, a result of the latest EU Summit of Home Affairs Ministers in September 2019 and subsequent negotiations in Luxembourg in October of the same year, has failed to address the shortcomings of current migration policies and to remove the obstacles standing in the way of principled humanitarian action in the Mediterranean. For this, new alliances are warranted between humanitarian, human rights and migration focussed organizations to defend the humanitarian space for principled action to provide crucial support to people on the move both on land and at sea.

Endnotes

1 See: https://missingmigrants.iom.int/region/mediterranean, last accessed 11.10.2019.

2 See:https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2009.pdf, last accessed 07.10.2019

3 https://www.agendaforhumanity.org/sites/default/files/resources/2017/Jul/SS04-Migration.pdf, last accessed 02.10.2019

4 See: https://agendaforhumanity.org/cr/3/#3B, last accessed 07.10.2019

5 See: https://reliefweb.int/sites/reliefweb.int/files/resources/The-CMR-The-deadliest-migration-route.pdf, last accessed 07.10.2019

6 The notion gained popularity in the early 1990s, when then Médecins Sans Frontières (MSF) President Rony Brauman used the term 'espace humanitaire' to describe a symbolic space in which humanitarian actors should be "free to evaluate needs, free to monitor the delivery and use of assistance, free to have dialogue with the people" (Collinson and Elhawary 2012).

7 See: https://fairtrials.org/news/arrest-kisa-director-reflects-wider-european-trend-criminalising-support-migrants, last accessed 09.10.2019.

8 As noted above, a diversity of actors engaging in different activities respond to the needs of people on the move. It is therefore difficult to establish, to what extent the prosecutions are based on solely humanitarian grounds.

9 The combination of the Council Directive 2002/90/EC of 28 November 2002 and the Council Framework Decision implementing it.

10 See Article 1(2) of the Directive. At the international level, both the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against Smuggling of Migrants by Land, Sea and Air, that supplement the UN Convention against Transnational Organized Crime (2000) include humanitarian exemptions.

11 For an overview of cases see Carrera et al. (2019) and Hammerl (2019). See also the documentation of cases by borderline-europe and Délinquants Solidaires.

12 For a report on the case of the ship Aquarius of the NGO SOS Méditerranée, operated in partnership with MSF (Amsterdam) see: https://www.humanrightsatsea.org/wp-content/uploads/2019/02/HRAS_Aquarius_Review_and_Commentary_2019_SECURED.pdf, last accessed 2.10.2019.

13 See page 4 of the resolution: https://www.bundesregierung.de/resource/blob/976072/432086/a0892e3d6adfceffbefc537c19c25d99/2015-09-24-bund-laender-fluechtlinge-beschluss-data.pdf?download=1, last accessed 11.10.2019

14 See:https://www.boell.de/en/2018/06/26/hungary-imprison-ngo-workers-helping-asylum-seekers-and-other-migrants, last accessed 09.10.2019

15 The term is borrowed from Carrera et al. (2019) and describes not only cases of formal prosecution and sentencing in criminal justice procedures, but also wider dynamics of suspicion, intimidation, harassment and disciplining.

16 Personal Interview, humanitarian organisation, Italy, May 2018.

17 See: https://www.aerzte-ohne-grenzen.de/aerzte-ohne-grenzen-verzicht-auf-eu-gelder-faq, last accessed 14.10.20189

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