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Pallister-Wilkins, P.

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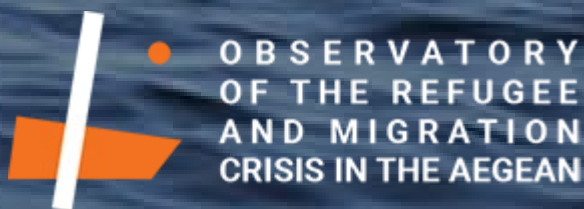
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REFUGEES, MIGRANTS & HUMANITARIAN GOVERNANCE

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Blogpost / Friday, September 14, 2018

RESEARCH



Criminalising Assistance and Solidarity: The ERCI Case and Beyond

Article by **Polly Pallister- Wilkins** (Assistant Professor, Political Science, University of Amsterdam) written for the Observatory of the Refugee and Migration Crisis in the Aegean

The recent arrest of NGO workers and solidarity activists by the Greek police, among them members of Emergency Response Centre International (ERCI), has caused consternation amongst migrant activists, humanitarians and interested observers alike. The arrests come amid other attempts around Europe and the Mediterranean to prevent the assistance and rescue of life seekers by non-state actors. The recent efforts of the new Italian government to prevent the disembarkation of search and rescue (SAR) vessels in Italian ports and Gibraltar's decision at the end of August to strip the SOS Méditerranée vessel the Aquarius of its flag have cast a pall over the last few years of a politics that have attempted in practice to place the lives of migrants and the risks they faced at the border front and centre. [i] Away from the spectacular politics of search and rescue at sea, there have been repeated attempts by French authorities to clamp down on solidarity activities, including the arrest of activists working in the difficult Alpine terrain along the Italian border and in the better-known Calais. [ii] Beyond Europe, US Border Patrol has repeatedly tried to interfere in the activities of solidarity activists operating in the harsh deserts of the US-Mexico borderland by for example slashing the life-saving water bottles left for life seekers, while activists from No More Deaths claim cases of repeated 'intimidation, harassment, and surveillance'. [iii] But what can we learn from these cases and this apparent criminalisation of assistance and solidarity?

Of course, attempts by state authorities to prevent solidarity and rescue activities by non-state actors is not new. Any discussion of recent events routinely returns to the 2004 Cap Anamur case, when the captain and first officer of the Cap Anamur vessel belonging to the German NGO of the same name were arrested and charged with aiding and abetting illegal immigration. In fact so present is the Cap Anamur in the minds of those engaged in SAR activities that it is a central point of departure for the architects of more recent SAR efforts keen to avoid a similar fate.[iv] It has been argued that the Cap Anamur case encouraged early European attempts at off-shoring and externalising migration and asylum procedures in North Africa, under the rubric of saving lives.[v]

Can we see similar logics at work in recent criminalisation attempts? In addressing current events around criminalisation I want to focus on three main issues: the attempts by state and supra-state authorities to reassert control; the easy and politically effective yet ethically lazy conflation of solidarity and rescue efforts with smuggling; and the effects of a confusing operational

and legal terrain on the solidarity activities.

Reasserting control

I have written elsewhere about member state and European Union attempts to bring the forces of compassion and the solidarity actions of citizens under control in relation to the Hotspots.[vi] In this formulation, state and institutional authorities such as the EU, confronted with a groundswell of solidarity actions aimed at rescue and humanitarian assistance, have worked hard to introduce systems of order in which their sovereignty over migrant lives, and the ability to, in the Foucauldian sense, make live and let die, remains uncontested.

For anyone who has studied what has been popularly called the ‘migration’ or ‘refugee crisis’,[vii] it is clear that solidarity activists got the march on state and EU responses. Solidarity activists and grassroots humanitarian NGOs were quick with on-the-ground provision of much-needed assistance while states and the EU as well as larger, more traditional humanitarian NGOs appeared sluggish. In this climate, it was no longer the state that was seen to be — and staying with Foucault — providing the necessary conditions for life in the first instance. The provision of the necessary conditions for life, or what is sometimes called sovereignty as responsibility, is thought to be a feature of the modern state and the inability to provide such conditions is understood in modern international law as a dereliction of sovereignty and forms the basis for (humanitarian) intervention.

As a result what has emerged slowly since 2015 is the re-imposition of control over life by state and supra-state authorities in Lesvos and other places of — to borrow from the EU’s own jargon when talking about the Hotspots — ‘high migratory pressure’, in an attempt to reassert sovereign control. That this re-imposition has been slow, has played itself out differently in different contexts, and has in many instances worked through co-opting the forces of solidarity to create a hodgepodge assemblage of state and non-state actors engaged in humanitarian borderwork should not surprise us. But where does overt criminalisation fit in all this?

I would argue that as EU member states and the EU themselves have built up a capacity to respond to ‘migratory pressure’, and as xenophobia and anti-migrant sentiment continues to rise, activities which could be seen as contesting or overtly challenging the control of sovereign authorities begin to come under attack more acutely. None of this of course explains why ERCI have been targeted specifically unless we are to believe the accusations of the Greek police regarding people smuggling and other criminal activity— accusations that ERCI strongly deny.

Conflating solidarity with smuggling

The European Union and its member states have been keen to prevent arrivals of life seekers to Europe. In order to do this they have created a range of mechanisms, including creating a specific trust fund to ‘manage migration’ and externalise its control in Africa;[viii] funding the Libyan coastguard who have been engaging in ‘pull-backs’;[ix] and perhaps most famously forging the EU-Turkey ‘deal’. This ‘deal’ is aimed at deterring arrivals on the Aegean islands under the rubric of tackling people smuggling to save lives through the prevention of dangerous boat crossings. In the popular political imagination the people smuggler looms large as the bogeyman, endangering life seekers’ lives and undermining Europe’s borders.

This is of course a lazy understanding of the smuggling economy fostered and facilitated by hyper-restrictive European border controls. But it is an affective formulation as it helps to mobilise particular policing responses aimed at governing ‘bad things’ and ‘bad guys’, rearticulates migration and its control as a law-and-order problem, and casts life seekers as victims in need of rescue by legitimate (read state) authorities.

In addition there have been attempts to cast non-state SAR efforts and other solidarity work as ‘pull factors’ with rescue efforts in the central Mediterranean being dubbed a ‘ferry service’ by certain Dutch security officials, while in Lesbos local efforts by solidarity activists and grassroots humanitarian organisations have been repeatedly accused by some on the island, unhappy at the arrival of life seekers, as being a pull factor. Meanwhile, other reactionary forces have stressed the naivety of pro-migrant solidarity work as well as more mainstream humanitarian efforts. From these attempts to delegitimise solidarity work and amid a climate in which state authorities want to reassert their ultimate sovereign control over the border and their ability to make live or let die — control and ability that they have lost both to solidarity activists and people smugglers — then the easy conflation of solidarity with smuggling is an effective tool.

There may be very clear legal differences between solidarity and smuggling; however, if we consider the border to be a spectacle and part of a performance of sovereign power, then the accusation of smuggling is less about proof and more about the accusation itself and the work such an accusation does. In addition, the accusation of smuggling and attempts to contest it are spatial struggles over territory, where the border is, and who gets to make such determinations. As the border has come to be embodied in the migrant and thus moves with them, accusations of smuggling are also spatially disaggregated and are increasingly being made against migrant solidarity activities that take place away from the borderline.[x] Many of these accusations do not result in convictions — but we have to wonder whether conviction is really the point of these attempts at criminalisation, when the accusation and charge themselves have such chilling effects.

Confusion as deterrent

At the end of August the Spanish SAR NGO Proactiva Open Arms announced they would end rescue missions in the Central Mediterranean amid increasing attempts at criminalisation, shifting its work instead to the Alboran Sea and Strait of Gibraltar.[xi] The NGO had their ship impounded (and then released) by Italian authorities earlier in the year after they had refused to hand over rescued migrants to Libyan authorities.[xii] While the NGO has not been convicted on any charges the previous accusations and fear of future accusations have been enough to see them alter their activities.

Solidarity work and humanitarian assistance more generally can only safely, and therefore effectively, operate within an environment of clear legal boundaries. Many humanitarian organisations claim the humanitarian space itself, defined as the possibility of action, is shrinking amidst global attempts to limit non-state, independent humanitarian efforts in a variety of ways, from the deliberate targeting of aid workers in conflict zones, to unsettling and shrinking the (legal) terrain in which humanitarian work occurs. Confusion around what is legal and what is not is one way in which such the unsettling and ultimately the shrinking of the humanitarian space takes place. Confusion rather than outright prohibition also avoids the political problems an outright attack on humanitarian endeavours would cause as such an attack would contest both the idea of a liberal Europe and the very particular legal treaties of which member states are signatories.

Therefore the confusion surrounding the arrests of ERCI activists, amongst them former Syrian refugee Sara Mardini, sister of Olympic swimmer Yusra Mardini, works as a form of deterrence. Solidarity activists in Greece and elsewhere are no longer sure where they stand in relation to the police or the law. That the authorities would target someone as well-known as Sara Mardini meanwhile shows that no one is above or beyond the reach of the state, no matter how much they are the perfect poster child for humanitarian action. However, the targeting of ERCI is also strategic. It is not a large humanitarian organisation with almost bottomless resources to fund a legal case unlike say MSF who raised €1.53 billion in 2017 alone. Nor does ERCI have immediate access to the media unlike humanitarian organisations with professional communication departments and a well-established ‘brand’ presence.

Thoughts for the future...

At the time of writing, it is not known what is going to happen with the case against ERCI, or the other attempts at criminalising solidarity in Lesvos specifically or across Europe more generally. Activists, solidarity workers and humanitarians continue to challenge the restrictions being placed on their work, while trying as best as possible to provide assistance to those life seekers suffering from the restrictive border policies of the European Union. Meanwhile sovereign powers continue to look for ways to affirm their role as the arbiter of entry and exit, life and death, by (cynically) mobilising similar, life saving and humanitarian discourses to those of the solidarity activists and humanitarians. What is clear from recent events is that the terrain of humanitarian borderwork remains a contested and contingent one. It is best that we continue to pay attention to what is happening.

[i] SOS Méditerranée, ‘SOS MEDITERRANEE urges EU leaders to guarantee safe port of disembarkation for people rescued at sea,’ 23 June 2018, <https://sosmediterranee.com/sos-mediterranee-urges-eu-leaders-to-guarantee-safe-ports-of-disembarkation-for-people-rescued-at-sea/> and Katy Budge, ‘Gibraltar’s decision to strip flag from Aquarius rescue ship undermines ancient seafaring principle of solidarity’, *The Conversation*, 7 September 2018, <http://theconversation.com/gibraltars-decision-to-strip-flag-from-aquarius-rescue-ship-undermines-ancient-seafaring-principle-of-solidarity-101928>

[ii] Clara Hernanz, ‘When helping a refugee gets you threatened with a prison sentence,’ *Vice*, 8 June 2018 https://broadly.vice.com/en_us/article/zm8wa5/europe-migrant-refugee-activists-jail-threat

[iii] No More Deaths, ‘Part 2, Interference with Humanitarian Aid: Death and Disappearance on the US-Mexico Border,’ 2018 http://www.thedisappearedreport.org/uploads/8/3/5/1/83515082/disappeared_report_part_2.pdf

[iv] Hernan del Valle (2016). ‘Search and Rescue in the Mediterranean Sea: Negotiating Political Differences,’ *Refugee Survey Quarterly* 35(2): 22-40.

[v] Paolo Cuttitta (2017) ‘Delocalization, Humanitarianism and Human Rights: The Mediterranean Border Between Exclusion and Inclusion’, *Antipode* 50(3): 783-803.

[vi] Polly Pallister-Wilkins (2018) ‘Hotspots and the geographies of humanitarianism,’ *Environment and Planning D: Society & Space* <https://doi.org/10.1177/0263775818754884>
https://www.academia.edu/36072878/Hotspots_and_the_geographies_of_humanitarianism

[vii] Space does not allow a thorough problematisation of this term, but see Polly Pallister-Wilkins, (2016) ‘Interrogating the Mediterranean ‘Migration Crisis’,’ *Mediterranean Politics* 21(2): 311-315
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https://www.academia.edu/22170531/Crisis_Routine_Consolidation_The_Politics_of_the_Mediterranean_Migration_Crisis

[viii] See https://ec.europa.eu/trustfundforafrica/content/homepage_en

[ix] See <https://euobserver.com/migration/140067>

[x] See <https://www.aljazeera.com/indepth/features/2017/01/france-prosecuting-citizens-crimes-solidarity-170122064151841.html>

[xi] See <https://www.thelocal.es/20180830/spanish-ngo-quits-migrant-rescues-in-lybia-over-criminalisation-of-aid-work>

[xii] See <https://www.hrw.org/news/2018/03/19/italy-migrant-rescue-ship-impounded>

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