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The non-governmental provision of search and rescue in the Mediterranean and the abdication of state responsibility

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Abstract   *From January 2015 to December 2017, approximately 1.6 million migrants crossed the Mediterranean to reach Europe. The death toll was dramatic, with almost 15,000 drowning. In response to the void left by the ending of the Italian-led Mare Nostrum mission, several non-governmental organizations (NGOs) launched their own search and rescue (SAR) operations, rescuing over 110,000 migrants. In this article, we argue that states have the responsibility not only to coordinate, but also to directly provide adequate SAR operations in the Mediterranean, and that these responsibilities are presently being abdicated. Although much criticism of NGO maritime rescuing operations is misplaced, non-governmental SAR has notable limitations, and states are ultimately responsible for this shortfall.*

Introduction

Between January 2015 and December 2017, almost 15,000 migrants died trying to reach Europe by sea (IOM 2017; UNHCR 2017).[1] The humanitarian crisis in the Mediterranean deteriorated from November 2014, after the halting of the Italian Navy search and rescue (SAR) operation Mare Nostrum. In response, several non-governmental organizations (NGOs) attempted to fill the gap left by the lack of large-scale SAR missions. These include the Migrant Offshore Aid Station (MOAS), which launched the first non-governmental rescuing operation off the shores of Libya, the Amsterdam, Barcelona, and Brussels sections of Médecins Sans Frontières (MSF), Sea-Watch, SOS-Méditerranée, Sea-Eye, Pro-Activa Open Arms, Jugend Rettet, the Lifeboat Project, the Boat Refugee Foundation, Save the Children and Mission Lifeline. NGOs have certainly saved lives: without them, thousands more migrants would have died. However, non-governmental rescue

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[1] Official casualty counts suffer from severe limitations and are likely to be underestimated; see Last et al. (2017).

operations have been criticized for increasing the flow of migration and facilitating smuggling. These operations also raise the broader question of whether it is acceptable for states to rely on NGOs for SAR operations.

This article considers the moral responsibilities that states possess around SAR. First, we argue that states have a moral responsibility to *ensure* that SAR operations take place. This responsibility, we will suggest, has been clearly abdicated by states. Second, in so far as the Central Mediterranean migratory route is concerned, we argue that states have a responsibility to *directly provide* SAR, owing to the limitations inherent in relying on NGOs such as MOAS and MSF. Although some objections to NGO SAR missions are overstated or mistaken, non-governmental SAR is still somewhat problematic. Most notably, the conduct of SAR by NGOs faces significant limitations in terms of capacity and can be conducive to a further abdication of state responsibility by allowing governments to justify their unwillingness to provide adequate rescue services.[2] The upshot is that states are doubly failing in their responsibilities: both to ensure adequate SAR and to provide it themselves.

The article proceeds as follows. We first provide a summary of the humanitarian crisis in the Mediterranean, before delineating states' moral and legal responsibilities to provide SAR. We argue that the international community has a general duty to ensure that SAR is provided and consider which states in particular possess this duty. We then consider whether the use of NGOs for performing this duty is an abdication of the responsibility. We will argue that, *in principle*, states have a moral responsibility to ensure SAR takes place, but not necessarily to always provide it themselves. This is what we call the 'Minimal View' of SAR responsibilities. The next section considers the problems raised by relying on private actors for SAR operations off the shore of Libya. In light of these concerns, we conclude that in the context of the Central Mediterranean migration crisis, SAR should be directly provided by states. This is what we call the 'Maximal View' of SAR responsibilities.[3]

Although public and academic debates often lament the absence of adequate SAR (see Heller et al. 2016; Tazzioli 2016; Carrera and Den Hartog 2015), they often miss the fact that states are morally required to ensure adequate SAR. To our knowledge, this is the first academic account that argues states have a moral responsibility to ensure SAR and that states have been abdicating this responsibility. This is also the first article that examines the ethical implications of relying on non-governmental providers for SAR operations.

To clarify and evaluate the central normative issues surrounding the conduct of large-scale SAR operations, we employ Rawlsian 'reflective equilibrium', the conventional meta-ethical method of contemporary political philosophy. This method works by attempting to achieve coherence between general moral principles and considered moral convictions in particular issues or cases (Daniels 2016; Rawls 1999). Based in the field of applied political philosophy, this article focuses on seaborne migrations across the Central Mediterranean as a 'normative case study' (Thatcher 2006), examining the coherence between SAR operations offshore of Libya and general moral principles from international political theory.

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[2] Note that we only focus on maritime SAR. There may be similar issues that arise with SAR on land, but space precludes considering these in this article.

[3] The Maximal View might also be relevant for other crises in other regions, which face similar situations if NGOs are relied upon to provide SAR.

The empirical analysis of this article relies on three different types of qualitative data. First, we conducted a set of semi-structured, anonymized interviews with representatives from all the NGOs working on SAR off Libya, as well as with law enforcement personnel working for the Italian Coast Guard, Frontex and military personnel from the Italian Navy and the European Union (EU) mission EUNAVFOR Med. Second, this research relies on a systematic analysis of public communications and official reports by NGOs, the Italian government and EU agencies. Third, the article draws on research tools from multi-sited ethnography (Marcus 1995), most notably participant observation (DeWalt and DeWalt 2002; Rabinow and Sullivan 1987). More specifically, we directly observed three stakeholder meetings involving representatives from both humanitarian and security organizations. Participatory fieldwork conducted by one of the authors aboard the Sea-Watch's vessel SAR operation in August 2017 also informed this research.

Provision of SAR in the Mediterranean

In October 2013, the sinking of two large boats near the island of Lampedusa caused the death of over 600 migrants (Tazzioli 2016). Calls for action by the Pope and other opinion leaders urged Italian decision-makers to undertake more proactive SAR activities. The Italian Navy launched Operation Mare Nostrum in October 2013, involving the use of 34 warships and approximately 900 sailors per working day. The operation cost €11 million per month (Patalano 2015: 17). However, the operation was short-lived. By the end of October 2014, discontent amongst Italians about the lack of burden sharing within the EU and criticism from other states that the mission was a 'pull factor' for further migration led to the termination of Mare Nostrum and the launching of EU border agency Frontex operation Triton (Carrera and Den Hartog 2015). Unlike Mare Nostrum, Triton was primarily a border control mission, initially operating within 30 nautical miles of the Italian coast with a third of Mare Nostrum's budget and far fewer smaller number of vessels (Cusumano 2017a; Tazzioli 2016). As the humanitarian emergency intensified (Glynn 2016; Mann 2016), the budget of Triton was tripled, and its operational area expanded from 30 miles to 138 miles off the Italian coast in April 2015. The mission, however, still remained focused primarily on border control (Campbell 2017; Tazzioli 2016). In the summer of the same year, the EU launched the Common Security and Defence Policy (CSDP) operation EUNAVFOR Med 'Sophia'. In the same period, the Italian Navy also launched operation Mare Sicuro. Both of these missions, however, focused on disrupting smuggling networks and protecting commercial activities rather than the provision of SAR (Cusumano 2017a; European External Action Service 2017).

By late 2015, the number of migrants seeking to reach Greece from Turkey increased dramatically, leading to the deployment of the Frontex operation Poseidon in the Aegean sea (Frontex 2017). The number of migrants attempting the Mediterranean route fell following the March 2016 agreement between the EU and Turkey. The humanitarian emergency, however, continued off the shore of Libya. In 2016 alone, 181,436 migrants reached Italian shores. At least 4,500 migrants went missing at sea (IOM, 2017; UNHCR, 2017). After July 2017, departures from Libya decreased substantially owing to instability in the smuggling hub of Sabaratha and to an agreement between the Italian government and Libyan militias. However,

Table 1. Non-governmental providers of SAR in the Mediterranean.

NGO	Capabilities	Period
MOAS	40 m *Phoenix*	August 2014–October 2017
	51 m *Responder*	October 2015–November 2016
MSF	50 m *Dignity 1*	May 2015–November 2016
	68 m *Bourbon Argos*	April 2015–November 2016
	77 m *Prudence*	March 2017–October 2017
Sea-Watch	27 m *Sea-Watch1*	April 2015–October 2015
	33 m *Sea-Watch2*	March 2016–October 2017
	50 m *Sea-Watch3*	October 2017–
Sea-Eye	26 m *Sea-Eye*	May 2016–October 2017
LifeBoat Project	23 m *Minden*	June 2016–September 2017
Pro-Activa	30 m *Astral*	June 2016–November 2016
	37 m *Golfo Azzurro*	December 2016–
	37 m *Open Arms*	March 2017–
SOS-Méditerranée	77 m *Aquarius*	February 2016–
Jugend Rettet	37 m *Iuventa*	July 2016–August 2017
Boat Refugee Foundation	37 m *Golfo Azzurro*	September–November 2016
Save the Children	57 m *Vos Hestia*	September 2016–November 2017
Mission Lifeline	33 m *Sea-Watch2*	October 2017–

as the root causes of large-scale migration remain unaddressed, this lull may be short-lived (Kingsley 2017). Moreover, in spite of the reduced number of migrant crossings, deaths at sea remain high, amounting to at least 3,000 as of the beginning of December 2017 (IOM, 2017; UNHCR, 2017).

In what follows, we argue that the failure to ensure and directly provide adequate SAR by states—and not just Italy—constitutes a serious abdication of their responsibilities. But, first, we need to establish that states do indeed possess these responsibilities.

States' responsibility and SAR

This section argues for a general international responsibility to ensure maritime rescue. The section uses the broader term 'ensure SAR' to denote the guarantee that SAR is provided. Since more specific responsibilities exist to (i) coordinate and (ii) directly provide SAR, this section also explores which actors bear these more specific responsibilities. We first consider the duty to ensure SAR. We argue that there are (at least) four potential grounds for this duty. We do not aim to defend one in particular here; our aim is simply to show that the duty to ensure SAR is a corollary of several leading approaches in political philosophy.

The first potential ground sees SAR as a duty of justice. On the 'interactional' (or 'non-relational') approach to cosmopolitan justice, there are duties of justice regardless of our current institutional arrangements. This establishes a duty simply based

on others' common humanity (Caney 2005a). There can also be an 'institutional' (or 'relational') cosmopolitan defence of SAR. This holds that 'practice-mediated relations in which individuals stand condition the content, scope, and justification of those principles' (Sangiovanni 2007: 5). One can conceive of the duty to ensure SAR in terms of positive or negative relational cosmopolitan duties. The former (which would be the second ground of the duty) would argue that positive duties arise to undertake SAR in virtue of the common, global institutional background that establishes the principles of justice (see, for instance, Beitz 1999). But the duties to ensure SAR are perhaps clearest through the use of negative duties. The claim (and the third ground of the duty) would be that states have negative duties to undertake SAR in response to the common, global institutional background that violates rights. That is to say, states have a duty to ensure SAR as a way of redressing previous violations of the negative duty not to harm those beyond their borders. For instance, a state may have a duty to ensure SAR to redress the severe instability caused by its unjust colonial policies. Analogously, Thomas Pogge (1992) presents an institutional cosmopolitan account of the negative duty argument in the context of humanitarian intervention, which runs as follows. Many of us are implicated in the upholding of an unjust global economic order that leads to extreme poverty and humanitarian crises. This is through policies such as supporting dictators, unequal trade tariffs, intellectual property rights, environmental pollution, and an unfair system of borrowing and resources privileges that lead to violent conflicts (Pogge 2008). Consequently, we have violated our negative right not to harm those beyond our borders. To redress these violations, Pogge argues that humanitarian intervention (and, more generally, the redistribution of wealth to those who are worse off within current international arrangements) is sometimes required. Pogge's argument can be extended to the idea of ensuring SAR: like humanitarian intervention, SAR is required to redress the rights violations of the unjust global economic order that, for instance, lead to migrants traversing the Mediterranean.

This fourth ground is that SAR could be considered a humanitarian duty. This duty stems from the fact that fellow humans are in peril, and they could be saved relatively easily. This is because the costs of providing SAR operations are not prohibitive and can be shared at reasonable cost between members of the international community.[4] Peter Singer's famous use (1972) of the case of the 'child drowning in the pond' to justify cosmopolitan duties is particularly apposite here: just as there are humanitarian duties to assist a nearby child drowning in a pond, so too are there humanitarian duties to assist migrants drowning. Adequate SAR is an obvious way of preventing deaths at a reasonable cost for potential rescuers. It is worth noting that this potential ground of SAR is perhaps the least controversial, given that the existence of a humanitarian duty to rescue is widely accepted amongst moral and political philosophers.[5] Not only is this a key claim of most cosmopolitan accounts (e.g. Caney 2005a), but virtually all mainstream scholars in international political philosophy accept that states have positive, humanitarian duties beyond their borders, such as a duty to rescue. This includes

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[4] This humanitarian duty can overlap with duties of justice on the interactional/non-relational account of justice. The interactional account goes beyond mere humanitarian duties though, claiming that we have duties to ensure equality of opportunity.

[5] The duty to rescue is even enshrined in tort law in certain states—individuals can be held legally liable for failing to fulfil it (Mann 2016).

non-cosmopolitans who reject arguments for cosmopolitan justice (Miller 2007; Nagel 2005)—and who may therefore question the first three grounds for SAR.[6] It is also worth noting here that one may accept that states owe *some* duties to those beyond their borders, such as the duty to ensure SAR, while holding that they owe *greater* duties to citizens, and that nationality, self-determination or communal autonomy are valuable for non-instrumental reasons. For instance, non-cosmopolitans such as David Miller (2007: 270) and Michael Walzer (2002) endorse international duties, most notably to engage in humanitarian intervention, based on humanitarian duties. There are, then, several potential grounds for an international, general duty to ensure SAR.

Launching effective rescue operations (even outside the state's own 'SAR zone') is also sometimes legally required. As specified by the Maritime Safety Committee Resolution 167(68)/2003 (para. 6.5) and restated in the 2013 International Aeronautical and Maritime Search and Rescue Manual (chapter 3.6.1), the first Maritime Rescue Coordination Centre (MRCC) that receives information on a distress event outside its own SAR zone is required to coordinate rescue operations until the authorities responsible for the SAR zone can take over the SAR mission (Trevisanut 2010). As the Italian MRCC receives most distress calls in the Central Mediterranean and the country responsible for the SAR zone where the situation occurs—Libya—has been neither able nor willing to take over rescue operations, Italian authorities have been legally in charge of most rescue SAR missions.[7]

The following question thus arises: which *specific* agent is morally responsible for providing SAR in the Mediterranean? Put another way, who in the international community bears the humanitarian duty to rescue? General moral duties of humanitarian assistance are held by all agents (including but not limited to individuals and states), but they need to be assigned to a specific actor. It is to this we now turn.

Assigning duties related to SAR

Under Article 98 of the United Nations Convention on the Law of the Sea (UNCLOS)—which reinstates the obligations already enshrined by the 1974 Convention for the Safety of Life at Sea and the 1978 SAR Convention—the states where the ship is registered (usually referred to as flag states) and coastal states have a duty to render assistance to those in distress at sea by coordinating and directly providing SAR operations in the areas identified as their own 'search and rescue regions' (SSR), also referred to as 'SAR zones' (Aalberts and Gammeltoft-Hansen 2014; Trevisanut 2013). In the Mediterranean, however, overlapping SAR zones complicate this situation. For instance, Malta and Italy share responsibility for the SAR zone off the shore of Southern Sicily. Libya officially accepted the existing SAR regime and the obligation it entails only in July 2017, but it has not yet signed the SAR Convention and remains unable to independently conduct effective

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[6] The debate between cosmopolitans and statists does not turn on the question of whether humanitarian duties exist, but rather focuses on whether duties of global justice exist and, in particular, duties to address global inequality.

[7] Author's interviews with Italian Coast Guard Captain working at the Italian Maritime Rescue Coordination Centre, April 2016 and January 2017.

operations.[8] Greece and Turkey also share the SAR zones crossed by migrants travelling the Eastern Mediterranean route in the Aegean Sea (Aalberts and Gammeltoft-Hansen 2014).[9]

Moreover, coastal states often lack the capacity to perform the extensive operations required to assist the large number of migrant boats traversing the Mediterranean. Effective large-scale SAR includes the establishment of an MRCC responsible for receiving distress calls, as well as the availability of coast guard and naval forces capable of directly conducting rescue operations. As Patalano (2015) suggests, no constabulary coast guard alone can provide large-scale rescuing services, which require a capable navy with a permanent offshore presence. To date, however, only Italy has deployed its navy to conduct the SAR operation Mare Nostrum, which required a considerable amount of assets, personnel and financial resources. Although the EU has launched some multinational military and law-enforcement maritime operations, such as Triton and EUNAVFOR MED 'Sophia', these missions do not have SAR as part of their mandate (Cusumano 2018; European External Action Service, 2017; Tazzioli 2016). Malta and North African states such as Tunisia and Libya, by contrast, arguably lack the capabilities to sustain such large-scale operations. The EU has trained and supplied the Libyan Navy and Coast Guard, but this force still ill-equipped for conducting large-scale SAR and is presently under investigation by the International Criminal Court for its inhumane treatment of migrants (Reuters 2017).[10] Accordingly, coastal Member States often lack the ability to ensure adequate SAR and, even when they do (e.g. in the case of Italy), they often unfairly carry most of the burden.

As documented in the political philosophy literature on the distribution of responsibilities (see, for example, Miller 2001), when collectives hold responsibilities that are not clearly assigned to particular agents, as is the case currently with SAR, they may not be discharged. Without a clear assignment, agents will often disagree about where the responsibility lies and use this ambiguity to justify their failure to contribute sufficiently. In David Miller's words, without a clear assignment 'there is a danger that the suffering or deprivation will continue unabated, even though everyone agrees that it is morally intolerable, because no one is willing to accept the responsibility to step in and relieve it' (2001: 453). This is what Miller calls the problem of 'remedial responsibility'. In order to ensure remedial responsibility, one agent has to be clearly 'picked out'. As Miller acknowledges, however, determining which agent should be picked out and assigned responsibility can be difficult.

There are several potential ways of assigning moral responsibility discussed in the literature on the assignment of duties (see, for instance, Miller 2001; Tan 2006). Scholarship on the distribution of duties surrounding climate change is the most advanced (e.g. Caney 2005b; Page 2008). It considers assigning responsibility

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[8] Author's interview with Italian Coast Guard Captain, December 2017.

[9] Additionally, all seafarers have a legal duty of SAR for ships found in distress in their vicinity, which could mean commercial ships that intersect with migrant traffic. The current system, however, provides several disincentives to fulfilling this duty. Merchant vessels are often ill-suited to conduct rescuing missions, which may entail extra costs and even trigger prosecution for abetting illegal immigration (Basaran 2015). As a result, some commercial ships avoid migrant-heavy areas, refusing to reveal their positions and bypassing migrant boats in distress (Aarstad 2015: 414–415).

[10] Authors' interview with Italian Coast Guard Captain, December 2017; Authors' interview with human right activist, December 2017.

to those who are *responsible*, particularly morally responsible, for climate change (the 'Polluter Pays Principle'), to those who are *most able* to bear the burdens (the 'Ability to Pay Principle'), and to the *beneficiaries* of climate change (the 'Beneficiaries Pay Principle').

Where does this leave us with regard to the duty to ensure SAR? General, provisional moral duties to ensure SAR are held by all agents (including but not limited to individuals and states), but they need to be assigned to a specific actor. There is no necessary moral reason why the agent legally tasked with ensuring adequate SAR should bear a greater burden than all other agents. The burdens of SAR provision, such as the cost of operations and hosting asylum seekers, should be distributed fairly amongst actors. Though we do not consider here what *exactly* a fair distribution would entail, it would most likely require wealthy, Western states to bear most of the costs. Their responsibility is seemingly overdetermined on the moral features typically thought of as relevant in the abovementioned literature on the assignment of responsibility. Akin to the 'Beneficiary Pays Principle', these states are arguably *beneficiaries* (beyond their just entitlements) of the current global socio-economic system that leads to migratory flows driven by global inequality, wars, poverty and humanitarian crises. Akin to the 'Ability to Pay Principle', such countries are also likely to be most *able*, given their wealth and resources. And akin to the 'Polluter Pays Principle', they are in part *responsible* for the current system that leads to large-scale, seaborne migratory flows.[11] This is especially the case for EU Member States, whose asylum and migration policies (foremost amongst them the so-called 'Dublin System', which allows most refugees to apply for asylum only when they have already reached EU soil) ultimately force refugees to risk their lives to illegally enter a European country before being able to apply for humanitarian visas (Moreno-Lax 2017; Carrera et al. 2017; Heijder, Rijpma, and Spijkenboer 2016; Trauner 2016; Franzke 2015). Thus, other states—often Western states—should share the burden fairly with the state ensuring SAR.[12] There is no clear reason why Italy, Malta, Greece or another frontline state should bear the costs of ensuring SAR over other states, such as the UK or Germany, or even those beyond Europe.

Even if one still holds that coastal states are required to do more because, for instance, the system of SAR zones tries to ensure fair burden-sharing, this does not let countries outside the Mediterranean basin off the hook. It is clear that there may be remedial responsibilities when the primary responsibility bearers do not fulfil their duties. Here, an analogy can be drawn to the responsibility to protect (R2P) doctrine, which asserts that states have the primary responsibility to tackle and prevent mass atrocities within their borders. When states are unable or unwilling to do so, their responsibility to protect transfers to the international community (e.g. see Bellamy 2015; Pattison 2015). This remedial responsibility to protect may require various preventive and reactive measures, both coercive and

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[11] For further accounts of the moral factors relevant to the distribution of duties, see Caney (2014), Miller (2001), Pattison (2015) and Tan (2006, 2015).

[12] Interestingly, this was acknowledged in the UN Summit for Refugees and Migrants in September 2016, where participants agreed (at least rhetorically) that the responsibility to provide SAR operations extends beyond the coastal states in the Mediterranean (UN General Assembly 2016).

non-coercive, to help ensure mass atrocities are addressed.[13] If those bearing the primary responsibility of providing SAR—such as coastal states—are unable or unwilling to do so, the responsibility for SAR transfers to the international community. The current lack of SAR capacity of Libya, Malta and other states, along with Italy's difficulty in covering the SAR areas of other states in additional to its own areas, mean that the remedial responsibility to rescue should be invoked. It falls on the international community—and particularly rich Western states—to assist coastal states and provide new SAR mechanisms.[14] At the moment, states are clearly abdicating their responsibilities in this regard.

Public and private provision of SAR

We have argued that states are clearly abdicating their responsibilities to provide SAR by not fulfilling their primary or remedial responsibilities. We will now turn to consider whether they are abdicating their responsibilities in a second manner. As we have already discussed, NGOs are filling the SAR capability gap left unattended by states. On the face of it, this might appear to mean that states are *necessarily* violating their responsibilities to provide SAR. However, in this section, we will argue that states might, *in principle*, rely on NGOs (or even other private actors) and still meet their responsibilities. To see this, we need to turn to the public/private distinction.

Let us first clarify how we define 'public' and 'private' in the context of SAR operations. The public/private distinction is what Norberto Bobbio famously called one of the 'grand dichotomies' of Western thought (Weintraub 1997: 1). This distinction is employed in various ways, such as to denote the restrictions on justifiable governmental interference with individuals (in liberal political theory), to demarcate the objectionable realms of patriarchal domination (in feminism), and to distinguish between the market-based and state-based provision of services (in economics). For simplicity's sake, we will take the public to be the collective, and to concern a group and, conversely, the private to be the particular, and to concern the individual. As Jeff Weintraub (1997: 5) notes, this is one of the main ways to use the public/private divide.[15]

Thus far, we have considered the responsibility for SAR as involving only one responsibility. But there are, in fact, several distinct responsibilities within it. These include, centrally, (1) the responsibility to *ensure* and coordinate SAR services in the areas for which agents are morally responsible and (2) the responsibility to *provide* the actual SAR services. Ensuring SAR involves adequate provision of SAR by private or public actors and effective coordination amongst these actors. This coordination essentially coheres with international law requirements

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[13] To be clear: we do not claim that SAR falls within R2P, which is focused on mass atrocities crimes. By drawing this analogy, we only intend to show that structurally similar moral requirements apply to SAR.

[14] Although we focus on SAR, there are also related duties to tackling the root causes of migrant crossing of the Mediterranean, such as mass atrocities in Syria, extreme global inequality, the situation of those in refugee camps in Lebanon and Turkey, and border restrictions, as well as to offer safer routes for passage and to offer humanitarian visas.

[15] Patricia Owens (2008) argues that this distinction is socially constructed, in the sense that what is deemed 'public' and 'private' is far from natural but is rather dependent on context and often influenced by political power. This argument is perhaps most visible in the maritime sector, where the notions of public and private have often been blurred (Mabee 2009).

(most notably, the SAR Convention) to establish an effective MRCC that can coordinate SAR operations. Other states may have remedial responsibilities as part of the more general duty to ensure SAR to assist relevant coastal states in their SAR. They might, for instance, be required to pay for SAR. Effectively ensuring SAR, of course, also entails removing all the hurdles and disincentives against rescuing migrants, such as the risk of prosecution for illegal immigration.

We label the 'Maximal View' of responsibilities the idea that public agents (typically states) are required to both (1) *ensure* and (2) *directly provide* SAR. By contrast, in the 'Minimal View', public agents are required only (1) to *ensure* sufficient SAR services are provided within their area. Determining what is 'within their area' involves considering whether states have a responsibility to provide SAR themselves, once they have been assigned the responsibility to ensure SAR within a particular region (according the model of the distribution of responsibilities outlined above).

Here is the challenge: the Maximal View (which we defend below) runs into the problem of explaining why *only* public bodies should provide SAR if a private actor (such as an NGO or a shipping company) could do so better (e.g. cheaper, with better equipment, more experienced personnel). In this case, why is the Minimal View not preferable? An analogy can be drawn to the view of minimal state responsibilities in the literature on private military and security companies (PMSCs). This literature makes a key distinction between the *authorization* of services and their *supply* (Krahmann 2010; Pattison 2014). Some scholars hold that the supply of services by PMSCs is not problematic, as long as they are authorized by states.[16] Similarly, one might argue that states only have to *ensure* SAR operations. If these could be *carried out* effectively by private actors—not-for-profit or for-profit—states would not be abdicating their responsibilities by contracting out to them. In certain cases, this might not be morally problematic, in so far as these private actors carry out SAR operations comprehensively and effectively. For instance, the UK relies heavily on the Royal National Lifeboat Institution to carry out SAR. The UK also outsourced the provision of air medical evacuation to a for-profit organization, Bristow Helicopters (BBC 2013). When SAR operations are likely to be sporadic and small-scale, they could be left to private vessels, appropriately coordinated by state MRCCs.

In such cases, the Minimal View might be appropriate. In what follows, however, we will now argue that this is not the case in the Mediterranean. Put another way, we will argue that reliance on private providers of SAR in the Mediterranean is only *instrumentally* problematic, in so far as it is not comprehensive enough to be fully effective. We do not claim that relying on private actors is *inherently* wrong. *If it were possible for states to ensure that private actors provided sufficient SAR, this would not necessarily be a problem.* But this is not currently the case off the shore of Libya. To demonstrate this, we will first explore NGOs' current rescue activities before exploring the problems raised by the reliance on non-governmental SAR in the Mediterranean.

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[16] These arguments are discussed at length in Pattison (2014).

Rise of non-governmental SAR missions

The first NGO providing SAR in the Mediterranean, MOAS was founded in 2014 by Christopher and Regina Catrambone, who used their experience in disaster management and part of their entrepreneurial fortune to purchase a fishing boat, the *Phoenix*, and equip it with two drones. In autumn 2015, MOAS extended its operations into the Aegean Sea by chartering a second vessel, the *Responder,* which was then redeployed off the shore of Libya in 2016 (Cusumano 2017a).[17] In 2017, financial strain forced MOAS to rely on only the *Phoenix* and stop leasing drones. In October 2017, MOAS interrupted its Mediterranean operations, relocating to South Asia.[18]

Following MOAS, three different MSF operational branches have become involved in SAR. MSF Amsterdam initially provided medical assistance aboard MOAS's vessel and later began a partnership with SOS-Méditerranée (Cusumano 2017a). The section of MSF headquartered in Barcelona and Brussels, by contrast, developed independent SAR capabilities, conducting SAR through their vessels, the *Dignity I* and *Bourbon Argos*, between April 2015 and November 2016, at which point operations were suspended. In March 2017, the Brussels and Rome MSF restarted operations with a new, larger vessel, the *Prudence*. Since the beginning of 2016, MSF vessels off the coast of Libya have saved a total of 56,000 migrants.[19] In October 2017, in response to growing criticism and attempts by the Italian government to impose restrictions on NGOs' activities (Cusumano 2017c), both the Brussels and the Barcelona MSF branches decided to suspend their SAR operations.

Sea-Watch, a German charity, became active off the shore of Libya starting in March 2015. As rescuing and disembarking migrants to a safe place ultimately entailed the risk of challenging states, Sea-Watch initially limited its activities to rescuing those in immediate danger of drowning and waiting for the Italian MRCC to task another vessel with transporting the migrants to shore.[20] In October 2017, however, Sea-Watch bought MSF's *Dignity I* and started disembarking migrants, as requested by Italian authorities (Cusumano 2017a).

As shown in Table 1, several other NGOs started conducting SAR off Libya in 2016, including Sea-Eye, Pro-Activa, the LifeBoat Project, Jugend Rettet, the Boat Refugee Foundation and Save the Children. Many of them, however, have since suspended operations owing to decreased funding and the growing risks of being prosecuted for abetting illegal immigration by Italian authorities (Cusumano 2017c). As of May 2018, only Sea-Watch, SOS-Méditerranée and Pro-activa were conducting SAR operations offshore Libya. SOS-Méditerranée, which operates in partnership with the Amsterdam branch of MSF, conducts SAR operations with the *Aquarius*, a 77 m ship which can operate under all weather conditions, and rescued over 11,000 migrants in 2016 alone.[21] Proactiva Open Arms is the charity branch of a Spanish lifeguard company that has deployed two ships offshore Libya, the *Golfo Azzurro* and the *Open Arms* (Cusumano 2017a).

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[17] Authors' interviews with MOAS spokespersons, October 2015. August 2016, and November 2017.
[18] Authors' interview with MOAS spokesperson.
[19] Authors' interviews with MSF spokespersons, April 2016, October 2016 and April 2017.
[20] Authors' interviews with Sea-Watch personnel, March 2016 and August 2016.
[21] Data obtained from the Italian Coast Guard.

Problems of private SAR

This section considers the problematic implications arising from non-governmental rescue, which grounds our defence of the Maximal View. Before considering these implications argument, however, we will first repudiate two simplistic and often erroneous claims made against maritime migrant rescue in general. These are what we call (1) the 'Pull Factor Objection' and (2) the 'Facilitation of Smuggling Objection'. These objections also seemingly apply to the public provision of SAR and are similarly erroneous and incorrect in other contexts.

Pull Factor Objection

The 'Pull Factor Objection' contends that SAR operations (both private and public) will increase the number of individuals attempting to cross the Mediterranean by reducing disincentives to migration. This objection was first made against rescue operations conducted by the NGO Cap Anamur in the South China Sea (Grahl-Madsen 1986: 195). European states authorities and Frontex also used this argument against all SAR operations and the Italian mission Mare Nostrum. The UK and Germany, for instance, criticized Mare Nostrum for 'encouraging more migrants to attempt the dangerous sea crossing', and for creating 'a bridge to Europe' (Riddelvolt and Bosilca, 2017: 9). More recently, Frontex (2017: 32) noted that 'SAR missions close to, or within, the 12-mile territorial waters of Libya … act as a pull factor … Migrants and refugees … attempt the dangerous crossing since they are aware of and rely on humanitarian assistance to reach the EU'. Italian opposition politicians have repeatedly referred to NGOs as 'migrant taxis' (Repubblica 2017).

Stated in its most plausible form, the Pull Factor Objection runs as follows. Providing SAR operations incentivizes migrants to make dangerous crossings because they will expect to be rescued if in distress. SAR operations will not, however, prevent all migrants from drowning, given the large SAR area in the Mediterranean and the rescuers' limited capabilities, and inevitably some migrants will perish. Underlying this objection is the seemingly legitimate worry of moral hazard. If no SAR operations were in place, a higher risk of drowning would deter migrants from attempting the crossing, ultimately saving lives.

Three points call into question this objection. First, casualties depend on SAR operations not being capable of sufficiently protecting migrants from drowning. If rescue operations *were* able to rescue all migrants at risk of drowning, this would not be a plausible objection. The only worry would then be that SAR operations render migrant crossings to Europe easier. To put this another way, the Pull Factor Objection could also justify *improving* SAR operations. Indeed, evidence shows that proactive SAR operations such as Mare Nostrum can substantially reduce death tolls. When Mare Nostrum was operational, and over 157,000 migrants were assisted (Patalano 2015).[22]

Second, the Pull Factor Objection is based on questionable empirical claims about migrants' decision-making. As 'risk acceptability is mediated by life opportunities' (Hernandez-Carretero and Carling 2012: 413), migrants may still consider dangerous sea journeys preferable to staying in war-torn, impoverished

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[22] Authors' interviews with Sea-Watch personnel, March 2016 and August 2016.

countries, even if SAR assets off Libya are absent, and their chances of dying at sea are greatly increased. Moreover, many of those presently being rescued off the shore of Libya do not start their journey with the idea of reaching Europe. Rather, they are forced to cross the Mediterranean to escape the abuses they face in Libya and their home countries and sometimes forced aboard unseaworthy dinghies against their will (Crawley et al. 2016; Toaldo 2015).[23]

Third, as shown by an overview of migratory trends in the Mediterranean, no solid evidence of a correlation—let alone a causal mechanism—between proactive SAR and an increase in migrants' crossings exists. The number of migrant transits through the Central Mediterranean route is influenced by a complex interplay of 'pull' and, most importantly, 'push' factors. SAR operations (or lack thereof) are neither a sufficient nor a necessary condition for the varying magnitude of sea-borne migrations from Libya (Crawley et al. 2016; Hagen-Zanker and Mallet 2016; Heller and Pezzani 2017; Toaldo 2015). The end of the operation Mare Nostrum in late 2014 translated into a shortage of SAR assets off the shore of Libya; still, migratory flows increased in 2015. In 2016, NGOs' presence off Libya peaked at 12 ships. Still, 2017 saw a substantial decrease in seaborne migrations to Italy. This decrease started *before* NGOs' presence diminished, and scholarship has associated it with in-land developments, such as instability in the smuggling hub of Sabratha and an agreement between the Italian government and Libyan militias, which have agreed on discontinuing their collaboration with and direct involvement in human smuggling in exchange for Italian foreign aid (Cusumano 2017c; Kingsley 2017).

Facilitation of smuggling objection

It is also sometimes objected that the provision of SAR facilitates smuggling, allowing human smugglers to use increasingly unseaworthy boats with more people aboard. For instance, according to Frontex, 'SAR operations in the Central Mediterranean unintentionally help criminals achieve their objectives at minimum cost, strengthening their business model by increasing the chances of success' (2017: 32). This is what we will call the 'Facilitation of Smuggling Objection'. (Note that, although this objection applies to both public and private SAR, it is less plausible when public rescue missions are conducted, as state-run SAR missions conducted by coast guards and navies like Mare Nostrum are likely to include a significant law-enforcement and anti-smuggling element.)

It is unclear what exactly is wrong here in the facilitating of smuggling. The SAR operations are launched as a *response* to smuggling. They attempt to address the problems caused by this practice. Although SAR operations may facilitate more smuggling, this does not motivate the private provision of SAR operations, which, as acknowledged by Italian prosecutors, are clearly conducted for humanitarian reasons (Cusumano 2017c). Although some have accused NGOs of colluding with smugglers, no evidence of contacts between smugglers and NGOs has

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[23] As an anonymous reviewer pointed out, if SAR were fully efficient in one year, they might attract even more migrants in the next. However, no causal connection has been found between the existence SAR operations and the magnitude of migratory flows. Even if such a connection existed, our point here is that SAR should be provided fully, year on year. The practical difficulties of doing so would not be insurmountable even in the face of a large-scale, potential upsurge.

yet been found (Heller and Pezzani 2018; Cusumano 2017c; Senato della Repubblica 2017a). Italian prosecutors have investigated two NGOs for abetting illegal immigration. Personnel from Proactiva Open Arms who were notified of an investigation in April 2018 were immediately acquitted. Investigations on Jugend Rettet are still ongoing at the moment of writing, but evidence of collusion with smugglers is very flimsy (Heller and Pezzani 2018), and even the Italian prosecutor conducting the investigation conceded that the humanitarian motives underlying rescuers' behaviour are unquestionable (Viviano and Ziniti 2017). In addition, the consequences of SAR, in terms of saving lives, appear to outweigh any harm it may cause by facilitating smuggling. It follows that these rescue operations are not problematic according to deontological (i.e. intentions) or consequentialist concerns.

One could also argue that rescuers inadvertently *do* harm by facilitating smugglers' use of increasingly unseaworthy dinghies that have caused an increased number of casualties at sea (Frontex 2017). In that case, SAR would be problematic on the 'doing/allowing' distinction in deontological moral philosophy. This holds that, other things being equal, it is worse to *do* harm oneself than to allow harm by others (see Quinn 1989; Scheffler 2004). However, smugglers' use of increasingly unseaworthy and overloaded dinghies cannot be clearly attributed solely to the presence of SAR missions, but it depends on a complex interplay of factors, including European anti-smuggling and border control policies, as well as other factors. Even if a causal connection exists between SAR missions and smugglers' behaviour, any harm that rescuers inadvertently do would be subject to the intervening agency of smugglers. This is because, in the causal chain, smugglers are responsible for using rickety dinghies that endanger the lives of migrants—not rescuers. This means that the smugglers are causally responsible—their agency matters. As such, any harm caused by the rescuers in this regard is likely to be further down the causal chain and therefore not as problematic on the doing/allowing distinction.

To date, the reaction of European states to the migration crisis has heavily focused on countering the criminal behaviour of smugglers. For instance, operation EUNAVFOR Med is based on saving lives by fighting smugglers and reducing the number of Mediterranean crossings (European External Action Service, 2017). According to this operation's mission, smugglers are immoral criminals who exploit the weak—a narrative repeatedly criticized by migration scholars as overly simplistic (Crawley et al. 2016; Mainwaring and Brigden 2016). However, even if smugglers are criminals, focusing on combatting smuggling does not necessarily make sense, as doing so might make matters worse by prompting the use of riskier routes and strategies. As of November 2017, the EU operation EUNAVFOR Med seized or destroyed 506 migrant boats to prevent smugglers from reusing them (EEAS 2017).[24] According to a UK House of Lords report (2016), along with evidence from academia (Cusumano 2018; Heller and Pezzani 2017; Riddelvolt and Bosilca, 2017), and NGO representatives,[25] EU efforts to disrupt smuggling by destroying boats may account for their resort to increasingly rickety and overloaded dinghies. Furthermore, eradicating smuggling could significantly harm

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[24] Authors' interview with EUNAVFOR Med Representative, November 2017. See also Carrera et al. (2017) and Cusumano (2017a).

[25] Author's interview with MSF and Sea-Watch representative, April 2017. See also Cuttitta (2016).

migrants by preventing them from leaving their current location. Overall, smuggling may in fact *enable* migrants to escape worse hardship.[26] Though smugglers' behaviour is often mendacious and can facilitate further social wrongs, hindering Libya's political stabilization (Toaldo 2015: 6), it is currently the only feasible means by which hundreds of thousands of migrants escape death, persecution, and hardship (Crawley et al. 2016).[27] Consequently, as argued by various scholars, human smuggling may sometimes be morally permissible (Hidalgo 2016).

Problems with non-governmental SAR

Having rejected two erroneous objections against both public and private SAR operations, this section now turns to the problems associated with NGOs conducting rescue operations. It focuses on two central issues: (i) the problem of limited capacity and (ii) the enabling of further 'de-responsibilization' by states. The applicability of these concerns in the context of the Central Mediterranean ultimately necessitates a Maximal View of state responsibility for SAR: in order to adequately ensure SAR, states need to directly provide it themselves.

Before doing so, however, we wish to make clear that the provision of SAR by NGOs is morally praiseworthy. This is because NGOs act out of good intentions, and the overall benefits that come from their provision of SAR outweighs the problems outlined below. However, this does not mean that private SAR is not problematic (indeed, many of the NGOs currently conducting these operations are aware of these issues).

The first issue associated with NGOs provision of SAR is their limited capacity. A central problem for their capacity relates to their reliance on donors for funding. Private provision can decrease—and, indeed, *is* decreasing—as donations dry up. When this occurs, NGOs may stop or streamline their operations. Fading public attention to the migration crisis, the increasing tendency to securitize migrations to Europe by depicting migrants as an existential threat (Huysmans 2000), and the misplaced but increasingly vocal accusation that NGOs facilitate smuggling, is likely to continue. This could and indeed has already weakened the number and capabilities of non-governmental rescue vessels. Indeed, both MOAS and MSF first gave up on one ship and eventually decided to suspend operations in late 2017.

It helps to consider here, more broadly, how the role of NGOs should be conceived. In her award-winning account of the political ethics of humanitarian NGOs, Jennifer Rubenstein (2015) suggests that, in order to grasp the normative issues raised by NGOs, one must see them as 'sometimes somewhat governmental', 'highly political' and 'often second-best'. NGOs are often 'second-best' actors because they govern less optimally (in terms of effectiveness and consistency with democratic, egalitarian, humanitarian, and justice-based norms) than conventional governments and governmental actors. Since they rely on voluntary contributions rather than taxes to fund their activities, NGOs must attract capricious

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[26] For a defence of the decriminalization of smuggling, see Gerver (2015).

[27] We do not draw a strong distinction here between refugees and economic migrants. This is because '[t]here is often a complex and overlapping relationship between "forced" and "economic" drivers of migration to Europe"' (Crawley et al. 2016: 8).

donors who may have different priorities or little understanding of the intended beneficiaries (Rubenstein 2015: 76).

In addition to limited funding, NGOs also lack the means to conduct SAR in all places where required. Unlike state military and law enforcement organizations, NGOs lack the force required to operate effectively in dangerous environments. In August 2016, when a Libyan speedboat attacked MSF's *Bourbon Argos*, most NGOs suspended their operations for over a week (Cusumano 2017b), leaving a gap in overall SAR capability. In 2017, too, various instances of violent behaviour by smugglers, militias and Libyan authorities hindered NGOs' ability to conduct SAR (Cusumano 2017c).

In such cases, the two objections considered in the previous section become more pertinent. If the private provision of SAR weakens (owing to loss of funding or the deterioration of security) but migrants are not sufficiently aware of the drop in SAR assets, NGOs' rescue operations may be subject to a form of the Pull Factor Objection. Migrants may make crossings that they would not have made if they knew about the diminished capabilities of NGOs capable of assisting them. Smugglers too may significantly cut operation costs with the expectation that migrants will be saved, failing to grasp the inadequacy of private SAR operations. As noted by Frontex (2017), since the foundation of Mare Nostrum, smugglers have started to put migrants at sea on boats provided with less fuel or even without an engine. The worries about facilitating smuggling may therefore apply—but this time not be outweighed (as previously)—if private provision fails to save lives owing to decreased capacity.

A second, related issue associated with NGO provision of SAR is that it enables the further 'de-responsibilization' of states. As citizens increasingly see the private provision of SAR operations as a central part of maritime rescue SAR capabilities (even while these operations are decreasing), governments may fail to develop their capacity to perform these operations, knowing that private agents will perform them instead. When private agents are able to perform SAR effectively, this concern is minimal. But if private agents are no longer able to conduct these operations successfully owing to a lack of capacity, a decrease in donations or growing security risks, the worry may increase. States and international organizations could then fail to respond timely to any drop in private rescue capabilities with a subsequent development of their own SAR capacity. As recognized by both NGOs and Italian Coast Guard spokespersons, SAR operations in the Central Mediterranean have become structurally dependent on the contributions of NGOs. Although Frontex, the CSDP operation EUNAVFOR Med, the Italian Navy and private ship owners are regularly present in the area, NGOs' vessels are the only ones that are exclusively dedicated to SAR, which makes their contribution 'invaluable'.[28] On several occasions between 2016 and 2017, the temporary unavailability of some NGOs' vessels created a gap in existing SAR capabilities.[29]

A further, related worry is that the private provision of SAR could legitimize inaction by states. States can point to the fact that private agents are effectively providing SAR to justify not providing it themselves. In the longer term, this could

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[28] Author's interview with Italian Coast Guard Captain, April 2015. A similar position has also been stated officially by the Italian Coast Guard in a testimony to Parliament (see Senato della Repubblica 2017).

[29] Author's interview with MSF spokesperson, April 2015.
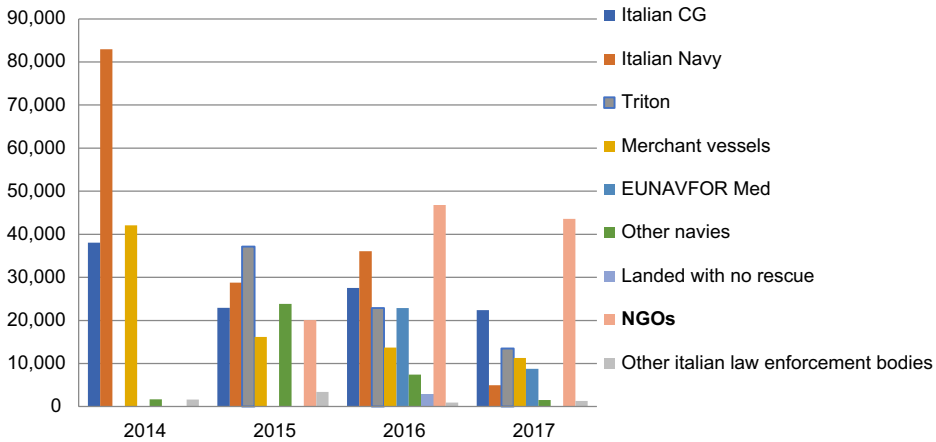
Rescues between 2014 and November 2017

Figure 1. Rescues between January 2014 and November 2017

As Figure 1 shows, NGOs became the largest provider of SAR offshore Libya, rescuing a total of 110,000 migrants between 2014 and December 2017. In the second half of 2017, however, decreasing donations, along with the hostility of the Libyan Coast Guard, and increasing restrictions imposed on NGOs by Italian authorities (who are now investigating some organizations for abetting illegal immigration), have caused a substantial decrease in non-governmental SAR capabilities (Cusumano 2017c).

reduce the expectation that public actors (including states) are required to perform large-scale maritime humanitarian operations themselves. In constructivist terms, the 'compliance pull' (Florini 1996; Franck 1990) of the moral and legal norms that would require states to provide SAR may be reduced. Their inaction may be viewed as legitimate, particularly while SAR operations are effectively carried out by private agents. In other words, states exploit the private provision of SAR to engage in 'de-responsibilization'—reducing their perceived responsibilities. Representatives of several NGOs have argued that the presence of non-governmental assets at sea has disincentivized ships participating in the Triton and EUNAVFOR missions from conducting SAR operation. Available data on the number of migrants rescued by each organization illustrated by Figure 1 above lend support to this argument. Triton's involvement in SAR operations diminished drastically in 2016, shrinking to 13 per cent of the total. According to Frontex Director Fabrice Leggeri, Triton's involvement in SAR decreased primarily because of the growing presence of NGOs offshore Libya (Senato della Repubblica 2016b). Operation EUNAVFOR Med Sophia—which saw its role in SAR operations shrink to 8 per cent of total rescues in the period between 2015 and 2017—is another case in point. Indeed, interviewees from various NGOs acknowledge their struggle with a 'Catch 22' dilemma: they have deployed assets at sea in response to the lack of state-led SAR operations', but their presence at sea has ultimately made those state-led operations more unlikely.[30]

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[30] Author's interview with SOS-Méditerranée spokesperson, April 2016; Sea-Watch personnel, April and August 2016, and MSF's spokesperson, October 2016.

When private provision is efficient at providing SAR, the shrinking role of public providers for SAR may not be a worry. However, given the potential capriciousness of private provision, de-responsibilization is a potential concern. To be sure, this is less of a concern for certain types of SAR operations conducted by NGOs. The model initially developed by Sea-Watch—based on spotting migrant boats and providing emergency relief while waiting for a bigger boat to take migrants to a safe place—has been devised precisely *not* to allow states to abdicate their responsibility, shaming governments for their failure to act by, for instance, releasing footage showing the frequent absence of state vessels from the rescue scene while simultaneously saving lives. Yet, such a rescue model is insufficient to address the ongoing humanitarian emergency and has failed to compel states to act. Indeed, Sea-Watch eventually caved in to Italian authorities' requests to conduct fully fledged SAR operations.[31]

De-responsibilization is a concern even *without* any decrease in the capacity of NGOs to provide SAR. As documented in interviews and forcefully illustrated by the large number of casualties off Libya between 2016 and 2017, the central issue is that NGOs never had the sufficient numbers and type of boats necessary for comprehensive, self-sufficient SAR operations like Mare Nostrum in an area such as the Central Mediterranean. Only navies and coast guards have the long-term capability to fund and carry out full-scale, long-term, efficient SAR operations in large maritime regions characterized by high security risks such as Libya's contiguous and territorial waters. As stressed by NGOs themselves, their presence 'will not stop deaths at sea … volunteer organizations cannot replace the institutions' (MOAS 2016). The private provision of SAR should therefore only be temporary, and public provision of SAR is vital to mitigate the risk that NGOs' maritime rescue missions allow states to further abdicate their inherent responsibilities.

There is a final, broader point that we wish to highlight here that is relevant for appraising the challenges with public actors de facto outsourcing international responsibilities to private actors. Many prevailing accounts focus on the problems with for-profit actors filling public responsibilities, perhaps most notably the literature on PMSCs (see Avant 2005; Krahmann 2010; Pattison 2014). Indeed, the central reasons why non-governmental SAR is problematic—further de-responsibilization of states and lack of sufficient capacity to ensure adequate rescue at sea—are paralleled by the problems of relying on for-profit actors such as PMSCs. Central objections to the role of PMSCs are that they can help states abdicate their responsibilities (e.g. to provide adequate care for those fighting their wars) and that they often lack the ability to perform the services for which they are hired (see Hedahl 2012: 188; Pattison 2014).[32] To be sure, PMSCs are often viewed as for-profit actors who are not interested in or responsible for the moral implications of their actions. This criticism does not apply to NGOs providing SAR. However, issues relating to insufficient capacity and de-responsibilization might arise even if the organizations replacing states are charities acting in a morally responsible manner. Hence, the provision of public services by private actors shows that even the reliance on private actors whose actions are highly morally

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[31] Author's interview with Sea-Watch spokesperson, October 2017.
[32] This is of course not unique to SAR: reliance on NGOs to fulfil various responsibilities in other sectors, such as humanitarian aid, can be problematic too, raising several tricky ethical issues (see Rubenstein 2015).

praiseworthy—such as many of the NGOs providing SAR—can be significantly problematic.

Conclusion

The upshot of our analysis is that the Minimal View of states' responsibilities to organize SAR is not being met. NGOs simply do not have the capacity to conduct large-scale maritime rescue operations offshore Libya and states' reliance on them can in fact make things worse. The Maximal View of states' responsibilities, whereby states are required to *provide* SAR, is appropriate. Unlike in other realms, where private actors might be able to sufficiently cope with the situation, this is not the case in the Mediterranean. To that extent, our defence of the Maximal View is contingent, rather than necessary. But this does not make it any less pressing that states provide adequate SAR themselves. Thousands of migrants' lives ultimately depend on it. Together with the failure to fulfil remedial responsibilities to ensure SAR takes place outlined in the first section of the article, there is a double abdication of responsibilities by states: both to ensure adequate SAR and to provide it themselves.

European states refused to fund the Mare Nostrum operation and seem unlikely to collaborate on a similar alternative in the future or revise existing EU border and migration policies to lessen the likelihood SAR operations are necessary. Although EU nations have launched multinational military operations such as Triton and EUNAVFOR MED, these missions do not primarily focus on SAR. Despite the transformation of Frontex into a European Border and Coast Guard, it is unlikely that this agency will become a large-scale provider of SAR owing to the limited resources and assets allocated to the agency. Additionally, Frontex focuses on border control rather than migrant rescue, and the division of responsibilities between the EU and its member states is unclear (Carrera et al. 2017). Similarly, although the establishment of a functioning Libyan MRCC and Coast Guard would contribute to filling the current gap in SAR operations off the coast of Libya, ongoing EU maritime capacity-building efforts are problematic for various reasons. At the time of writing, Libyan forces seem focused primarily on migrant interdiction rather than rescue, have repeatedly hindered NGO SAR operations and have used violence against migrants (Heller and Pezzani 2018; Reuters 2017).[33] Furthermore, the rescue capabilities of the Libyan Coast Guard are likely to be compromised by the extreme fragility of Libyan state institutions, widespread corruption and the importance of smuggling to the economy of Western Libya (Carrera et al. 2017). Thus, considering the present trajectory of European migration and border control policies, it seems likely that states will continue to fail in upholding their responsibility to ensure and provide SAR in the Mediterranean. In spite of the limitations of non-governmental SAR, SOS-Méditerranée, Sea-Watch, Proactiva and other NGOs will need to continue to provide their sticking plaster.

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[33] Given the widespread evidence of torture and inhuman treatment in Libyan migrant detention centres, returning asylum seekers and migrants to Libya appears problematic on both moral and legal grounds (Amnesty International 2016; Human Rights Watch 2016; Reuters 2017).

Disclosure statement

No potential conflict of interest was reported by the authors.

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