

Dear Members of the Commission,

We thank you for the invitation to present our views on the ongoing humanitarian crisis in the Mediterranean at the Round Table discussion on 30<sup>th</sup> October 2017. We appreciate the opportunity to inform you about our work and our experience at sea.

As a humanitarian non-profit organisation, we observe with great concern that in recent months some parts of the public debate have turned increasingly hostile towards our and others' efforts to save lives. We regret that the plight of the most vulnerable people, who have no recourse but flee violence and war, is getting overlooked and instead the debate is misguidedly directed towards identifying a scapegoat for the current migration situation. We hope to contribute to an open debate based on factual evidence.

Since 2000, an estimated 22,300 people have lost their lives at our borders in the Mediterranean<sup>1</sup>. The inability of the European authorities to develop a swift and adequate response to this human tragedy and reduce the number of deaths was a primary motivation for Sea-Watch to start a civilian search-and-rescue (SAR) mission. We believe that every man, women, or child dying at sea is one too many. Therefore, we will continue our mission until the EU implements a comprehensive, civilian maritime rescue mission in the Mediterranean.

### How We Operate

Sea-Watch currently operates one SAR vessel in international waters 24 nautical miles off the coast of Libya, the M.S. SEA-WATCH 3. All our operations are and have always been exclusively conducted with the express permission and under the sole coordination of the international Maritime Rescue Coordination Centre (MRCC) Rome, which is the internationally recognised legal authority for SAR operations in this territory. This means that whenever we encounter a boat in distress, we immediately inform the MRCC Rome and follow their directions throughout the rescue operation, including the transfer of people to other vessels. In some cases, MRCC Rome directly orders us to attend a distress case in our proximity. We are bound by international maritime law to follow these orders.

Furthermore, our Standard Operating Procedures (SOPs), which are binding guidelines for all crew members, clearly state that our operations at all times must comply with international maritime and humanitarian law. As a European vessel operating in international waters, we are also bound by the European Convention on Human Rights. These various legal statutes provide a clear framework for our operations and a legal obligation to assist people in distress at sea. They also entail a strict prohibition of returning migrants to an unsafe place, in this case Libya.

As of the 20<sup>th</sup> of October 2017 Sea-Watch has also signed the Italian Code of Conduct for NGOs Involved in Migrants' Rescue Operations at Sea (CoC). The effect on our operations is minimal, as the CoC overlaps with existing legal obligations under international law and our SOPs. This includes the coordination of operations through MRCC Rome, the strict prohibition of any contact with smugglers, respect of Libyan territorial waters, and cooperation with Italian police. We saw it necessary, however, to add clarifications to the CoC so as to ensure adequate protection of refugees and to safeguard that we will not be made complicit in violations of international law, for example through the return of migrants to Libya.

Given the current nature of smuggling operation off the coast of Libya, NGO ships are sometimes approached by unidentified third parties, while conducting rescue operations in

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<sup>1</sup> International Organisation for Migration, 'Missing Migrants Project', accessed 25 October 2017, <https://missingmigrants.iom.int/>.

international waters. These unidentified third parties can be armed and pose a threat to the safety of our crew as well as to the people in distress. In these cases, the safety of our crew and the people in distress are our primary concern. While we do everything in our power to keep unauthorised third parties from interfering with our operations, it is not always possible to stop them from attacking people in distress and removing equipment from refugee boats. Unfortunately, as an unarmed civilian actor we have neither the mandate, nor the ability to stop third parties from breaking international law.

In this light, the European cooperation with the Libyan Coast Guard (LCG) must be seriously questioned. The LCG has repeatedly breached international law by intervening without authorisation in rescue operations in international waters. They fired shots at SAR ships, boarded ships without authorisation and caused panic during rescue operations, threatening the lives of SAR crew members and migrants alike. In addition, UN reports raise serious concerns about the LCG's involvement in human rights abuses and collusion with smugglers<sup>2</sup>. By supporting the LCG financially the EU is making itself complicit to unlawful behaviour perpetrated by the LCG. Consequentially, the EU should immediately cease all cooperation with Libyan factions as long as the adherence of these groups to international maritime and human rights law cannot be guaranteed.

### The Criminalisation of Migration

Sea-Watch opposes the increasing criminalisation of migration. Fleeing violence, conflict, and persecution is not a crime. International human rights law clearly states that everyone should have the right to flee their country and that no one should be punished for crossing a border, when fleeing a country where their lives or freedom was threatened<sup>3</sup>. Libya and many more countries classify without a doubt as such unsafe countries. The current European border regime has aimed to close humanitarian corridors that would allow people to find safety and exercise their right to seek asylum. At the same time, the EU is denying refugees alternative legal and safe means to receive the protection they need. During our work at sea, we witness the direct consequences of these policies – thousands of deaths every year. As a humanitarian actor, we are committed to reducing human suffering and to protecting the most vulnerable. Therefore, we also fundamentally condemn the activities of smugglers and human traffickers. We are cooperating wherever possible with the relevant law enforcement authorities to put an end to these criminal practices. Yet, we also acknowledge that migrants are not criminals, they are the victims of criminals and deserve to be treated as such.

### Criminalisation of Humanitarian Actors

We regret that in recent months there have been sustained attempts to delegitimise and even criminalise humanitarian actors who are responding to the crisis in the Mediterranean Sea. Despite repeated allegations of misconduct that often originate from sources with connections to far-right movements in Italy, up to date the parties who make these allegations have not produced any evidence of links between humanitarian actors and smugglers. Furthermore, there is also no evidence that the operation of humanitarian actors is the primary driver of changes in smugglers tactics or constitutes a "pull-factor" of any kind. In-depths studies of the smuggling structures in Libya unequivocally demonstrate that changes in operating modes and increases in number of migrants are a result of ongoing conflict and economic hardship in countries of origin as well as dynamics between warring

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<sup>2</sup> S/2017/46617-068162/299 Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), <https://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>.

<sup>3</sup> International Covenant on Civil and Political Rights Article 12 (2): "Everyone shall be free to leave any country, including his own."; and 1951 UN Convention on the Rights of Refugees Article 13(1).

factions in Libya.<sup>4</sup> Sea-Watch hopes that in future there will be an honest, evidence-based debate about real, long-term solutions to the ongoing humanitarian situation in the Mediterranean, based on facts and not on unfounded speculations, fake news, or smear campaigns.

### Reducing the Loss of Life and Human Suffering at European Borders

Sea-Watch's ultimate objective is to reduce the loss of life and human suffering at European borders. In the long run, this requires two elements: reducing migration pressure in countries of origin and offering safe and legal ways for refugees to receive protection.

First of all, refugees crossing the Mediterranean often have already been on a long journey. They have fled ongoing wars, civil conflict, political instability, persecution, torture, famine, and extreme poverty. The conditions for internally displaced people and refugees in neighbouring countries often are highly inadequate and far from safe. In order to address these deep rooted structural causes of migration the EU needs to do more to reduce global inequalities and foster a truly fair, global economic system. How to best achieve this is a question for the international development experts.

Secondly, refugees need safe and legal ways to escape from violence and war. It is deeply cynical to allow people to ask for protection only after they have risked their lives at sea. Therefore, Sea-Watch urges the EU to live up to their humanitarian responsibility and provide adequate means of protection for those in need.

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<sup>4</sup> Charles Heller and Lorenzo Pezzani, 'Blaming the Rescuers', 2017, <https://blamingtherescuers.org>; Elias Steinhilper and Rob Gruijters, 'Border Deaths in the Mediterranean: What We Can Learn from the Latest Data', *Oxford Law Faculty* (blog), 8 March 2017, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/03/border-deaths>.