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A humanitarian mission in line with human rights? Assessing Sophia, the EU's naval response to the migration crisis.

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Abstract:

This article adds to our understanding of the role of norms in the European Union's (EU) response to the migration crisis by conducting a critical assessment of the EU's anti-smuggling naval mission 'Sophia'. Is Sophia in line with the normative standards the EU has set for itself in the conduct of its foreign policy? Conducting the analysis in two steps in line with the main criteria of a humanitarian foreign policy model – first exploring Sophia's launch and then assessing Sophia's in theater behavior – findings suggest that although concerns for migrants at sea mobilized the initial launch of the mission, the conduct of the mission is not in line with key human rights principles. As the operation mandate is amended and updated with new tasks, and as the EU-NATO in theater cooperation increases, the EU is moving further away from what one would expect of a humanitarian foreign policy actor.

1. Introduction

This article adds to our understanding of the role of norms in the European Union's (EU) response to the migration crisis by conducting a critical assessment of the legitimacy of the EU's anti-smuggling naval mission 'Sophia'. Empirical studies have suggested that the EU is a "normative", "ethical" or "humanitarian" foreign policy actor, due to its focus on promoting human rights and multilateral cooperation (cf. Cross 2011, Diez 2005; Kissack 2010; Manners 2002, Orbie 2008, Riddervold 2011, Sjørusen 2006). This is also how the EU often describes itself, including when justifying operation Sophia. According to the EU, Sophia was launched in 2015 in response to the migrant crisis in the Mediterranean, as increasingly more people died at sea while trying to reach Europe's shores. For example, in their Council's decision on the launch of a naval mission, the EU member states argue that the mission was launched to tackle the root causes of the crisis and that its immediate priority is to prevent more people from dying

at sea (Council 2015a). According to the EU itself all of the activities undertaken by Sophia moreover ‘adhere to and respect international law, including human rights, humanitarian and refugee law and the *non refoulement* principle meaning that no rescued persons can be disembarked in a third country” (EEAS 2016). Critiques of Sophia have however questioned the mission’s legitimacy, claiming instead that the EU’s ‘approach fails migrants by predominantly focusing on the challenges posed to the EU, rather than on those faced by the human beings whose lives continue to be lost at sea’ (Berry et al 2016: 4). In other words, that although presenting the mission as humanitarian, in reality and in order to reduce migration to the EU, Sophia does not live up to the human rights standards the EU claims to respect. Actually, at the outset, this description of Sophia almost seems intuitively right: In light of the chaos taking place on the EU’s borders, the *de facto* break up of Schengen, the rise of populist parties and what appears as the EU’s inability to come up with common solutions to the migration crisis, it is reasonable to assume that both the EU institutions and the member states would look for ways of curbing migration to limit these problems. This article studies the relevance of this claim by conducting an in-depth critical assessment of the legitimacy of EU Sophia. Is Sophia in line with the normative standards the EU sets for itself in its foreign policy? In order to answer this question, the article assesses whether or not the mission is in line with what one would expect of a humanitarian foreign policy (Eriksen 2009; Riddervold, 2011: Sjursen 2006). Analytically, and as set out in more detail below, the two defining criteria of a humanitarian policy are first, that it focuses on protecting and strengthening global norms, i.e. human rights law, in the international system, and second, that it is willing to bind itself to such norms in conducting its foreign policy (Eriksen 2009; Sjursen 2006. Also see Riddervold 2011). If Sophia is in line with such a foreign policy model, it would thus not only have been launched foremost as an attempt to rescue people in distress at sea and prioritize this task in theater. Sophia would also have to be conducted in line with the relevant human rights conventions, including the refugee convention, as discussed further below.

Exploring the extent to which Sophia is in line with a humanitarian foreign policy model is important for several reasons. Empirically, although having been operational for three years and despite the huge attention paid to the EU’s migration policies amongst academics and observers alike, one of the few actions that the EU member states have actually agreed to undertake, EU mission Sophia, has so far not been studied systematically. This is puzzling not only in light of the ongoing debate about EU migration policies, but also from the perspective of understanding EU foreign policies more broadly. First, as Sophia is one of the few and most

tangible tools in the EU's attempts to deal with the migration crisis, understanding the basis for its launch and the extent to which it lives up to the EU's human rights standards might be indicative of EU migration policies more broadly. Second, Sophia is the EU's second naval mission, contributing not only to a further militarization of EU foreign and security policies but also to a further strengthening of the maritime element of this development (Germond 2015). As with the EU's anti-piracy naval mission off the coast of Somalia, Atalanta, Sophia is moreover the biggest of the international missions operating in the waters outside of Libya, and in both cases, it is NATO who assists the EU and not the other way around, suggesting that the EU is indeed developing a stronger and more independent foreign and security policy. Understanding the launch and conduct of Sophia thus also adds to our understanding of the EU's foreign policy ambitions. Nonetheless, and at a difference to Atalanta who has been studied extensively in this and other journals (see, for example Bueger 2016; Germond and Smith 2009; Riddervold 2011, 2014), Sophia remains unexplored. Assessing Sophia is also important from an analytical perspective, as Sophia puts the EU's claim of protecting and promoting human rights norms to a particularly hard test. The migration crisis not only challenges the EU's internal solidarity but also its ability and willingness to live up to its proclaimed normative standards. If this study finds that the EU with Sophia nonetheless lives up to its human rights principles, it would thus strengthen the argument that the EU indeed is a normative or humanitarian foreign policy actor. If, on the other hand, the analysis suggests that the EU does not live up to the principles it has set for itself in its foreign policy conduct, it might indicate that the EU is less able and willing to do so when the stakes are high.

The remainder of the article is organized as follows. A first part describes the case and introduces the conceptual framework, developing and operationalizing the humanitarian foreign policy model and setting out the article's methodological approach. In doing this, I first also briefly set out the analytically opposite to a humanitarian foreign policy model, namely the rational choice based traditional model of foreign policy. The following section contains the analysis, which is structured in two parts in line with the two defining criteria of a humanitarian foreign policy. I first discuss whether there is evidence to suggest that Sophia was launched due to concerns for migrants in distress at sea. Second, I go on to explore whether or not the implementation of Sophia – the EU's in theater behavior – is consistent with a humanitarian model of EU foreign policy, that is, if it is conducted in accordance with relevant human rights law, as argued by the EU itself. The conclusion sums up the findings and discusses their implications for Sophia's legitimacy and for our understanding of EU migration policies and

the EU's foreign and security policies more broadly.

2. Case and framework

2.1. EU operation Sophia

Operation EUNAVFORMED Sophia (Sophia) was launched in June 2015 as part of the EU's response to what has been commonly referred to as the "Mediterranean", "migration" or "refugee crisis." With 1, 255, 600 first time migrants applying for asylum in the EU and 3,771 people dying in the attempt in 2015 alone (Eurostat 2016), the EU member states have struggled to find ways to deal with migrants coming mainly by boat to the EU border states. Internally, the Union saw the *de facto* annulment of the Dublin regulations when Germany opened its borders to Syrian refugees, while other member states built fences to protect theirs (Dernbach 2015). In response, a special meeting of the European Council in April 2015 concluded that the EU would "mobilise all efforts at its disposal to prevent further loss of life at sea and to tackle the root causes of the human emergency" (European Council 2015a). Part of this, the member states agreed to strengthen the EU's "presence at sea, to fight the traffickers, to prevent illegal migration flows and to reinforce internal solidarity and responsibility," including a naval mission within the framework of the EU's Maritime Security Strategy (Council 2015).

As with all EU civilian missions and military operations, decisions on Sophia fall under the special Common Security and Defence (CSDP) intergovernmental procedures, whereby member states decide unanimously on proposals from the member states or the High Representative for Foreign Affairs and Security Policy (HR/VP). The Political and Security Committee (PSC), composed of national ambassadors and chaired by the EEAS, has the political control and ensures the strategic direction of crisis management operations, based on the member states' decisions. The member states' military contribution to EU operation is voluntary, and they cover the costs themselves. Military operations are however conducted under common EU command. There is thus also a joint budget for Sophia, which is shared by the EU members, foremost covering the running costs of the Operational Headquarter in Rome, Italy, and the Force Headquarters in theatre (EEAS 2017).

Sophia is to be conducted in four sequential phases. The first was a deployment and assessment phase, focusing on information gathering and patrolling of the high seas to monitor migrant smuggling activities. The second, still ongoing phase involves the boarding, search, seizure and diversion of the vessels suspected of participating in human smuggling or

trafficking on the high seas (“2A”). Phase 2B is to extend this to the territorial and internal waters of Libya, provided that the EU obtains a mandate from the UN Security Council (UNSC) or the approval of the Libyan authorities (“2B”). Also depending on Libyan consent or UN authorization, in the third phase, Sophia will actively seek to disrupt the smugglers’ networks by disposing of the suspected vessels or rendering them inoperable. Finally, in the fourth phase, the EU will withdraw its forces and end the operation. So far, the UNSC has only agreed on a resolution allowing the EU (and other forces, like NATO) to conduct boarding and search on the high seas, but not in Libya’s territorial waters (UNSCR 2015). The Libyan government has not given its consent either, which is why Sophia thus far has not moved beyond phase 2A. In June 2016, the Council added two new supporting tasks to the mission: training the Libyan navy and coastguard and contributing to the implementation of the UN arms embargo to Libya (European Council 2016). Since November 2016, the EU forces also receive support from the North Atlantic Treaty Organization (NATO)’s Sea Guardian (NATO 2016). Since the EU cannot carry out legal investigation of suspected smugglers or traffickers, it is the member states that have jurisdiction over such investigations, in line with relevant international law provisions.

Sophia is innovative in several ways. Together with Atalanta and the EU Maritime Security Strategy, it confirms the maritime turn in the EU Foreign and Security Policy (CFSP) in the management of new types of security threats. It also brings the CFSP, including the CSDP, closer to the EU’s internal security policies “in the sense that an internal security and societal challenge is partly handled (...) through an action that takes place outside of the EU” (Tardy 2015: 2). Sophia is also potentially the first EU military operation with an openly coercive mandate. At a difference to other EU military missions, including Atalanta, operation Sophia has a more robust mandate under UN Chapter VII and its measures can be implemented in the territorial waters of a third state, even in the absence of the consent of the concerned state, provided the existence of a UN mandate. This resembles more of a peace enforcement mission, which may imply as much as “a qualitative shift in the EU’s security and defence posture” (Ibid). This coercive element is however also the main reason why so far, the EU has not got such a mandate from the UN Security Council or the Libyan government to proceed to phase 2B of the mission (Ibid).

2.2. Framework: A humanitarian mission?

To assess whether or not Sophia is in line with the human rights standards the EU itself claims it has set for itself in the conduct of its foreign policy, including Sophia, the framework applied distinguishing between two analytically distinct but empirically overlapping models of foreign policy – a traditional and a humanitarian model. One of the main debates in the literature on EU foreign and security policies has been linked to its main characteristics and in particular, to what, if any, role norms play in the making and conduct of common policies. On the one hand, scholars applying rational choice based perspectives argue that their conventional state-based analytical tools and models can describe and explain EU foreign policies. Although there are major differences between neo-liberal and neo-realist approaches within the rational choice based tradition, building on such perspectives, one would expect that once the EU acts on the international scene, its behaviour will be in line with what we expect of a traditional foreign policy actor (Hyde-Price 2006, 2008, Moravcsik 2010; Schimmelfennig 2003). In the same manner as states, the EU's foreign policy would follow from an internal aggregation of interests and the main aim would be to promote these interests in the most efficient way available. If the EU refers to or promotes particular norms, this would be a strategic choice. The main aim would be to advance the member states' common preferences, and any reference to or promotion of human rights would be instruments in this regards, which in the literature is referred to as the use of 'smart' or 'soft' power (Cooper 2003; Nye 2004). At the very least, norms will always be secondary to material interests only. Following a traditional foreign policy model, one would in other words expect the EU to conduct mission Sophia first and foremost in order to curb and reduce migration to Europe. As mentioned in the introduction, considering the economic and political costs associated with growing migratory pressures, such an explanation seems almost intuitively right. During the last years, the increase in the number migrants coming to the EU has not only been financially costly, at least in the short run, but it has also helped fuel populist parties across the continent, increased the fear of terrorist attacks and undermined one of the core foundations of the EU itself, namely free movement across the internal market. Precisely for these reasons, the explosion of migrants coming to the EU has commonly been labelled as a crisis, by both officials and observers alike (see for example Berry et al. 2016; Trauner 2016).

On the other side of the spectrum and drawing on constructivist International Relations perspectives, a number of scholars have on the basis of empirical studies argued that the EU is a 'normative', 'civilian' or 'ethical' foreign policy actor. Although there is much variation across the different characteristics of the EU, these studies share the idea that the EU is a 'force

for the good', promoting norms rather than self-interests when acting on the international scene (Duchêne 1972; Kissack 2010; Manners 2002; Orbie 2008). As mentioned in the introduction, this is also very much in line with the way the EU describes its own foreign policy, including EU mission Sophia. A number of authors have however questioned both the theoretical robustness and the analytical usefulness of concepts such as 'normative' or 'civilian' foreign policies (Diez 2005; Börzel and Risse 2007; Hyde-Price 2008; Sjørnsen 2006a). In particular, due to the lack of clear analytical categories, it is often challenging to identify a normative (as opposed to a non-normative) policy empirically, making it difficult to control for rhetorical action. Moreover, scholarly definitions of a normative policy are often linked to the use of civilian or soft foreign policy means, hence limiting their applicability when studying cases involving the use of force, such as military operations (Riddervold 2011). In order to overcome these challenges and better understand why Sophia was launched and is conducted, this article operationalizes and applies Eriksen and Sjørnsen's humanitarian foreign policy model (Eriksen 2009; Sjørnsen 2006; Sjørnsen 2012. Also see Riddervold 2011). A humanitarian policy is defined by two main criteria: first, its focuses on strengthening global norms, i.e. human rights law, in the international system, and second, the foreign policy actor in question is willing to bind itself to such norms in conducting its foreign policy (Eriksen 2009; Sjørnsen 2006). This distinction between global and international law is crucial: While a traditional model of foreign policy rests on the idea that states are the makers and addressees of any common regulations and institutions, the humanitarian model focuses on the domesticating of state relations, i.e. on the idea that individuals are both makers and addressees of law. It follows that if Sophia testifies to a humanitarian foreign policy model one would not only expect Sophia to abide by international law. One would also expect Sophia to be conducted in accordance with the human rights conventions and with other relevant conventions protecting individual rights. Most importantly: even when colliding with material interests, such as when resulting in more people coming to the EU, or when involving particular costs to the EU or some of the member states, one would expect the EU would to promote and adhere to human rights law.

2.3. Methodological approach

To explore whether or not Sophia is in line with a humanitarian foreign policy model, the methodological approach applied in the analysis is to 1) study the justifications given for Sophia in order to uncover the mobilizing arguments behind its launch and conduct and 2) controlling for the EU's actual behaviour in theatre (Sjørnsen 2002; also see Riddervold 2011).

The relevance of such an analysis might be questioned on the grounds that there might be a big gap between what policy makers say and what they actually mean or do. This is, after all, the underlying assumption of the rational choice-based claim that references to norms are used mainly instrumentally, to help foreign policy actors promote particular material interests or will come second to interests only, as discussed above. In the analysis, I seek to control for rhetorical action by triangulating between different data sources, by examining the consistency of arguments presented across time, across different member states and EU institutions, and not least by controlling for consistency between what the EU says it is doing with Sophia and what actually does in theater. More precisely, to control for consistency between words and deeds, I draw on Kilian and Elgström (2010) and also study other actors' perceptions and assessments of the operation. Given that the two main indicators of a humanitarian policy are that it promotes and binds itself to global human rights law, the UN Refugee Agency (UNHCR), non-governmental human rights groups (Human Rights Watch, Statewatch) and legal scholars' assessments of Sophia when studying the relevance of the humanitarian model. What is more, I make no claims regarding the real or true motives behind Sophia. As rational choice theorists argue, it is impossible to uncover policy-makers 'sincere' motives and beliefs. This is, after all, why such perspectives for methodological reasons start from the assumption that actors are motivated by the aim of maximising self-interest. The methodological approach applied in this paper instead builds on two alternative assumptions. First, I assume that actors are communicatively rational, meaning that they have the ability to justify and explain their actions, and that they coordinate their behaviour through communication (Deitelhoff 2009; Eriksen and Weigård 2003; Risse 200; Sjursen 2002; Sjursen 2006a). Second, I expect that social action can be accounted for by interpreting what it was that made it intelligible to the actors involved (Eliaeson 2002: 52). On this basis, I assume that any agreement on a common EU foreign policy action, such as that of launching and later conducting a naval mission in a particular way, are based on arguments given by proponents that have to be comprehensible and acceptable for at least some co-decision makers for decisions such as that about Sophia to come about. Uncovering the arguments that led to a particular decision or action thus amounts to an explanation of this outcome. This approach is particularly relevant when seeking to understand foreign and policy decisions and actions, which after all rest on agreement between all the EU member states. The arguments leading to an agreement on a given policy (i.e. the mobilizing arguments) can of course refer to particular self-interests, as one would expect if Sophia was launched to avoid migrants reaching EU soil. However, by defining actors as communicatively

rational, one also allows for the possibility that the actors can ‘reflect on the validity of different norms, and why they should be complied with’ (Sjursen 2006b: 88), hence allowing also normative, and thus humanitarian, behaviour to be considered rational.

2.4. Empirical expectations

So, what one would expect to find if the EU with Sophia acts in line with a humanitarian foreign policy model? If this is so, one would expect first, that actors across different EU institutions and member states would refer to the moral and legal duty to rescue people in peril of being lost at sea when justifying the launch of operation. Second, migrants’ rights would also have to be consistently followed up in practice. Most importantly: even when colliding with material interests, such as when resulting in even greater migratory pressures at its borders, or when incurring particular costs to the EU or some of its member states, the EU would be expected to promote and adhere to human rights law. Building on Butler and Ratcovich (2016), the relevant legal obligations in this case are the following: (1) the Law of the sea (UNCLOS) duty to rescue any person in distress at the sea (p 248); (2) the 2004 amendment to the SOLAS convention requiring states to ‘disembark and deliver anyone rescued at sea to a ‘place of safety’ (Butler and Ratcovich 2016: 249) and; (3) the international and European human rights conventions and international refugee regulations (Butler and Ratcovich 2016: 251). Also the Preamble of the UN Security Council resolution 2240 (2015) underlines that all states must “comply with their obligations under inter-national law, including international human rights law and international refugee law.” Of particular importance in this regard is the respect for the “principal protection instrument of international refugee law”, namely the “obligation not to send refugees back to a place where they would be at risk of persecution” (*non-refoulement*, Butler and Ratcovich 2016: 251). This obligation is established in the Refugee Convention and a number of human rights treaties (ibid). This obligation is established in the UNHCR Refugee Convention and a number of human rights treaties (Ibid.). Thus, for Sophia to be characterised as humanitarian, it would not only have to abide by the provisions of international law. It must also be conducted as a search and rescue operation which prioritises the task of saving lives. At the same time, rescued persons should not be transported back to places that are unsafe or where they are at risk of prosecution, and such behaviour should be consistent, irrespective of the status of the migrants, in full respect of their human rights.

If on the other hand the critics are right and Sophia indeed is in breach of the norms the EU claims to promote and protect in its foreign policy, one would instead expect evidence in

line with a traditional foreign policy model. This implies first, that one would expect EU actors across institutions and member states to primarily justify Sophia by the need to launch an operation to reduce immigration. The EU may also refer to its obligation to assist people in distress at sea, and indeed conduct search and rescue, but such concerns would only be secondary in importance to the goal of reducing immigration and would not necessarily be promoted consistently. Instead, second, one would find evidence to suggest that the conduct of EU Sophia are in breach of the global, human rights laws discussed above.

2.4.1 Data

To explore whether or not Sophia is in line with a humanitarian foreign policy model, the analysis draws on the following sources. First, all official EU documents regarding the operation, from the Commission, the EEAS and the (European) Council. Unpublished working documents about the mission were collected from Wikileaks. Documents were also collected from a selection of member states, including Italy, who initially suggested an EU mission, and from two member states initially opposing it, namely Germany and the UK. News articles have also been a source for detecting these states' positions. As discussed above, to study the extent to which the mission was conducted in line with the humanitarian hypothesis, data was collected from a number of observers and specialist: the UNCHR, the Council of Europe, a variety of human rights organizations including Human Rights Watch and Amnesty, the UK House of Lords, as well as from legal and other scholars. Lastly, to further triangulate the data, five interviews were conducted with EU civilian and military staff in 2017.

3. Analysis: A humanitarian mission to help migrants in line with their human rights?

3.1. Launched to save migrants in distress at sea?

So, is Sophia a humanitarian, 'normative' operation, as claimed by the EU itself? First, we look at the member states' decision to launch Sophia in 2015. Was it initially launched to help people in distress at sea, in line with a humanitarian foreign policy model? According to the United Nations High Commissioner for Refugees (UNCHR 2018) 3,771 people died or went missing while crossing the Mediterranean in 2015. In 2016, the number rose to over 5,000, while 3139 people lost their lives in an attempt to reach Europe by sea in 2017. All the EU decisions regarding Sophia suggest that it initially was launched in response to these tragedies. For instance, in its special meeting on 23 April 2015, the heads of states stated: "The situation in the Mediterranean is a tragedy. The European Union will mobilize all efforts at its disposal

to prevent further loss of life at sea and to tackle the root causes of the human emergency that we face. Our immediate priority is to prevent more people from dying at sea” (European Council 2015a). This statement and the “strong commitment to act in order to prevent human tragedies resulting from the smuggling of people across the Mediterranean” was also underlined in the Foreign Affairs Council’s decision to launch a naval mission in May the same year (Council 2015). Similarly, according to HR/VP Mogherini, mission Sophia “is one of the stories of the European Union we can be proud of [...] this is an important sign of the European unity we should be proud of again - : saving lives” (EEAS 2016b).

Most importantly the data suggests that the 2015 accident in which a vessel carrying over 850 migrants capsized close to the Italian island of Lampedusa, is key to understanding why the mission was launched in the first place. With only 28 survivors, this marked the largest death toll ever known in a single incident in the Mediterranean (Bosilca 2017). As we shall see, this accident functioned as a critical juncture, triggering consensus on an EU mission in response to the migrant crisis. At the time of the Lampedusa accident, Italy had concluded its own naval search and rescue mission, ‘Mare Nostrum’. Mare Nostrum was operational for over a year, in total rescuing more than 100,000 people. In parallel to conducting the operation, Italy was however trying to convince the other member states to jointly take over the responsibility for search and rescue by launching an EU mission within the CSDP framework. With a cost of more than 100 million Euros a year and increasing difficulties in handling all the boats coming, Italy ended its Mare Nostrum in October 2014, thereby placing further pressure on the EU member states to take over this task. However, despite the number of drowning increasing during 2014, many of the EU member states continued to oppose the idea of replacing Mare Nostrum with an EU search and rescue mission (The Guardian 2014). Instead, at the initiative of the Commission, agreement was reached on a new border control mission called Triton, to be coordinated by the EU border agency Frontex (Frontex 2017). Frontex, however, is a border control, internal security agency, and although rescuing a high number of people, Triton could only operate in the waters outside of Italy – not in the high seas where most of the accidents occurred. The capacity of Triton was also limited. As put by Frontex itself: “Of course, we will also do search and rescue actions,’ but if you don’t have enough capacity will you be there in time? I would expect many more sea deaths the moment that Mare Nostrum is withdrawn” (The

¹ This is not to be confused with the first Lampedusa accident which happened in 2013, but which did not result in any common reaction from the EU member states within the CFSP/CSDP framework.

Guardian 2014.) Nonetheless, and in spite of hard criticism both from the Council of Europe and various human rights organizations, many EU member states continued to reject the Italy's suggestion to launch an EU search and rescue mission. Several member states, including big countries Germany and the UK, even opposed the very idea of the EU taking *any* such actions, claiming instead that such operations would attract even more migrants to Europe. German Interior Minister Thomas de Maizière for example said about Mare Nostrum that it "was an emergency plan but has proven to be a bridge to Europe" (Hasselbach, 2014). Similarly, according to the UK, search and rescue missions would have an "unintended pull factor (...) They encourage more migrants to attempt the dangerous sea crossing, and thereby leading to more tragic deaths" (Joyce Anay, Minister of State at Britain's Foreign Office; Hasselbach 2014). The data suggests that the Lampedusa accident changed these positions. Like many other observers, following the accident, the Council of Europe again called on "European governments to reaffirm their solidarity by putting in place a more effective and well-resourced European search and rescue initiative, creating alternative migration possibilities and increasing efforts to combat smuggling" (Council of Europe 2015). According to the Council of Europe, Lampedusa was a "tragedy that should have been avoided by all means. These deaths (...) put into question the decision to end the full-scale search-and-rescue mission Mare Nostrum in 2014", thus indirectly blaming the EU member states for not taking action (Council of Europe 2015). And this time, previously reluctant member states positions changed in favour of a joint mission. Some of the member states, including Spain, Greece and France were already supporting further integration in the field of maritime security. But in other countries, including Germany and the UK, data indicates a clear shift in position following Lampedusa. Directly following the accident, German policy-makers for example referred to the need to take action to save lives. Chancellor Angela Merkel emphasized that such accidents have to be avoided at all cost, stressing that "everything - really everything - must be done in order to save lives" (DW 2015). Similarly, in the aftermath of the April accident, then Prime minister Cameron said that such tragedies marked "a dark day for Europe" (BBC 2015). The 2015 Lampedusa accident in other words functioned as a critical juncture, changing the positions of reluctant member states in favour of common EU action, allowing a consensus on an EU naval search and rescue mission to be reached. As Rear Admiral Credendino, the commander of Sophia explained to the Italian parliament: Before the accident, there were "extremely different opinions on the topic: there were the more interventionist, the less interventionist, and those who had other interests" (Senato della Repubblica 2016 in Bosilca 2017). But following Lampedusa,

consensus was reached among member states “in less than a week” (ibid) and “the operation was launched in record time” (ibid).

The importance of the Lampedusa accident for understanding the initial agreement to launch Sophia has also been confirmed in other studies. According for example to Tardy (2015: 1), Sophia was launched due to a ‘strong commitment to act pledged by the Council following the death of 800 migrants.’ Similarly, in its investigation of Sophia, the UK House of Lords’ report on finds that the mission came “in response to the loss of 700 lives in the Lampedusa tragedy”. It was on this basis that the European Council concluded that it would “mobilise all efforts at its disposal to prevent further loss of life at sea” (House of Lords 2016: 5) There is little evidence to support the claim that concerns for reducing migration to Europe mobilized the member states’ *initial decision* to launch Sophia in 2015. Contrary to what one would expect if this was the case, there is no evidence to suggest that any cost-efficiency calculations were conducted at the time, or that a naval mission’s potential efficiency in curbing migration was discussed or known to the member states prior to their decision. It is even questionable whether policy-makers at the time regarded a naval mission as an efficient means to limit migration. To the contrary several of the member states, including Germany and the UK, as we have seen initially opposed an EU naval mission precisely on the grounds that a search and rescue operation could have a pull effect on potential migrants (Hasselbach 2014). As argued by Tardy in 2015 (2015: 4) “the operation cannot be a solution to the migrant crisis, and no one in Brussels is contending that it could.”

3.2. The EU’s in theatre behaviour: In line with human rights?

In sum, so far, the data suggests that the Lampedusa accident made initially reluctant member states change positions in favour of an EU search and rescue operation, hence leading to consensus on the initial decision to launch Sophia. So, does this therefore also imply that Sophia has also been conducted as a humanitarian mission, as argued by the EU itself? As we recall, if this is so, one would expect Sophia to have been conducted as a search and rescue mission, despite its costs or in cases of conflicting interests. In addition and most importantly, Sophia must have been conducted in accordance with relevant human rights law. In particular, migrants must have been treated in accordance with their human rights, rescued persons must not be transported back to places that are unsafe or where they are at risk of prosecution; and this will have been applied consistently, indifferent to the status of the migrants. To study this,

we turn to explore the implementation of Sophia, i.e. the EU's behavior in theater, and how this has developed over time.

Overall, the data reveals that although initially launched as a search and rescue operation, over time, Sophia has developed into a mission that is less focused on search and rescue and that is increasingly breaking with important human rights principles. On the one hand, Sophia was initially a de facto a search and rescue operation (House of Lords 2016). In April 2017, 35.037 lives had been rescued at sea by Sophia (EEAS 2017). Due to its search and rescue mandate, the UK house of Lords in 2016 hence concluded that "Operation Sophia have been ready and equipped to meet their commitments under the International Convention on Safety of Law at Sea (SOLAS) and the UN Convention on the Law of Sea (UNCLOS) to rescue people in distress" (House of Lords 2016:18). One may also argue that the EU initially did search and rescue as required by international law in spite of the known costs of such an approach. After all, as discussed above "critics suggested that search and rescue activity by operation Sophia would act as a magnet to migrants and ease the task of smugglers, who would only need their vessels to reach the high seas" (House of Lords 2016: 3). After the first year, also human rights organizations and the UN applauded the EU for rescuing people in distress. In a speech at the European Policy Centre in Brussels United Nations High Commissioner for Refugees (UNCHR) Filippo Grandi for example argued that the number of deaths at sea "would have been significantly higher had it not been for the search and rescue operations carried out by EU member states, coastguards and merchant ships, volunteers and NGOs" (Grandi 2016). Similarly, in 2015 Amnesty International found that the "results of the EU-coordinated naval operations for saving lives in the Mediterranean very soon emerged. The number of people who drowned or disappeared at sea in their attempts to reach European shores declined dramatically in the months following the deployment of naval forces. The death rate between January and April 2015 was 1 in 16, or 6.2%, while the numbers between April and June of the same year were significantly reduced to 1 in 427, or 0.23%" (Amnesty 2015).

On the other hand, however, looking at the further development of Sophia, the EU's in theater behavior is clearly not in line with a humanitarian model. To the contrary, the search and rescue focus of the mission is becoming less important, and it is increasingly clear that the EU does not live up to the human rights standards it claims to have set for its mission. Increasingly, the aim of preventing migrants from coming to Europe seems to be trumping human rights considerations. According to the EU itself "all of the activities undertaken in each phase adhere to and respect international law, including human rights, humanitarian and refugee

law and the *non-refoulement* principle meaning that no rescued persons can be disembarked in a third country” (EEAS 2016). Similarly, the Council’s Decision on Sophia states the operation is conducted in compliance with the relevant provisions of international law (Council 2015). Data however challenge this claim. On the one hand, Sophia is backed by a UN mandate to operate in international waters. As discussed above, the EU needs an UN mandate or consent by the Libyan authorities to operate in Libyan waters, and has respected this by not proceeding to the next phase of the mission. However, as discussed above, acting in accordance with international law is not enough for the operation to be in line with a humanitarian foreign policy model. As discussed above, the critical difference between a humanitarian and a more traditional model of foreign policy is not whether or not an actor follows the rules of the international system, but whether it promotes and acts in accordance with global norms, i.e. individual rights, in this case the requirements enshrined in the Refugee convention, the Human rights conventions and the duty to help people in distress under the Law of the sea. And from this perspective, the EU does not live up to the standards it claims to have set for its operation. In fact, and instead suggesting that the EU in its implementation of the mission is more concerned with curbing migration, a wide number of NGOs find that the EU approach “fails migrants by predominantly focusing on the challenges posed to the EU, rather than on those faced by the human beings whose lives continue to be lost at sea” (Berry et al 2016: 4). According to Berry et al (2016) “the key reason for the unwillingness of EU leaders to take a more decisive and coherent approach to the refugee crisis has been the high levels of public anxiety about immigration and asylum across Europe (...) In a number of countries in Europe (...) financial strains plus concerns over national security and cultural assimilation have encouraged the growth of far-right anti-immigrant parties and movements such as Golden Dawn, the Swedish Democrats, the National Front and Pegida” (Berry et al 2016: 3-4). The training of the Libyan coastguard and the cooperation with NATO is particularly problematic from a human rights perspective. Just before implementing these changes to Sophia’s mandate, Human Rights Watch (2016) noted that by training Libyan coastguard forces, the EU seeks to “bypass” the *non-refoulement* principle, so it wants ‘to outsource the dirty work to Libyan forces (...) the EU - soon perhaps with NATO’s help – is basically deputizing Libyan forces to help seal Europe’s border”. The fact that the EU’s policies result in preventing migrants from leaving Libya also infringe the right of individuals to leave any country, including their own (Human Rights Watch 2016). Similarly, other leading NGOs have been very vocal in criticizing the EU way of managing the migration crisis including with Sophia, with some, like Doctors

Without Borders refusing to accept EU funding in sign of protest (Médecins Sans Frontières 2016). In contrast to its very positive report of the EU Naval operation in 2015, Amnesty International in 2016 found that the extension of the operation to train the Libyan coastguard may have severe human rights implications, arguing that “the EU has repeatedly shown it is willing to stop refugees and migrants from coming to the continent at almost any cost now, with human rights taking a back seat” (Amnesty 2016). Its 2017 report is even more critical, arguing that by training and cooperating with the Libyan coastguard in Sophia, ‘European governments are actively supporting a sophisticated system of abuse and exploitation of refugees and migrants by the Libyan Coast Guard, detention authorities and smugglers in order to prevent people from crossing the *Mediterranean*’ (Amnesty 2017).

Also the United Nations High Commissioner for Refugees, Fillippo Grandi has been very critical to “the narrowing of access to Europe” (Grandi 2016). Yet other observers have labeled Sophia as a “militarisation of a humanitarian crisis” (Rettman 2016). Similarly, Ventrella (2016: 18) concludes that “the aim of Operation Sophia is more the achievement of peace and security by pre-venting the illegal entry of migrants within EU Member States.” Further in line with such a claim, in a restricted access report to the EU foreign and security institutions, Sophia’s mission Commander referred to the efficiency of the operation in reducing migration flows when reporting on its success: “There has been a reduction in the proportion of migrants using the central Mediterranean route as opposed to the eastern route. Prior to the start of the operation there was an even split between the people using the central route and the eastern route, whereas now 16 percent migrants use the central route, with almost 83percent of migrants using the eastern route. Secondly, since September, for the first time in 3 years, we have seen a 9 percent decrease. This is an encouraging decrease in the flow” (EEAS 2016b: 3). There is no specific reference to the need or rights of migrants, or justification of Sophia on the basis of search and rescue needs in the report. The rescue side of the mission is also discussed, for example when arguing that, as the mission moves to the next stages, it would be necessary “to have the right type and number of assets to protect the force and operate effectively both in the counter smuggling role and in the rescue role” (EEAS, 2016b: 20). However, there are no references to the EU’s obligations vis a vis refugees and migrants’ rights in the classified report. If rights-based arguments were used mainly rhetorically to legitimize interest-based behavior as one would expect following a rational choice based perspective, this is, one might argue, precisely what one would expect to find in a secret policy-document. What is more - the data suggests that the EU member states and institutions are aware of the mission’s human rights

challenges but nonetheless continue to conduct it due to their interest in curbing migration. According to Amnesty (2017), 'European governments have not just been fully aware of these abuses; by actively supporting the Libyan authorities in stopping sea crossings and containing people in Libya, they are complicit in these crimes.' Also interviews with military staff and staff from the EU External Action Service confirm what both this article and other observers are claiming, namely that the mission indeed is breaking with the EU's own normative, human rights standards.. Interviews with naval officers having sailed on EU flagged ships taking part in the Sophia mission for example suggest that the EU fleet increasingly is leaving the search and rescue part of the mission to NGO ships, with EU ships laying further out and observing their work rather than actively doing search and rescue themselves (informal interview, September 2017). Similarly, interviews both with staff from the EEAS and with military personnel taking part in the missions confirmed that the EU itself indeed knows that there are severe human rights challenges linked not only to Sophia but also the EU's wider policies vis a vis Libya (interviews 2017). For example, when asked about it during an interview, a high level advisor to the High Representative confirmed that the EU is well aware of the ways in which Sophia is in breach of a number of human rights principles and regulations (interview 2017).

4 Concluding Remarks

This article set out to conduct a critical assessment of EU mission Sophia, asking whether or not it is in line with the normative principles the EU has set for itself in the conduct of its foreign policy, including Sophia. To do this, it asked whether or not the mission is in line with a humanitarian foreign policy model. Conducting the analysis in two steps in line with the main criteria of such a model – first exploring Sophia's launch and then assessing the EU's in theater conduct – findings suggest that although concerns for migrants at sea indeed seem to have mobilized the initial launch of the mission, the conduct of the mission is not in line with key human rights principles. On the one hand, the 2015 Lampedusa accident changed reluctant member states' positions in favour of an EU mission and thus helped forge consensus amongst the EU member states on the need to act in the face of the increasing number of people losing their lives at sea in an attempt to reach Europe. The analysis also suggests that the Union has respected international law, including Libya's right to sovereign control of its own borders, that the EU acts in accordance with existing UNSC resolutions, and that it has honored its obligation

to wait for a UNSC resolution or invitation by the Libyan government before extending the operation to Libyan waters. On the other hand, however, the analysis of the EU's in theater behavior suggests that Sophia is not conducted in accordance with relevant human rights law. In fact, according both to observers, the UN, the Council of Europe various human rights organizations and even EU military staff and civilian officials, the EU does not live up to the human rights standards it claims to have set for itself in the conduct of the operation. Although initially launched as a search and rescue mission, EU Sophia is not a humanitarian mission. As the operation mandate is amended and updated with new tasks, and as the EU-NATO in theater cooperation increases, there is also evidence to suggest that the EU is moving further away from what one would expect of a humanitarian foreign policy actor. Although one should be careful with drawing broader conclusions on the basis of one case study, by being one of the few concrete EU actions agreed in response to the migration crisis, this study hence questions the legitimacy not only of Sophia but also of the EU's migration policies more broadly. Instead, it suggests that as the migration crisis continues and Sophia is further amended, the aim of preventing migrants from coming to Europe increasingly seems to be trumping human rights considerations. This finding breaks with previous studies, including of other EU military missions, suggesting the opposite – namely that in the EU's foreign and security policies, human rights trump particular interests. Some may however argue that this case is not really representative of the EU's foreign and security as a whole. After all, the migration crisis is 'an extraordinary moment when the existence and viability of the political order are called into question' in line with Ikenberry's commonly used definition of what constitutes a crisis (Ikenberry 2008: 3; Cross and Ma 2015). Indeed, the migration crisis is challenging the very basis of the EU polity, challenging both the internal solidarity and the free movement across the inner market. One may also argue that this situation is particularly challenging to the EU as it has to be seen in relation to the increased fear of terrorism amongst the EU population and the need to take action to hinder migration to reduce the support of populist parties. One may however also argue the opposite, as I have done in this article, namely that rather than not being representative of the EU's foreign and security policy, it is situations like this who really put the EU's normative behaviour to a test. If the EU really wants to act in a principled way, respecting international law and human rights, it must do so also when such policies come with high costs. And so far, with the migration crisis, with Sophia, it has not stood up to the test.

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