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From the Cap Anamur to Mare Nostrum. Humanitarianism and Migration Controls at the EU's Maritime Borders

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CENTRE FOR THE LAW OF EU EXTERNAL RELATIONS

**THE COMMON EUROPEAN ASYLUM SYSTEM AND HUMAN  
RIGHTS: ENHANCING PROTECTION IN TIMES OF  
EMERGENCIES**

**CLAUDIO MATERA AND AMANDA TAYLOR  
(EDS.)**

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## CONTENTS

List of terms and abbreviations	5
List of contributors	7
Preface	9
The Common European Asylum System and its shortcomings in protecting human rights: can the notion of human security (help to) fill the gaps? <i>Claudio Matera</i>	11
From the <i>Cap Anamur</i> to <i>Mare Nostrum</i> : humanitarianism and migration controls at the EU's maritime borders <i>Paolo Cuttitta</i>	21
Human Security and CEAS: bringing human rights into the centre of the EU's asylum policies <i>Myrthe Wijnkoop</i>	39
Initiatives of EU Member States in managing mixed flows in the Mediterranean and the EU distribution of competences <i>Paula García Andrade</i>	51
Two realities: striking the balance <i>Robert K. Visser</i>	65
The CJEU as an Asylum Court: what role for human security discourses in the interpretation of persecution in the Qualification Directive? <i>Amanda Taylor</i>	77
Asylum seekers' access to employment: tensions with human rights obligations in the recast of the directive on reception conditions for asylum seekers <i>Lieneke Slingenberg</i>	93

# FROM THE *CAP ANAMUR* TO *MARE NOSTRUM*: HUMANITARIANISM AND MIGRATION CONTROLS AT THE EU'S MARITIME BORDERS

Paolo Cuttitta<sup>1</sup>

## 1. INTRODUCTION

At the time of writing, the Italian government has announced that operation *Mare Nostrum* – which was presented as a humanitarian mission aimed at rescuing lives in the Strait of Sicily, when it was launched in 2013 – will not be extended after October 2014. However, saving migrants' lives and protecting their human rights will remain among the declared aims of the Italian and European border policies and practices.

Indeed, humanitarian concerns have progressed towards centre stage in the public discourse about migration and border controls in the last decade. While earlier stages of the Europeanisation of migration and border policies were framed mainly, if not solely, in security terms, the humanitarian narrative was gradually incorporated into the language of European policy-makers after the turn of the century.<sup>2</sup>

Nine years before the launch of *Mare Nostrum*, a rescue operation carried out by the German humanitarian ship *Cap Anamur* had resulted in accusations from the Italian authorities of aiding and abetting illegal immigration. Considering that *Mare Nostrum* is doing the same thing for which three persons were brought to court in 2004, one might think that much has changed after the *Cap Anamur* case. In this paper, I ask the question of what has really changed. In order to provide some basis for answering this question, I try to shed some light on the history of interceptions and rescue interventions in the Strait of Sicily, and to assess the actual function of the operation *Mare Nostrum* by analysing it against the background of Italian and European border policies and, more

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<sup>1</sup> I am grateful to Bernd Kasperek, Claudio Matera and Amanda Taylor for their comments on an earlier draft of this paper, as well as to Emanuela Roman for her comments on my presentation at the conference 'Le frontiere mobili del Mediterraneo', Palermo, 3-4 November 2014.

<sup>2</sup> See *inter alia* D. Fassin, 'Compassion and Repression: The Moral Economy of Immigration Policies in France', 20 *Cultural Anthropology* 2005, 362-387; M. Agier, *Managing the Undesirable. Refugee Camps and Humanitarian Government* (Cambridge: Polity Press 2011); W. Walters, 'Foucault and Frontiers. Notes on the Birth of the Humanitarian Border', in U. Bröckling, S. Krasemann and T. Lemke (eds.), *Governmentality: Current Issues and Future Challenges* (New York: Routledge 2011), 138-164; G. Campesi, 'The Arab Spring and the Crisis of the European Border Regime. Manufacturing Emergency in the Lampedusa crisis', 59 *EU Working Paper RSCAS* 2011, available at <[http://cadmus.eui.eu/bitstream/handle/1814/19375/RSCAS\\_2011\\_59.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/19375/RSCAS_2011_59.pdf?sequence=1)>; P. Cuttitta, 'Borderizing the Island. Setting and Narratives of the Lampedusa Border Play', 13 *Acme: An International E-Journal for Critical Geographies* 2014, 196-219.

specifically, of the cooperation framework established between the two shores of the Mediterranean.

Section 2 analyses the rise of the humanitarian narrative in the language of European policy documents and Italian laws, as well as of statements made by Italian policy-makers. Section 3 makes a comparison between *Mare Nostrum* and previous patrolling activities carried out by Italian authorities in the Strait of Sicily, in order to assess whether and in how far *Mare Nostrum* marks a difference with the past. Section 4 continues the comparison by taking into consideration the Italian policies of pushing back or deporting migrants, as well as that of preventing them from leaving through increased cooperation with North African countries. Section 5 summarises a few cases of rescue by private seafarers to suggest that non-state actors were *de facto* discouraged from rescuing people without the state's authorisation, even after the *Cap Anamur* case. Section 6 provides an update about the end of *Mare Nostrum* and the launch of the Frontex operation *Triton*.

## 2. THE HUMANITARIANISATION OF THE EUROPEAN SEA BORDER

At the EU level, the humanitarianisation of the sea border can be first traced in official documents to late 2004. It has been argued, indeed, that the emergence of European humanitarianism was a consequence of the *Cap Anamur* case, which sparked the debate on boat migrants that summer.<sup>3</sup> In June 2004, while cruising the international waters of the Strait of Sicily, the German humanitarian ship *Cap Anamur* came across an inflatable dinghy with 37 people aboard. The dinghy had partially deflated and was taking in water, while the engine was over-heating and letting off fumes. All passengers were taken on board the *Cap Anamur*.<sup>4</sup> They claimed to be Sudanese and declared that they wanted to ask for asylum in Europe. The Italian island of Lampedusa was 100 miles (around 180 km) away, while Malta was almost twice as far.<sup>5</sup> Libya was by far closer, but it could not be considered as a safe haven.

As the Lampedusa harbour was too small for the *Cap Anamur*, the shipmaster asked for permission to land at Porto Empedocle, in Sicily, on 29 June. The day after, as soon as the permission was granted, the humanitarian ship headed northwards. Immediately before the *Cap Anamur* entered Italian territorial waters, however, the Italian authorities suddenly revoked the permission. The Berlusconi government declared that it was not its responsibility to receive the migrants and examine their asylum applications, and sent navy ships and helicopters in order to prevent the German vessel from crossing the sea border. Germany, as the flag state of the *Cap Anamur*, declared it was not responsible either. Both Italy and Germany attempted to pass the buck to Malta, arguing

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<sup>3</sup> See S. Mezzadra and B. Neilson, *Border as Method, or, the Multiplication of Labor* (Durham/London: Duke University Press 2013), 170-171.

<sup>4</sup> E. Bierdel, *Ende einer Rettungsfahrt. Das Flüchtlingsdrama der Cap Anamur* (Weilerswist: Ralf Liebe 2006), at 65.

<sup>5</sup> The exact location was latitude 33°46,5984N, longitude 12°15,4908E. See E. Bierdel, *supra* note 4, at 110.

that the ship had transited Maltese territorial waters after rescuing the migrants. The authorities of Malta denied any involvement, making clear that they had never been aware of the *Cap Anamur* transiting their territorial waters. In any case, it would have been difficult to consider a mere passage as an entry in the sense of the Council Regulation (EC) No. 343/2003 of 18 February 2003 (hereafter, Dublin regulation).<sup>6</sup> Furthermore, Malta argued that the *Cap Anamur* should have brought the migrants to Libya, the country closest to the place of rescue. In sum, nobody wanted the rescued migrants to land on their territory.

The dispute went on for eleven days, during which the ship had to wait at the border of Italian territorial waters. On 6 July the German and Italian Interior ministers, O. Schily and G. Pisanu, deemed it necessary to stick to the Dublin regulation and insist that Malta take the migrants, because an exception in this case would represent '*a dangerous precedent and could pave the way for numerous abuses*'. According to the two ministers, the *Cap Anamur* case also required '*clarification in many respects*'.<sup>7</sup> On the *Cap Anamur* food started running out: as a consequence, humanitarian organisations travelled from Sicily to ensure basic supply. The prolonged forced waiting time ended up affecting the mental balance of the rescued people. Some of them threatened to throw themselves overboard. On 11 July the master of the *Cap Anamur*, fearing that he might no longer be able to guarantee the safety of the people on board, declared a state of emergency, asked the Italian authorities for permission to land and informed them that in the absence of a formal authorisation he would find himself constrained to enter the harbour even without the authorities' consent – which is what happened in the end. The German ship met no resistance when it entered Italy's territorial waters without authorisation. However, immediately upon landing at Porto Empedocle, the ship was confiscated while the shipmaster (S. Schmidt), the first officer (V. Dachkevitch) and the head of the humanitarian organisation *Cap Anamur* (E. Bierdel) were all detained under the charge of aiding and abetting illegal immigration.<sup>8</sup>

Immediately after the *Cap Anamur* case, the German Interior Minister, O. Schily, proposed the establishment of European reception camps for asylum seekers in North Africa, arguing that this would also prevent casualties during the sea crossing.<sup>9</sup> The proposal was never formalised at EU level. However, the European Council of November 2004 recognised '*that insufficiently managed migration flows can result in humanitarian disasters*', expressed '*its utmost concern about the human tragedies that take place in the Mediterranean as a result of attempts to enter the EU illegally*' and called '*upon all States to inten-*

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<sup>6</sup> V. Della Fina, 'Cap Anamur Case, Tribunal of Agrigento, First Criminal Section, Judgment of 15 February 2010', 13 *Yearbook of International Humanitarian Law* 2011, at 544.

<sup>7</sup> Ministero dell'Interno, 'La vicenda della nave Cap Anamur all'esame dei Ministri dell'Interno Pisanu e Schily', available at <[http://www.interno.gov.it/mininterno/site/it/sezioni/sala\\_stampati/comunicati/comunicato\\_568.html?pageIndex=10&year=2004](http://www.interno.gov.it/mininterno/site/it/sezioni/sala_stampati/comunicati/comunicato_568.html?pageIndex=10&year=2004)>.

<sup>8</sup> In 2009, after a five-year trial, the court (Tribunale di Agrigento, I Sezione Penale, I Collegio. 7 October 2009) acquitted the three accused from all charges, recognizing that they had acted for humanitarian reasons and not for profit.

<sup>9</sup> See *inter alia* J. Valluy, 'La nouvelle Europe politique des camps d'exilés: genèse d'une source élitaire de phobie et de répression des étrangers', 57 *Cultures & Conflits* 2005, 13-69.

*sify their cooperation in preventing further loss of life*'.<sup>10</sup> It also declared that it would welcome *'initiatives by Member States for cooperation at sea, on a voluntary basis, notably for rescue operations*'.<sup>11</sup> In 2005 the 'Global Approach to Migration' – a policy document adopted by the European Council – called on Frontex to establish a surveillance system using *'modern technology with the aim of saving lives at sea and tackling illegal immigration*'.<sup>12</sup> Such a surveillance system was established in October 2013. It is called Eurosur and aims to strengthen the exchange of information and the operational cooperation between member states, as well as between them and Frontex *'for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants*'.<sup>13</sup> Finally, after the Lampedusa tragedy, the EU Council of 24-25 October 2013 expressed *'its deep sadness at the recent and dramatic death of hundreds of people in the Mediterranean which shocked all Europeans. Based on the imperative of prevention and protection and guided by the principle of solidarity and fair sharing of responsibility*', the Council concluded that *'determined action should be taken in order to prevent the loss of lives at sea and to avoid that such human tragedies happen again*'<sup>14</sup> and that *'[s]wift implementation by Member States of the new European Border Surveillance System (EUROSUR) will be crucial to help detecting vessels and illegal entries, contributing to protecting and saving lives at the EU's external borders*'.<sup>15</sup>

It was only after the long blame game of July 2004 that the question of rescuing people at sea landed, as such, on the EU agenda as one of the official aims of border controls. In Italy, instead, the humanitarianisation of the sea border had already become visible in 2002. The amendments made to the Italian immigration law that year, introduced stricter penalties for smugglers if the lives or physical safety of the smuggled persons have been put at risk during the smuggling process, and if the smuggled persons have been subjected to inhuman or degrading treatment.<sup>16</sup> By doing this, the Italian legislator seemed to aim at enhancing the safety of irregular travels in general, by protecting not only the right to life, but also the right to physical integrity, the right to be treated humanely, and the right not to be tortured. For the first time, the human secu-

<sup>10</sup> Council of the European Union, 'Brussels European Council 4/5 November 2004 Presidency Conclusions' (5 November 2004), at 21, available at <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/82534.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/82534.pdf)>.

<sup>11</sup> *Ibid.*, at 25.

<sup>12</sup> Council of the European Union, 'Brussels European Council 15/16 December 2005 Presidency Conclusions' (30 January 2006), at 10, available at <[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/87642.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/87642.pdf)>.

<sup>13</sup> Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), *OJ* [2013] L295/11, 6.11.2013.

<sup>14</sup> Council of the European Union, 'European Council 24/25 October 2013 Conclusions' (25 October 2013), at 17, available at <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/139197.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf)>.

<sup>15</sup> *Ibid.*, at 18.

<sup>16</sup> Art. 11 Law No. 189 of 30 July 2002 *Modifica alla normativa in materia di immigrazione e di asilo* [Amendments to the immigration and asylum law], *GU* [2002] Serie Generale no. 199, Suppl. Ordinario n. 173, 26.8.2002.

rity of migrants was clearly placed at the service of border controls. As this paper shows, however, the relationship has never been reciprocal: border controls are not placed at the service of the human security of migrants, because their actual aim is to prevent people to reach a place of safety in Europe.

In 2003, the cooperation agreement signed by the Italian government with Gadhafi's Libya was publicly justified with the '*strong determination*' of both parties to '*jointly tackle criminal organisations devoted to the smuggling of human beings and the merciless exploitation of clandestine migrants*'.<sup>17</sup> Similarly, the 2007 Italian-Libyan agreement allowing for joint border patrols along the Libyan coast was presented as the best way to stop '*the smugglers' vessels. By doing this, it will be possible to tackle such activities much more effectively, thus saving many human lives and disrupting the criminal organisations*'.<sup>18</sup> In 2009, when the pushback operations were started, the Italian prime minister described them as '*an act of great humanity [...] because they prevent tragedies at sea*'.<sup>19</sup>

This is exemplary of a shift taking place from a mostly securitarian approach to smuggling, which presented facilitators as criminals harming societies, to the mixed securitarian-humanitarian approach, focusing also on the humanitarian consequences of crime. Importantly, the stress is put only on the humanitarian consequences of smuggling and trafficking activities, and not on the humanitarian consequences of the policies and practices carried out by European and North African state authorities.<sup>20</sup>

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<sup>17</sup> Ministero dell'Interno, 'Comunicato stampa. Firmata dal Ministro dell'Interno Pisanu un'intesa operativa con la Libia sulle modalità pratiche della collaborazione per la lotta all'immigrazione clandestina' (3 July 2003), available at <[http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/comunicati/comunicato\\_353.html\\_1278249885.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/comunicati/comunicato_353.html_1278249885.html)>.

<sup>18</sup> Ministero dell'Interno, 2007a, 'Notizie. Immigrazione clandestina: il Ministro dell'Interno Amato firma a Tripoli un accordo per il pattugliamento congiunto della costa libica' (29 December 2007), available at <[http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala\\_stampa/notizie/immigrazione/0871\\_2007\\_12\\_29\\_ministro\\_Amato\\_firma\\_a\\_Tripoli\\_accordo\\_per\\_il\\_pattugliamento\\_congiunto.html](http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0871_2007_12_29_ministro_Amato_firma_a_Tripoli_accordo_per_il_pattugliamento_congiunto.html)>.

<sup>19</sup> Adnkronos, 'Migranti, premier: respinti per umanità. Maroni: politica che dà grandi risultati' (25 May 2009), available at <<http://www.adnkronos.com/IGN/News/Politica/?id=3.0.3354936348>>.

<sup>20</sup> See the reports: Human Rights Watch, 'Turned Away. Summary Returns of Unaccompanied Minor Children and Adult Asylum Seekers from Italy to Greece' (22 January 2013), available at <<http://www.hrw.org/print/reports/2013/01/22/turned-away>>; Médecins Sans Frontières, 'Violence, Vulnerability and Migration. Trapped at the Gates of Europe. A report on the situation of sub-Saharan migrants in an irregular situation in Morocco' (March 2013), available at <[http://www.msf.org/sites/msf.org/files/migrants\\_in\\_morocco\\_report.pdf](http://www.msf.org/sites/msf.org/files/migrants_in_morocco_report.pdf)>; Amnesty International, 'Scapegoats of Fear. Rights of Refugees, Asylum-Seekers and Migrants Abused in Libya' (June 2013), available at <<http://www.amnesty.org/en/library/asset/MDE19/007/2013/en/5310f0f7-1ff4-4acd-bfd8-e3e2c082d7d3/mde190072013en.pdf>>; Amnesty International, 'Frontier Europe. Human Rights Abuses on Greece's Border with Turkey' (July 2013), available at <<http://www.amnesty.org/en/library/asset/EUR25/008/2013/en/d93b63ac-6c5d-4d0d-bd9f-ce2774c84ce7/eur250082013en.pdf>>; Pro Asyl, 'Pushed Back. Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border' (7 November 2013), available at <[http://www.proasyl.de/fileadmin/fm-dam//EU\\_Fluechtlingspolitik/proasyl\\_pushed\\_back\\_24.01.14\\_a4.pdf](http://www.proasyl.de/fileadmin/fm-dam//EU_Fluechtlingspolitik/proasyl_pushed_back_24.01.14_a4.pdf)>; Amnesty International, 'The Human Cost of Fortress Europe. Human Rights Violations Against Migrants at Europe's Borders' (July 2014), available at <[http://www.amnesty.nl/sites/default/files/public/eur\\_050012014\\_fortress\\_europe\\_complete\\_web.pdf](http://www.amnesty.nl/sites/default/files/public/eur_050012014_fortress_europe_complete_web.pdf)>; Jesuit Refugee Service Malta, 'Beyond Imagination. Asylum Seekers Testify to Life in Libya' (January 2014), available at

### 3. THE OPERATION *MARE NOSTRUM*

Since October 2013 a number of vessels, helicopters, airplanes, drones and personnel of the Italian Navy, Army, Air Force, *Carabinieri*, *Guardia di Finanza*, Coast Guard and Police have been permanently patrolling the international waters of the Strait of Sicily, in search for migrants to be rescued, within the operation *Mare Nostrum*. The mission was launched as early as two weeks after 3 October 2013: on that day, 366 people had drowned after their fishing-boat sank only half a mile before reaching the Italian island of Lampedusa. Although many thousands of people had already died in the attempt to cross the Mediterranean before, this particular incident caused an unprecedented sensation in Italy and Europe alike – because of both the larger number of people involved, and the fact that it happened so close to European soil. As a response, the Italian government launched *Mare Nostrum* and presented it as a humanitarian mission, whose declared aim was to save human lives. Indeed, around 100,000 migrants have been rescued by Italian navy ships alone in ten months.<sup>21</sup>

Because of its life-saving goal, *Mare Nostrum* has been praised and supported not only by almost all Italian political parties (the only criticism coming from a part of the opposition accusing it of attracting more migrants, and therefore also possibly increasing the absolute number of casualties),<sup>22</sup> but also by humanitarian organisations, which called on the Italian and European institutions not to reduce the search and rescue capacity in the Mediterranean after the Italian government announced that *Mare Nostrum* would end because of financial constraints in October 2014, only a year after its launch.<sup>23</sup>

<<https://www.jrs.net/assets/Publications/File/Beyond-imagination-jesuit-refugee-service-malta-libya-report.pdf>>.

<sup>21</sup> On 11 November 2014, at the 'Fundamental Rights and Migration to the EU' conference, organized by the EU Fundamental Rights Agency in Rome, the Director of the Central Unit for Immigration and Border Police Management of the Italian Interior Ministry, G. Pinto, explained that over 155,000 people have been rescued since January 2014. Around 100,000 of them have been rescued by Italian navy ships, 30,000 by cargoes and other private vessels contacted by the Italian Coast Guard, 25,000 by the Italian Coast Guard as well as by the Italian vessels engaged within the Frontex *Hermes* operation.

<sup>22</sup> See Camera dei Deputati, 'Resoconto Stenografico. Seduta di venerdì 16 maggio 2014' (16 May 2014), available at <<http://documenti.camera.it/leg17/resoconti/assemblea/html/sed0230/stenografico.pdf>> and Camera dei Deputati, 'Resoconto Stenografico Audizione. Seduta di martedì 8 aprile 2014' (8 April 2014), available at <<http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/pdf/30/audiz2/audizione/2014/04/08/leg.17.stencomm.data20140408.U1.com30.audiz2.audizione.0004.pdf>>. According to Frontex, the '[r]atio between confirmed fatalities and arrivals in the Central Mediterranean during the first eight months of 2014 compared to the same period in 2013 increased from an average of 0.4 of confirmed deaths per 1 000 detections in 2013 to 1.4 per 1 000 detections in 2014'. See Frontex, 'Africa-Frontex Intelligence Community Joint Report' (October 2014), at 26, available at <[http://ffm-online.org/wp-content/uploads/2014/12/AFIC\\_2013.pdf](http://ffm-online.org/wp-content/uploads/2014/12/AFIC_2013.pdf)>. However, the increased surveillance of the Strait of Sicily might have drastically reduced the number of both the missing persons and the unreported casualties, which would undermine Frontex' theory of an increased mortality rate.

<sup>23</sup> See Amnesty.it, 'Mare nostrum non termini. Amnesty International scrive al governo italiano. Domani un convegno a Roma', 16 October 2014, available at <<http://www.amnesty.it/Il-governo-italiano-non-termini-Mare-nostrum-lettera-a-governo-italiano>>, Unhcr.it, 'Unhcr Expresses Grave Concern on the Termination of Mare Nostrum Operation', 16 October 2014, available at <<http://www.unhcr.it/news/unhcr-profonda-preoccupazione-per-la-fine-delloperazione-mare-nostrum>>.

However, the Italian operation has not only one, but two declared aims. Although the stress was mainly put on the humanitarian aim of saving lives at sea, *Mare Nostrum* was also presented, from the beginning, as a security mission aiming at capturing smugglers. Indeed, besides the thousands of migrants rescued, authorities can also boast about the hundreds of smugglers detained. A particular event attests to the security nature of the mission: in November 2013, an Italian navy vessel spotted a smugglers' fishing-boat immediately after it had left the migrants on a smaller boat on the high seas, and chased the smugglers, shooting at their vessel until it sank and the smugglers could be apprehended. Indeed, navy ships are used to identify people, to interrogate them and to detect smugglers: in order to do this, not only military personnel but also police officers are on board. Even if there are dead migrants on board or people reportedly missing, Italian authorities on *Mare Nostrum* vessels only interrogate migrants as to their own identity and try to gather information useful for arresting presumptive smugglers, while abstaining from any investigation activity that could lead to the identification of the dead or missing people. Generally speaking, the fact that state authorities regularly collect information and compile statistics regarding the apprehension of live migrants, while they don't collect or disclose to the public systematic data on border deaths,<sup>24</sup> is an indicator of their ambiguous attitude towards the issue of human security. In the specific case of *Mare Nostrum*, it suggests that the security aims of the Italian operation still outweigh the humanitarian ones. Furthermore, *Mare Nostrum* aircraft and vessels are part and parcel of the operational cooperation framework that has long been established between Italy and North African countries.<sup>25</sup> Within such framework, based on the provision of training programmes and technical equipment, on practical cooperation and exchange of information, migrant boats are intercepted and returned by force by Libyan border guards.<sup>26</sup>

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Medicisenzafrotiere.it, 'Mare Nostrum: Tempo scaduto. Il governo Italiano non può rinnegare il proprio impegno di continuare a salvare i profughi in mare', 17 October 2014, available at <<http://www.medicisenzafrotiere.it/notizie/comunicato-stampa/mare-nostrum-tempo-scaduto-il-governo-italiano-non-puo-rinnegare-il>> and the report of Amnesty International, 'Lives Adrift. Refugees and Migrants in Peril in the Central Mediterranean' (30 September 2014), available at <<http://www.amnesty.org/en/library/info/EUR05/007/2014/en>>, at 25.

<sup>24</sup> T. Last and T. Spijkerboer, 'Tracking Deaths in the Mediterranean', in T. Brian and F. Laczko (eds.), *Fatal Journeys. Tracking Lives Lost during Migration* (Geneva: International Organisation for Migration 2014), 85-107; S. Grant, 'Irregular Migration and Frontier Deaths. Acknowledging a Right to Identity', in M.-B. Dembour and T. Kelly (eds.), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Abingdon: Routledge 2011), 48-70; I. Kovras and S. Robins, 'Missing Migrants: Deaths at Sea and Addressing Migrant Bodies in Lesbos', in H. Donnan, M. Hurd and Carolin Leutloff-Grandits (eds.), *Border crossings* (Manchester: Manchester University Press forthcoming).

<sup>25</sup> See P. Cuttitta, 'The Case of the Italian Southern Sea Borders: Cooperation across the Mediterranean?', in G. Pinyol (ed.), *Immigration flows and the management of the EU's southern maritime borders* (Barcelona: Cidob Edicions 2008), 45-62; J.-P. Cassarino (ed.), *Unbalanced Reciprocities. Cooperation on Readmission in the Euro-Mediterranean Area* (Washington D.C.: Middle East Institute 2010); L. Bialasiewicz, 'Off-shoring and Out-sourcing the Borders of Europe: Libya and EU Border Work in the Mediterranean', 17 *Geopolitics* 2012, 843-866; P. Cuttitta, 'Migration Control in the Mediterranean *Grenzsaum*. Reading Ratzel in the Strait of Sicily', 29 *Journal of Borderlands Studies* 2014, 117-131.

<sup>26</sup> See *infra*, section 4.

Once it has been made clear that *Mare Nostrum* has both a humanitarian and a security aim, what deserves to be stressed is that military vessels and aircraft are in fact not a novelty in the Strait of Sicily, nor is it a novelty that they carry out both rescue missions and security activities. In October 2013 the Italian government opted less for a qualitative than for a quantitative change, by strongly increasing the already existing patrolling activities. Within the operation *Constant Vigilance*, indeed, Italian military vessels and aircraft have been patrolling the Strait of Sicily since 2004. While *Constant Vigilance* was never presented as a ‘humanitarian mission’, *Mare Nostrum* only (yet significantly) increased the number of vessels, aircraft and personnel deployed in the framework of the previous operation: the estimated cost of *Mare Nostrum* is around 9.5 million Euro per month, whereas the monthly budget of *Constant Vigilance* is only 1.5 million Euro per month. In quantitative terms there is a big difference, but in qualitative terms – in terms of what Italian authorities actually do in the Strait of Sicily – there is hardly a difference, because *Constant Vigilance* is also engaged in both rescue missions and security activities.

Moreover, if we go further back in time, we realise that military vessels and police vessels started patrolling the international waters of the Strait of Sicily as early as 1995 – eighteen years before *Mare Nostrum*, nine years before *Constant Vigilance*. From the beginning, Italian border guards were confronted with the duty to rescue people: in 1997, they claimed that they were not able to forcibly divert migrant boats back to Tunisia, because migrants sinking their own vessels resulted in the legal obligation for authorities to rescue them and bring them to Italy.<sup>27</sup> Then, from 2002 onwards, the number of navy ships involved in migration controls was increased. That year, the Italian immigration law was extensively amended. Among other things, the new regulation explicitly allowed for Italian ships, within the limits set by international law, to board vessels suspected of being involved in smuggling activities, to search them and, if evidence is found that the vessels are engaged in the smuggling of migrants, to escort them to an Italian port.<sup>28</sup> The new regulation was highly publicised by the centre-right government as an important move against illegal immigration. In fact, it could not obviously add anything to what Italian authorities were already allowed to do according to international law, nor did it add anything to what Italian ships had already been doing in international waters. Importantly, the emphasis was mainly put on security, not on humanitarian concerns. However, migrants were still ‘rescued’, first, and then brought to Italy, except in the very rare and exceptional cases in which Tunisia accepted to take migrants back from international waters, upon the request of Italian authorities that first intercepted the migrants and then contacted their Tunisian counterparts.<sup>29</sup> In 2003, a governmental decree

<sup>27</sup> See Comitato parlamentare Schengen-Europol, ‘Sopralluogo a Lampedusa (18-19 e 20 luglio 1997)’, available at <[http://www.camera.it/\\_bicamerali/schengen/sopralluoghi/AGRIGENT.htm](http://www.camera.it/_bicamerali/schengen/sopralluoghi/AGRIGENT.htm)>.

<sup>28</sup> Art. 11 Law No. 189 of 30 July 2002, *supra* note 16.

<sup>29</sup> On 21 October 2003, ‘twenty-eight clandestine immigrants were intercepted in three different vessels few miles away from Pantelleria and handed over to a Tunisian patrol boat. [...] The transshipment took place 14 miles south of Pantelleria, in international waters’ (Repubblica.it, ‘Clandestini in Tunisia, accordo col Viminale’, 21 October 2003, article on file with the author, my

was issued to regulate i.a. the '*continuous patrolling activities*' of Italian navy ships and aircraft in international waters. The decree specified that activities tackling irregular migration must always aim at '*safeguarding human life and respecting human dignity*'.<sup>30</sup> Then, in 2004, the operation *Constant Vigilance* was launched, and the activities didn't change significantly: according to governmental guidelines, the priority of interceptions was always rescuing lives.<sup>31</sup> Even in 2011, when arrivals to Southern Italy drastically increased in the wake of the Arab Spring, saving lives '*was at the top in the hierarchy of priorities [...], at that time maybe in daily operational activities more than in the public discourse*'.<sup>32</sup> With regard to the geographical extent of patrolling activities, *Mare Nostrum* has surely covered on a more regular basis the area close to the border of Libyan national waters. However, Italian navy aircraft or ships often spotted vessels and carried out rescue interventions tens of miles south of the Italian territorial sea, sometimes much closer to the Libyan than to the Italian maritime boundary, also in earlier times. For example, this was the case both in the period preceding the *Cap Anamur* case and in the months before the Lampedusa tragedy and the launch of *Mare Nostrum*, with migrants being sighted and rescued up to 88 miles south of Lampedusa, as well as up to 170 miles south-east of Sicily.<sup>33</sup>

In sum, there seems to have been a continuity in qualitative terms as regards the engagement of Italian authorities in rescuing migrants in distress at sea, in spite of the humanitarian rhetoric that has been surrounding the *Mare Nostrum* mission since it was launched in October 2013, presenting it as something new. The humanitarian side of Italian sea border controls is less novel than it seems, instead innovations are apparent in intelligence, most notably the identification procedure and the fact that migrants are sometimes held on board for several

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translation). A year later '*six clandestines intercepted by the Guardia di Finanza 25 miles south of Lampedusa were handed over to a Tunisian patrol boat. After receiving first aid assistance from the Italian unit, the immigrants [...] were handed over to the Tunisian military*' (Ansa.it, s. t., 22 October 2004, article on file with the author, my translation).

<sup>30</sup> Ministero dell'Interno, *Decreto Ministeriale 14 luglio 2003. Disposizioni in materia di contrasto all'immigrazione clandestina*, G.U. serie generale n. 220 of 22.09.2003 (my translation).

<sup>31</sup> See Consiglio dei ministri, 'Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato per il 2004-2006' (6 May 2005), available at <[http://www.governo.it/Presidenza/DICA/immigrazione/DPPI\\_04052005\\_2.pdf](http://www.governo.it/Presidenza/DICA/immigrazione/DPPI_04052005_2.pdf)>.

<sup>32</sup> F. Pastore and E. Roman, 'Implementing Selective Protection. A Comparative Review of the Implementation of Asylum Policies at National Level Focusing on the Treatment of Mixed Migration Flows at EU's Southern Maritime Borders', *FIERI Working Papers* 2014, available at <[http://fieri.it/wp-content/uploads/2014/11/WP\\_FIERI\\_FINAL\\_Implementing-Selective-Protection\\_PastoreRoman\\_Oct-2014.pdf](http://fieri.it/wp-content/uploads/2014/11/WP_FIERI_FINAL_Implementing-Selective-Protection_PastoreRoman_Oct-2014.pdf)>.

<sup>33</sup> See i.a. Repubblica.it, 'Affonda un altro barcone. Tutti salvi i clandestini', 19 June 2003, available at <<http://www.repubblica.it/online/cronaca/sbarcoquattro/salvi/salvi.html>>; Repubblica.it, 'Avvistato, sesto barcone carico di clandestini in 24 ore', 29 October 2003 (article on file with the author); Il Manifesto, 'Sbarco record a Lampedusa', 30 October 2003 (article on file with the author); Ansa.it, 'Duecento migranti soccorsi a Lampedusa', 26 August 2013, available at <[http://www.ansa.it/web/notizie/rubriche/topnews/2013/08/26/Duecento-migranti-soccorsi-Lampedusa\\_9203202.html](http://www.ansa.it/web/notizie/rubriche/topnews/2013/08/26/Duecento-migranti-soccorsi-Lampedusa_9203202.html)>; Repubblica.it, 'Emergenza sbarchi nel canale di Sicilia soccorsi mille migranti su cinque barconi', 17 September 2013, available at <[http://palermo.repubblica.it/cronaca/2013/09/17/news/eemergenza\\_sbarchi\\_nel\\_canale\\_di\\_sicilia\\_soccorsi\\_mille\\_migranti\\_su\\_cinque\\_barconi-66703040/](http://palermo.repubblica.it/cronaca/2013/09/17/news/eemergenza_sbarchi_nel_canale_di_sicilia_soccorsi_mille_migranti_su_cinque_barconi-66703040/)>.

days before they are brought to land, thus turning navy ships to floating detention centres.

#### 4. PUSHING BACK, DEPORTING AND PREVENTING FROM LEAVING

Of course, rescuing and bringing to Italy is different from pushing back to Libya or Tunisia. Indeed, there have been periods when Italy, going far beyond the above-described occasional cases in which migrants were handed over to Tunisian authorities on the high seas, carried out pushback operations systematically. From 2009 to 2010, for example, migrants were pushed back to Libya directly from international waters. In 2012 such practice was ruled unlawful by the European Court of Human Rights in the *Hirsi* case – in the only case in which a group of deportees were able to file an appeal.<sup>34</sup> Even in this period, though, intercepted migrants were not left to die.<sup>35</sup> When there were people in need of medical care on a boat, all passengers were generally taken to Lampedusa first: the persons in need were disembarked, while the others were pushed back to Libya from there. The latter case (with people being returned after entering Italian national waters) recalls to memory the period from October 2004 to March 2006, in which over 3,000 people were returned to Libya from Italian territory<sup>36</sup> (not from international waters, as it was mostly the case in the period 2009-2010) short after their landing. Incidentally, the people deported from 2004 to 2006 were also ‘rescued’ first, then they were brought to Lampedusa (or other Italian ports), and only later were they returned to Libya.

However, the fact that no pushbacks and no deportations have been carried out within the *Mare Nostrum* framework has nothing to do with the operation itself: it has rather to do with the policy that the last three Italian governments<sup>37</sup> decided to follow after the *Hirsi* case, long before *Mare Nostrum*, and that even previous governments had already followed in the past.

Moreover, the policy of repatriating the so-called ‘economic migrants’ (all those – e.g. Egyptian and Tunisian citizens – who can be returned by force without blatantly violating the principle of *non refoulement*) was continued also after the launch of *Mare Nostrum*. Such persons are first rescued, then they are brought to Italy, and finally they are returned to their home countries, in so far as the home countries cooperate – which they do, at least to some extent. Not only does the way in which border patrols operate in the Strait of Sicily remain largely unchanged since the launch of *Mare Nostrum*, but the decisions on whether to allow disembarked people to remain in Italian territory or to deport

<sup>34</sup> The Court held that the push-back of 24 Eritrean and Somali people carried out in May 2009 had violated Art. 3 (prohibition of inhuman or degrading treatment), Art. 4 of protocol 4 (prohibition of collective expulsion) and Art. 13 (right to effective remedy) of the Council of Europe’s Convention for the protection of human rights and fundamental freedoms. See ECtHR, *Hirsi Jamaa and Others v. Italy*, Appl. No. 27765/09, 23 February 2012.

<sup>35</sup> However, see *a contrario* section 5 of this paper.

<sup>36</sup> See E. Paoletti, *The Migration of Power and North-South Inequalities. The Case of Italy and Libya* (Basingstoke: Palgrave Macmillan 2010), at 146.

<sup>37</sup> The governments led by M. Monti (November 2011 – April 2013), E. Letta (April 2013 – February 2014) and M. Renzi (February 2014 – present).

them follow the same guidelines that oriented Italian border management before *Mare Nostrum*.

A further crucial feature of Italian and European border policies remains stagnant in spite of the increased humanitarian rhetoric surrounding *Mare Nostrum*: the fact that such policies still aim at preventing people from leaving North Africa and reaching Europe, regardless of their origin and motivation to migrate. While no pushback operations have been carried out from international waters by Italian vessels after the *Hirsi* case, Libyan patrols have carried out many interceptions of migrant boats both in Libyan national waters and in international waters. Such interceptions are carried out in the interest of Italy and Europe, which thus circumvent the principle of *non-refoulement* through practices that can be described as 'preventive *refoulement*'<sup>38</sup> or 'neo-*refoulement*'.<sup>39</sup>

Italy and the EU, indeed, keep making agreements on police cooperation with Libya as well as with the other North African countries; they keep providing such countries with aid programmes (offering training courses for border guards as well as funding for the construction of border police facilities) and technological equipment (all-terrain vehicles, patrol boats, night vision devices, instruments for the detection of false and falsified documents) in order for them to curb irregular migration to and from their territories.

In 2013, for example, the EU started a two-year border and assistance mission (EU-BAM) in Libya. Its aim is to train and advise Libyan authorities in order for them to strengthen border controls and prevent migrants from leaving or intercept them on the sea. Italy has been providing technical equipment and training programmes for Libyan border guards since 2003 and currently aims at resuming joint patrols in Libyan waters.<sup>40</sup> During the last EU-Libya meeting, in July 2014, the Libyan Prime Minister A. Thinni '*made a point of thanking the Italians, whose country, he said, had generously supplied Libya with boats to prevent migrant vessels from leaving Libya's waters*'. Thinni also '*asked for EU cooperation especially in training, technology and the construction of new detention centres. He requested that three new centres be constructed in Libya*'.<sup>41</sup>

This is particularly disconcerting, however, given that it is well known that torture and inhuman and degrading treatments are part of everyday life in Libyan detention centres, as numerous reports of human rights organisations have documented. In April 2014, for example, Human Rights Watch interviewed 138 migrants and asylum seekers who were detained in Libya: 100 of them (over

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<sup>38</sup> C. Marchetti, 'Expanded Borders: Policies and Practices of Preventive *Refoulement* in Italy', in M. Geiger and A. Pécout (eds.), *The Politics of International Migration Management* (Basingstoke: Palgrave Macmillan 2010), 160-183.

<sup>39</sup> J. Hyndman and A. Mountz, 'Another Brick in the Wall? Neo-*Refoulement* and the Externalization of Asylum by Australia and Europe', 43 *Government and Opposition* 2008, 249-269.

<sup>40</sup> Stranieriinitalia.it, 'Profughi. Pinotti: Accoglienza nelle caserme, l'Onu in Libia contro gli sbarchi', 3 July 2014, available at <[http://www.stranieriinitalia.it/attualita-profughi\\_pinotti\\_accoglienza\\_nelle\\_caserme\\_l\\_onu\\_in\\_libia\\_contro\\_gli\\_sbarchi\\_18948.html](http://www.stranieriinitalia.it/attualita-profughi_pinotti_accoglienza_nelle_caserme_l_onu_in_libia_contro_gli_sbarchi_18948.html)>.

<sup>41</sup> Libya Herald.com, 'Libya wants EU partnership to fight illegal migration', 11 July 2014, available at <<http://www.libyaherald.com/2014/07/11/libya-wants-eu-partnership-to-fight-illegal-migration/#axzz376kwszqe>>.

72 per cent of the sample) declared they had been tortured or abused.<sup>42</sup> Libyan officials also impose bribes on detained migrants who want to be released from endless *incommunicado* detention.

Life in Libya is not much easier for migrants outside the detention centres. They run the risk of being killed by border guards when they try to enter Libyan territory (alone in June 2014 twelve people were shot dead after crossing the border from Sudan),<sup>43</sup> and they also happen to be shot at when they try to set off towards Europe.<sup>44</sup> More generally, they are subjected to exploitation and grave abuses from the local authorities, employers and population, as well as from their own smugglers.

For migrants, indeed, there is hardly a difference between being pushed back by Italian authorities from international waters and being intercepted and returned (be it from Libyan national waters or from the high seas) or being prevented from leaving by Libyan authorities. The only difference is that, theoretically, those pushed back by Italy have the right to file a claim with the European Court of Human Rights. However, such right can hardly be exercised in practice once people have been deported.

The European policy of trying to prevent people from leaving Libyan land and sea territory, as well as to let Libya push them back from international waters on behalf of Europe (and with the support of European funding, equipment and training programmes), results in people being abused and their right to physical integrity to be violated in Libya rather than on the sea, in spite of the humanitarian rhetoric of European migration and border policies. Significantly, ten years after the first proposal to establish reception centres in Africa, the Italian Interior Minister, A. Alfano, took up the proposal again, arguing that this would prevent the ill-treatment of migrants by smugglers as well as deaths at sea.<sup>45</sup> Once again, humanitarianism is used in order to justify policies aimed at preventing people from reaching a place of safety in Europe.

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<sup>42</sup> A 33-year old Eritrean man described the treatment reserved to people who had been caught while trying to escape: they *'stripped off their shirts, threw water all over them, and then whipped them with rubber on their backs and heads for about half an hour'*. A 27-year old Somali man said: *'the guards [...] whipped me with metal wire and beat and punched me all over my body. I also saw them hang four or five people upside-down from the tree outside the entrance door and then beat and whip their feet and stomach'*. Finally, a 21-year old Somali woman reported the treatment received when she arrived with a group of 23 women: *'the guards put us in a room, told us to take off our clothes and then put their fingers inside our vaginas'*. See Human Rights Watch, 'Libya: Whipped, Beaten, and Hung from Trees', 22 June 2014, available at <<http://www.hrw.org/print/news/2014/06/22/libya-whipped-beaten-and-hung-trees>>.

<sup>43</sup> Madote.com, 'Sudanese Court Fines Rescued Illegal Ethiopian and Eritrean Migrants', 7 July 2014, available at <<http://www.madote.com/2014/07/sudanese-court-fines-rescued-illegal-html?showComment=1404793379638>>.

<sup>44</sup> Bbc.com, 'Migrant boat 'shot at' as it left Libya', 13 October 2013, available at <<http://www.bbc.com/news/world-europe-24514340>>; Repubblica.it, 'Spunta video-choc: 'Fermati sennò muori'. Così i libici danno la caccia ai clandestini', 18 May 2009, available at <<http://www.repubblica.it/2009/05/sezioni/cronaca/immigrati-8/clandestini-video/clandestini-video.html>>.

<sup>45</sup> See Repubblica.it, 'Immigrazione, Alfano: Portare richieste asilo in Africa', 31 October 2014, available at <[http://www.repubblica.it/politica/2014/10/31/news/immigrazione\\_alfano\\_porta\\_re\\_richieste\\_asilo\\_in\\_africa-99445825/?ref=search](http://www.repubblica.it/politica/2014/10/31/news/immigrazione_alfano_porta_re_richieste_asilo_in_africa-99445825/?ref=search)>.

## 5. HUMANITARIANISM: A STATE PREROGATIVE?

As says Fassin,<sup>46</sup> humanitarianism is part and parcel of global governmentality. However, while non-state actors (NGOs, private firms, political movements etc.) also participate in the humanitarian government of migration and borders, which means that states cannot monopolise the issue entirely, the latter still maintain a dominant position. This section summarises some cases showing that non-state actors were *de facto* discouraged from rescuing people without the state's authorisation even after the *Cap Anamur* case and the consequent rise of the humanitarian narrative.

In 2007 seven Tunisian fishermen rescued forty-four migrants on the high seas and brought them to Lampedusa: they were charged with facilitating illegal immigration and prosecuted by an Italian court. After four years they were acquitted from all charges,<sup>47</sup> like the accused of the *Cap Anamur* case, but in the meantime their fishing boats and fishing licenses had been confiscated, so their lives had been ruined.

Furthermore, many vessels that happened to meet and assist migrants in distress were forced to wait in international waters for days and days, even more than a week, before Italy, Malta, the flag state, and sometimes other countries involved (e.g. Tunisia) decided who had to take the migrants. This was the case of vessels as different as the Spanish trawler *Francisco y Catalina* in 2006, the Turkish cargo *Pinar* in 2009, the Spanish Nato warship *Almirante Juan de Borbón* in 2011 and the Greek-Liberian tanker *Salamis* in 2013, to name but a few. The fear of being prosecuted or simply wasting time and money ends up discouraging non-state actors from rescuing people, which inevitably increases the risk of death for those attempting the sea crossing. The survivors of the Lampedusa tragedy of 3 October 2013 said private vessels did not stop to assist them during the journey. This was only one of the many occasions on which private seafarers reportedly turned a blind eye to migrants in distress. In January 2008, instead, a migrant was the victim of something more than indifference. Four months after the Tunisian fishermen had been arrested for rescuing migrants, an Italian fisherman was arrested on Lampedusa under the accusation of murder. He had met a boatload of migrants on the high seas. One of them had swum to his fishing-boat to ask for help, but the fisherman prevented him from getting on board by beating him and throwing him into the water. His body was never recovered.<sup>48</sup>

While they are discouraged from taking action upon their own initiative, private seafarers are often asked by state authorities to intervene on their behalf if they are close to boats in distress. In such cases, commercial ships are asked to take migrants on board and either hand them over to Italian navy ships or bring them to the nearest Italian port. On at least one occasion, however, Italy report-

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<sup>46</sup> D. Fassin, *Humanitarian Reason. A Moral History of the Present* (Berkeley: University of California Press 2012).

<sup>47</sup> Corte di Appello di Palermo, Terza Sezione Penale (21 September 2011).

<sup>48</sup> See Repubblica.it, 'Il comandante di un peschereccio accusato della morte di un naufrago', 11 January 2008, available at <<http://www.repubblica.it/2007/11/sezioni/cronaca/immigrati-3/omicidio-peschereccio/omicidio-peschereccio.html>>.

edly used a private vessel to circumvent the prohibition of *refoulement*: on 4 August 2013 the Turkish commercial ship *Adakent* was asked by the Italian authorities to rescue a group of migrants in international waters, in the Libyan search and rescue zone. The migrants were brought to Tripoli, and it is unclear whether it was Italian or Libyan authorities that instructed them to do so. It is documented, instead, that on the same day the Italian authorities instructed the Greek-Liberian tanker *Salamis* to bring 102 rescued migrants from international waters back to Libya, but the ship refused to do so and headed for Malta instead.<sup>49</sup>

Finally, even state actors sometimes fail in what they claim to be their mission of rescuing people. A 2012 report by the Council of Europe has tried to shed light on the case of the 'left-to-die boat', a dinghy that remained adrift off Libyan coasts for two weeks in March 2011.<sup>50</sup> 63 passengers died, while the remaining nine survived only because they were washed up on the Libyan coast before it was too late. The report ascertained that Italian, Maltese and NATO authorities had been aware of the migrants being in distress but refrained from intervening. However, it was impossible to achieve a satisfactory degree of clarity on all responsibilities, because specific questions asked to specific agencies and authorities remained unanswered. More recently, on 11 October 2013, over 260 people died after sending an SOS to the Italian authorities from the Maltese search and rescue zone, because Italy waited for Malta to take the lead of rescue operations, although an Italian navy ship was close to the sinking vessel, and when the rescue boats arrived, most migrants had already drowned.<sup>51</sup> These two cases are exemplary of how the violence of the European border, well hidden behind the veil of humanitarianism, can operate '*less through the direct action of a singular actor than through the inaction of many*'.<sup>52</sup> Sadly, however,

<sup>49</sup> Timesofmalta.com, 'Update 8: Government requests ship master to return to rescue location', 5 August 2013, available at <<http://www.timesofmalta.com/articles/view/20130805/local/tanker-carrying-migrants.480832>>; Amnesty International, 'Lives Adrift', *supra* note 23, at 40-41; Council of Europe, 'The left-to-die boat: actions and reactions', Doc. 13532 (9 June 2014), available at <<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20940&lang=en>>, at 11. The Italian deputy Interior minister F. Bubbico expressed the government's position on both the *Adakent* and the *Salamis* case at a hearing before the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe on 4 February 2014, see [Interno.gov.it](http://www.interno.gov.it), 'Audizione del vice ministro sen. Bubbico presso la Commissione Migrazione dell'Assemblea Parlamentare del Consiglio d'Europa' available at <[http://www.interno.gov.it/it/mininterno/export/sites/default/it/assets/files/28\\_2014/2014\\_02\\_05\\_audizione\\_bubbicoo\\_Consiglio\\_Europa.pdf](http://www.interno.gov.it/it/mininterno/export/sites/default/it/assets/files/28_2014/2014_02_05_audizione_bubbicoo_Consiglio_Europa.pdf)>.

<sup>50</sup> Council of Europe, 'Lives lost in the Mediterranean Sea: who is responsible?' (29 March 2012), available at <[http://assembly.coe.int/CommitteeDocs/2012/20120329\\_mig\\_RPT.EN.pdf](http://assembly.coe.int/CommitteeDocs/2012/20120329_mig_RPT.EN.pdf)>. See also C. Heller, L. Pezzani and Situ Studio, 'Forensic Oceanography. Report on the Left-To-Die Boat', s.d., available at <<http://www.fidh.org/IMG/pdf/fo-report.pdf>>, and Council of Europe, 'The left-to-die boat: actions and reactions', *supra* note 49.

<sup>51</sup> F. Gatti, 'Lampedusa, passing the buck of responsibilities: this is how they left the Syrian children drown' (28 November 2013), available at <<http://espresso.repubblica.it/internazionale/2013/11/28/news/lampedusa-buck-passing-on-the-massacre-so-they-left-syrians-children-drown-1.143363>>.

<sup>52</sup> C. Heller and L. Pezzani, 'Liquid Traces: Investigating the Deaths of Migrants at the EU's Maritime Frontier', in Forensic Architecture (ed.), *Forensis. The Architecture of Public Truth* (Berlin: Sternberg Press 2014), at 659.

even *Mare Nostrum*'s direct action aimed at saving lives at sea proved unable to stop border deaths: over 3,000 people lost their lives in the Mediterranean in 2014,<sup>53</sup> and most of them died on the sea routes to Italy, in spite of the considerable contribution to rescue activities provided by the Italian military/humanitarian operation.<sup>54</sup>

## 6. THE END OF *MARE NOSTRUM* AND THE LAUNCH OF *FRONTEX TRITON*

Contrary to the announcements made by the Italian government in the summer, *Mare Nostrum* did not end completely on 31 October 2014 but was extended for a further two-month period. However, its budget and capacity were strongly reduced.<sup>55</sup> If no further extension is granted, the Italian mission will expire on 31 December 2014. The Italian calls for a European mission to take over the humanitarian tasks of *Mare Nostrum* remained unheard. The EU decided only to strengthen the presence of its border agency Frontex in the waters surrounding Italy, by launching the operation *Triton*. On 1 November *Triton* replaced the two previously existing Frontex operations hosted by Italy (*Aeneas*, controlling the waters south-east of Italy, off the coasts of Apulia and Calabria, and *Hermes*, patrolling the Strait of Sicily). 15 member states have already contributed to the new Frontex mission by providing technical equipment and border guards, but the monthly budget allocated to *Triton* (2.9 million Euro) is less than a third of the budget of *Mare Nostrum*. Furthermore, the Frontex mission has officially no humanitarian mandate and is rather aimed at supporting the Italian authorities in controlling the border and collecting intelligence. However, following the humanitarian rhetoric that also permeated the EU border agency in recent years,<sup>56</sup> Frontex executive director G. Arias Fernandez stressed that 'saving lives will remain an absolute priority'.<sup>57</sup> Again, the main difference with *Mare Nostrum* is supposed to be, besides the smaller budget available, the geographical extent of patrolling activities, since the area to be patrolled by Frontex' vessels and aircraft should not exceed 30 nautical miles from the Italian coastline, thus leaving the zone next to Libyan territorial waters without any surveillance. However,

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<sup>53</sup> T. Brian and F. Laczko, 'Migrant Deaths: An International Overview', in T. Brian and F. Laczko (eds.), *Fatal Journeys. Tracking Lives Lost during Migration* (Geneva: International Organization for Migration 2014), 15-43, at 20.

<sup>54</sup> Frontex has suggested that the mortality rate has increased (see *supra* note 22).

<sup>55</sup> See *supra* note 45.

<sup>56</sup> See N. Perkowski, 'A normative assessment of the aims and practices of the European border management agency Frontex', 81 *RSC Working Paper Series* 2012, available at <<http://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp81-normative-assessment-frontex-2012.pdf>>; G. Campesi, 'Frontex, the Euro-Mediterranean Border and the Paradoxes of Humanitarian Rhetoric', 2 *South East European Journal of Political Science* 2014, 126-134; K. Franko Aas and H. Gundhus, 'Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life', *British Journal of Criminology* forthcoming.

<sup>57</sup> Frontex, 'Frontex Launches Joint Operation Triton' (31 October 2014), available at <<http://frontex.europa.eu/news/frontex-launches-joint-operation-triton-JSYpL7>>.

Italian navy ships and aircraft will likely continue patrolling wider areas of the international waters, as they used to do even before *Mare Nostrum*.

## 7. CONCLUSIONS

Through a brief review of institutional documents and press reports, I have shown that the importance of the humanitarian narrative in the language of European policy-makers has increased since the turn of the century. The decision to present *Mare Nostrum* as a humanitarian mission was a further step in this process. In spite of the strong humanitarian rhetoric surrounding it, however, I have shown that *Mare Nostrum* is not much more humanitarian than previous patrolling activities carried out in the Strait of Sicily, the main difference being quantitative (the drastic budget increase) rather than qualitative. After pointing out that *Mare Nostrum* is also a security mission, I have then argued that its role must be analysed – and its degree of ‘humanitarianism’ assessed – against the background of the actual aims of Italian and European border policies, paying particular attention to the existing cooperation framework with Libya and other North African countries.

Such an analysis unveils the ambiguities of ‘humanitarianised’ border policies whose main aim, in fact, is still to prevent people from leaving and to deport the unwanted. Indeed, the concept of human security is used in order to enhance the safety and the right to asylum only of those who manage to leave Libyan, Egyptian or, more recently, Turkish coasts and are intercepted by Italian vessels after reaching international waters and before drowning or dying of dehydration. Since 2011, and especially after the *Hirsi* judgement, all Italian governments have declared that no more pushback operations will be carried out towards Libya, which is where most migrant boats come from. However, Italy is still engaged in strengthening international police cooperation in order to prevent migrants from leaving North African shores. Far from seeing their human security enhanced, people who are prevented from leaving countries such as Libya pay the human cost of Italian and European migration controls by suffering torture and inhuman and degrading treatments in North Africa.

Furthermore, the ‘left-to-die’ boats and the state’s attitude of *de facto* discouraging private seafarers from rescuing people in distress at sea, as well as the reluctance of states to collect and disclose to the public information about border deaths, also raised the question about the monopoly of the state over human life and death,<sup>58</sup> as well as about the dominant position of states in the humanitarian government of migration. It could be concluded that the humanitarian border is but a fig leaf for covering up exclusionary policies aimed at denying opportunities for asylum and protection in Europe. However, the importance of the change in the language of border policies should not be played

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<sup>58</sup> See M. Albahari, ‘Death and the Moral State: Making Borders and Sovereignty at the Southern Edges of Europe’, 136 *CCIS Working Paper* 2006, available at <<http://www.ccis-ucsd.org/PUBLICATIONS/CCIS%20Albahari%20death%20and%20the%20moral%20state%20June%2015%202006.pdf>>.

down too much. On the one hand, the use of words can be instrumental, but, on the other hand, it is also true that words can end up changing the minds, the attitudes and possibly the plans and actions of the actors involved, also including policy-makers and border guards. In the future, this process might result in the human security of migrants to become the main concern not only of interception operations but also, and most of all, of migration and border policies as a whole.