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

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

Paolo Cuttitta

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.2

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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1 I am grateful to Bernd Kasparek, 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.

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.3 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*.4 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.5 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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5 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). 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’. 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.

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. 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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8 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.
sify their cooperation in preventing further loss of life’. 10 It also declared that it would welcome ‘initiatives by Member States for cooperation at sea, on a voluntary basis, notably for rescue operations’.11 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’.12 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’.13 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’14 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’.15

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.16 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-

11 Ibid., at 25.
15 Ibid., at 18.
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’. 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’. 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’.

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.

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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.21

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),22 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.23


21 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.


26
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, 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. 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.


26 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. 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. 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. In 2003, a governmental decree

28 Art. 11 Law No. 189 of 30 July 2002, supra note 16.
29 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’. 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. 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. 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.

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

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).

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.34 Even in this period, though, intercepted migrants were not left to die.35 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 territory36 (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 governments37 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

34 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 ECHR, Hirsi Jamaa and Others v. Italy, Appl. No. 27765/09, 23 February 2012.
35 However, see a contrario section 5 of this paper.
36 See E. Paoletti, The Migration of Power and North-South Inequalities. The Case of Italy and Libya (Basingstoke: Palgrave Macmillan 2010), at 146.
37 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_’38 or ‘neo-_refoulement_’.39

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.40 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’.41

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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72 per cent of the sample) declared they had been tortured or abused. 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), and they also happen to be shot at when they try to set off towards Europe. 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. 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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42 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>.


5. HUMANITARIANISM: A STATE PREROGATIVE?

As says Fassin, 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, 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.

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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47 Corte di Appello di Palermo, Terza Sezione Penale (21 September 2011).
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.49

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 2011.50 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.51 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’.52 Sadly, however,


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
2014,53 and most of them died on the sea routes to Italy, in spite of the consid-
erable contribution to rescue activities provided by the Italian military/humanitar-
ian operation.54

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.55 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 surround-
ing 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 hu-
manitarian rhetoric that also permeated the EU border agency in recent years,56
Frontex executive director G. Arias Fernandez stressed that ‘saving lives will
remain an absolute priority’.57 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,

cko (eds.), *Fatal Journeys. Tracking Lives Lost during Migration* (Geneva: International Organiza-
54 Frontex has suggested that the mortality rate has increased (see supra note 22).
55 See supra note 45.
56 See N. Perkowski, ‘A normative assessment of the aims and practices of the European bor-
df>; 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. Francho Aas and
H. Gundhus, ‘Policing Humanitarian Borderlands: Frontex, Human Rights and the Precarious-
ness of Life’, *British Journal of Criminology* forthcoming.
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, 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

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.