

Delocalization, Humanitarianism, and Human Rights: The Mediterranean Border Between Exclusion and Inclusion

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Abstract: By reflecting on both the exclusionary and the inclusionary role of humanitarian migration and border management in the Central Mediterranean, this paper explores the relationship of humanitarianism with the delocalization of the EU border and with human rights. First, the paper analyses the role of human rights in the institutional humanitarian discourse about migration and border management at the Mediterranean EU border. The paper then analyses the Italian operation *Mare Nostrum* and, more generally, Italian humanitarianized border management in the Central Mediterranean. In doing this, it shows that humanitarianism contributes to the discursive legitimation and spatial delocalization of exclusionary policies and practices. Moreover, humanitarianism contributes to a symbolically and legally subordinate inclusion of migrants in the European space. While such humanitarian inclusion can be more inclusive than what human rights would require, it is posited as an act of grace rather than an enhancement of human rights. In both its exclusionary and inclusionary dimension, humanitarianism transcends and expands territorial boundaries by outsourcing responsibilities and enhancing delocalized border management.

Keywords: migration regimes, humanitarianism, human rights, Central-Southern Mediterranean border

Introduction

Scholarly research on the increasing role of the “humanitarian reason” (Fassin 2012) in migration and border management¹ has proliferated in recent years. While humanitarian logics have always contributed to determining the conditions under which borders can be crossed and enforced, their role has become more crucial in the last two decades. After humanitarian arguments had been mostly used to criticize the violence of the border, their increasing use by policymakers, as well as the gradual involvement of humanitarian non-state actors in *borderwork* (Rumford 2006), have transformed what has been called the “humanitarian border” (Walters 2011) and increased its visibility.

In this paper, I focus on the Italian military and humanitarian operation *Mare Nostrum*, as well as on other developments that occurred at the EU border of the Central Mediterranean over the past few years. Casualties at sea and abuses perpetrated by smugglers have been increasingly used by institutional actors to frame migration across the Strait of Sicily as a humanitarian emergency, as well as to support the intensification of policies aimed at tackling smuggling activities

and preventing people from attempting the sea-crossing (e.g. through patrolling in international waters and police cooperation with North African countries). However, the “humanitarian reason” also resulted in increased efforts either to rescue people at sea, close to Libyan waters and sometimes even in Libyan waters, and bring them to Italy, or to open limited humanitarian corridors providing safe passage to selected groups of vulnerable persons. The aim of this paper is to reflect on both the exclusionary and the inclusionary role of humanitarianism, and on how processes of humanitarian exclusion/inclusion interact with the delocalization of the EU border, as well as with human rights.

Research on the exclusionary power of humanitarianism in general (Aradau 2004; Carling and Hernández-Carretero 2011; Cuttitta 2014; Franko Aas and Gundhus 2015; Pallister-Wilkins 2015; Ticktin 2005; Williams 2016), as well as of politics of pity (Aradau 2004) and care (Agier 2011; Williams 2015) in particular, is increasing. This body of work shows that humanitarian logics are not incompatible with—and are often instrumental to—restrictive migration policies and migration management practices, which exclude people from territories and/or rights (often resulting in violent or even unlawful and inhuman outcomes).

On the contrary, the inclusionary power of humanitarianized migration and border management remains under-researched. A notable exception is the work of Fassin (2005) and Ticktin (2005, 2006), analysing the effects of the illness clause introduced in French immigration law in 1998. This measure allowed authorities to grant residency status for humanitarian reasons to undocumented foreign residents affected by life-threatening pathologies. Thus, while the main doors of labour migration and asylum in France were closed by increasingly restrictive laws and administrative practices, a small window could still be opened by compassion. This shows a particular attitude of humanitarian inclusion, namely the fact that it strengthens the asymmetry between including and included subjects, and that it “creates and privileges non-rights-bearing, apolitical, non-agentive victims” (Ticktin 2005:350). Indeed, undocumented people were de facto encouraged to present themselves as suffering bodies, while the beneficiaries were not granted full residency rights (their status was by far more precarious than that of other legal residents), and the recognition of their right to remain was largely dependent on the arbitrariness of the officials assessing their claims (Ticktin 2006).

By analysing Italian humanitarianized border policies and practices, this paper shows both their exclusionary and inclusionary effects. On the one hand, humanitarianism ends up enhancing and legitimizing policies and practices aimed at preventing migrants from embarking for Europe, thus excluding them from rights they would enjoy there. On the other hand, humanitarianism can enhance search and rescue operations and prompt relocation mechanisms, thus allowing migrants to reach European soil. This follows patterns of subordinate inclusion comparable to those shown by Fassin and Ticktin, since the admission of suffering bodies (people at risk of death and other particularly vulnerable persons) to EU territory is left to the arbitrariness of fate, as well as of administrative decisions, and the legal status of the persons allowed to disembark on EU territory is often characterized by irregularity and deportability.

Importantly, both the exclusionary and the inclusionary effects of the humanitarian border are largely supported by the process of delocalization of migration and border management. “Delocalization” (Salter 2006:172, 175, 176; Walters 2006:191, 193) refers to the process whereby border enforcement gradually detached from the official demarcation line of state borders. The relevant activities increasingly take place inside the territories of countries of transit or origin and in international waters, resulting in externalization (Zaiotti 2016) and extraterritorialization (Ryan and Mitsilegas 2010), as well as inside the territories of destination countries, resulting in internalization (Euskirchen et al. 2007). The paper shows that the processes of humanitarianization and delocalization are in a relationship of mutual support and influence. More specifically, while the above cited literature on inclusive humanitarianism (Fassin 2005; Ticktin 2005, 2006) limits its focus on dynamics taking place within the territory of the relevant destination country, this paper shows that processes of humanitarian subordinate inclusion (producing victimized and pitiful subject positions) also happen in other delocalized contexts, such as international waters and countries of transit. Furthermore, these humanitarian inclusionary processes do not only rely on the need to save lives, as is the case of the French illness clause analysed by Fassin and Ticktin: they also expressly include (other) human rights, and they even go beyond direct human rights obligations.

Literature on the role of humanitarianism in migration and border management hardly problematizes the relationship between humanitarianism and human rights. Walters (2011:151) has argued that:

one axis for knowing the humanitarian border ... is constituted by certain forms of legal know-how. This is manifested in the numerous ways in which the border is documented as a regime which is violating certain norms of treatment and denying certain rights to migrants.

Moreover, “the humanitarian border is configured as a sociolegal space, and its subjects governed if not as, then certainly in the image of rights-bearing individuals”. Human rights seem thus to be an essential component of the humanitarian border. Similarly, Mezzadra and Neilson (2013:175) write that “humaneness implies a certain humanitarianism that might be claimed by policing borders according to UN protocols or observing principles of human rights”. The relation between humanitarianism and human rights, however, is not as easy and straightforward as it may seem (Perkowski 2014).

Historically, there have been different expressions and interpretations of humanitarianism (Barnett and Weiss 2011; Davey et al. 2013; Redfield and Bornstein 2010). As Calhoun (2008:73) points out, “[t]here is no ‘objective’ definition of humanitarian action”. Some interpretations of humanitarianism see it as limited to saving lives and providing immediate relief to the suffering in situations of emergency, while others include the enhancement and protection of human rights, and even broader aims such as promoting the well-being of mankind.² Furthermore, the ambiguity with which concerns about the risk of “genocide” have been mixed up with those about “massive human rights violations” in order to justify the so-called “humanitarian wars” that have been waged in the post-Cold

War era also suggests that humanitarianism and human rights can hardly be kept separated, if at all (Kennedy 2004). As this paper shows, the humanitarianized EU sea border places itself in a peculiar position among these different expressions of humanitarianism. It is not limited to saving lives and providing immediate relief, because it also includes human rights at large. However, its relationship with human rights is controversial. On the one hand, human rights rhetoric is instrumental to exclusionary aims, which ends up limiting several human rights of migrants. On the other hand, humanitarian inclusion can be more inclusive than what human rights would require, and yet this wider inclusion is posited as an act of grace rather than an enhancement of human rights.

More generally, the paper analyses the multiple and mutual relations of humanitarianism to human rights, delocalization, exclusion and (subordinate) inclusion, against the backdrop of the evolving migration and border regime at the Central Mediterranean EU border.

The first section shows that the Italian and EU institutional discourse deploys humanitarian language to justify and strengthen the extant border regime (especially in its delocalized dimension), and hence includes not only the right to life but also other human rights. The second and third section analyse the *Mare Nostrum* operation and other practices of humanitarianized migration management at Italy's southern sea borders, to show their exclusionary power, as well as their ability to delocalize, rather than to eliminate, inhumanity. The fourth section addresses the inclusionary power of humanitarianized migration management. It shows that processes of humanitarian subordinate inclusion can be delocalized, reaching out to international waters, as well as to other countries' territories. It further shows that processes of humanitarian subordinate inclusion can encompass human rights other than the right to life, and even go beyond human rights obligations. Finally, the conclusions reflect on the material presented and summarize the main findings.

Human Rights in the Institutional Humanitarian Discourse

In the last 15 years, European institutions (at both state and EU level) have increasingly used humanitarian concerns to justify their migration and border policies. While the latter were subjected from the beginning to strong criticism based on humanitarian reasons, policymakers, think-tanks, security professionals, experts and technocrats involved in the management of migration gradually appropriated (Fassin 2007:154), recoded and used the very same arguments to legitimize them. In doing this they focused not only on the need to save lives or relieve the suffering of undocumented travellers, but also on the need to protect their human rights. In this section I analyse public statements of politicians, as well as the wording of official EU documents and Italian laws, and I refer to critical scholarship on the rhetoric of Frontex regulations and policy documents. In doing this, I show that the issue of human rights in general—besides that of border deaths and emergency care—is a constitutive component of the institutional rhetoric aimed at discursively constructing (Fairclough 1992) the Mediterranean humanitarian

border, as well as at discursively producing a “top-down legitimation” (Rojo and Van Dijk 1997) of specific policies and practices.

At the EU level, the humanitarianization of the sea border has become increasingly visible in official documents since 2004. In July that year, the shipmaster and the first officer of the German humanitarian ship *Cap Anamur*, as well as the head of the organization owning the ship and bearing the same name, were all detained and prosecuted for aiding and abetting illegal immigration because they had rescued 37 migrants in the Strait of Sicily and brought them to an Italian port.³ This prompted a debate about boat migration to Europe, and the German government proposed the establishment of European camps for asylum seekers in North Africa, arguing that “the death of many people would thus be prevented” (Schily 2004). The prospective delocalization of asylum, whose actual aim was keeping migrants at bay, was thus presented as a humanitarian measure aimed at saving their lives. A few months later, the European Council expressed “its utmost concern about the human tragedies that take place in the Mediterranean” and called “upon all States to intensify their cooperation in preventing further loss of life” (Council of the European Union 2004). Since then, the need to save lives has been regularly mentioned by EU policy documents on migration, and rescuing migrants at sea has become, besides tackling irregular immigration, the main declared objective of EU border control strategies (Council of the European Union 2006; European Parliament and Council of the European Union 2013). Vibrant calls for determined action to “prevent the loss of lives at sea” came from the EU Council (Council of the European Union 2013, 2015) after the two deadliest tragedies ever occurred in the post-war Mediterranean history, which both took place in the Strait of Sicily on 3 October 2013 and 18 April 2015 respectively.

While EU political documents are mostly focused on the need to save lives, an amendment made to the Italian immigration law in 2002 put the stress on other human rights as well. The amendment introduced stricter penalties for smugglers if the lives or physical safety of the smuggled persons are put at risk during the smuggling process, and if the smuggled persons are subjected to inhuman or degrading treatment—which is, indeed, often the case. 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, the right not to be tortured. Gradually, human rights became a crucial issue for justifying the restrictive border regime. In 2003, the cooperation agreement signed by the Italian government with Gadhafi’s Libya was heavily criticized, both internally and internationally, because of the well-founded fear that increased cooperation with the Libyan regime would result in increasing violations of migrants’ human rights by authorities and smugglers alike. However, the agreement was publicly justified with the “strong determination to jointly tackle criminal organizations devoted to the smuggling of human beings and the merciless exploitation of clandestine migrants” (Ministero dell’Interno 2003b). More recently, after an estimated 700 people died in the shipwreck of 18 April 2015, the Italian prime minister said migrant smuggling amounts to “the slavery of the 21st century” and labelled the smugglers as “the new slave traders”

(BBC 2015). Comparing smugglers to slave traders explicitly addresses not only the right to life but also other human rights such as personal freedom, freedom from exploitation, and, again, the right to physical integrity and the right to be treated humanely. Along the same line, the EU Commissioner for Migration stressed the need to prevent not only “loss of life” but also “further human rights violations” when presenting his plan to “counter migrant smuggling” (Avramopoulos 2014). The EU institutional discourse also points at human rights deficiencies in neighbouring countries, where the implementation of “human rights and fundamental freedoms ... raises concerns”, especially “[r]egarding asylum seekers and refugees, [since] most ENP countries do not provide adequate assistance and protection” (European Commission 2010). Similar concerns for insufficient human rights standards in Libyan detention centres, as well as for human rights violations perpetrated by smugglers and traffickers, were raised more recently by the European Commission (2017).

Importantly, the presentation of migrants as the victims of a context of exploitation originating from outside of Europe (e.g. the “wild” world of the smugglers violating migrants’ human rights and driving them to death; the “wild” world of the transit countries lacking capacities for humanitarian border management, and therefore in need of guidance and support) matches the image of non-Western countries and of their inhabitants as backward and therefore lacking an adequate sense of humanity and human rights culture. Thus, a specific picture of inhumanity is drawn, which clearly includes violations and insufficient protection of human rights. The increasing rhetoric of humanitarian values and norms also contributes to a moral geography of the Mediterranean region, and can be linked with the postcolonial representation of Europe “as a ‘force for good’ in the world, whose internal values presumably drive its external conduct as well” (Bialasiewicz 2011:300), and as a global actor aiming to consolidate its dominant position towards its neighbours within asymmetrical relationships (Walters 2009).

Human rights are also at the core of the “humanitarian turn” of the EU border agency Frontex. Since the first mission was launched in 2006, Frontex operations have been delocalized to international waters as well as to third countries’ waters, thus contributing to the construction of the EU border as a delocalized space (Kasperek 2010). A number of studies (Campesi 2014; Franko Aas and Gundhus 2015; Pallister-Wilkins 2015; Perkowski 2012; Slominski 2013) have documented a drastic increase of humanitarian rhetoric in Frontex’s regulations and policy documents, as well as in its public self-presentation (e.g. through its website and in press interviews). These works show that, while Frontex has increasingly stressed its role as saviour of lives, its humanitarianization has also largely focused on the respect of human rights in general and of the principle of non-*refoulement* in particular. This discursive turn was necessary in order to defend Frontex from the accusation of being inhumane.

In sum, the institutional humanitarian discourse aimed at justifying, strengthening and further delocalizing the existing border regime is based on human rights at large. It does not only create “non-rights-bearing” (Ticktin 2005:350) subjects but also rights-bearing ones; however, it does so only insofar as the pledge to protect the migrants’ rights lends itself to support restrictive

policies and practices. Furthermore, the institutional humanitarian discourse projects humanitarian principles outside the European space in order to place the relevant moral and legal responsibilities on other actors, such as smugglers and third countries' authorities, while defending European institutional actors against accusations of inhumanity in their delocalized activities.

Mare Nostrum

The instrumental use of (delocalized) humanitarianism is best exemplified by the Italian operation *Mare Nostrum*. From 18 October 2013 to 31 December 2014 a number of vessels, helicopters, aeroplanes, drones and personnel of the Italian Navy, Army, Air Force, *Carabinieri*, *Guardia di Finanza*, Coast Guard and Police continuously patrolled the international waters of the Strait of Sicily, looking for migrant boats, within the *Mare Nostrum* framework. The mission was launched immediately after, and as a response to, the Lampedusa tragedy of 3 October 2013, when 366 people drowned only half a mile before reaching the island. Its declared aim was both to save human lives and to intensify border control. As time went by, however, the stress was put more and more on the humanitarian side of the mission. Because of its life-saving goal, *Mare Nostrum* was praised and supported by almost all Italian political parties, the only criticism coming from a part of the right-wing opposition accusing it of attracting more migrants, and therefore also increasing the death toll—which shows that rescuing lives has become a universal argument used to support different political agendas. Humanitarian organizations such as Amnesty International, Médecins sans Frontières and the United Nations High Commissioner for Refugees (UNHCR) called on the Italian and European institutions not to reduce the search and rescue capacity in the Mediterranean when the Italian government announced that *Mare Nostrum* would end because of financial constraints only a year after its launch. Even after *Mare Nostrum* was stopped, its name remained the symbol of humanitarian border management. After the shipwreck of 18 April 2015, the International Organization for Migration (IOM) requested the resumption of the Italian mission, while the UNHCR and the European Parliament called for a European *Mare Nostrum*-like humanitarian rescue operation.

To deconstruct the picture of a good-hearted and innovative humanitarian mission, it must be first reminded that, besides the thousands of people rescued, Italian authorities also boasted about the hundreds of smugglers detained within the operation. Indeed, *Mare Nostrum* was (also) a security mission, and Italian Navy ships were used to identify people, to interrogate them and to detect smugglers. In order to do this, not only military personnel but also police officers were on board, while Navy ships were turned into floating detention centres—the forerunners of the EU “floating hotspots” proposed by Italy in May 2016—with migrants being held on board for several days before they were brought to land.

Furthermore, *Mare Nostrum* aircraft and vessels were still part of the operational cooperation framework that has long been established between Italy and North African countries (Bialasiewicz 2012; Cuttitta 2008; Paoletti 2010). Within such a framework, based on the provision of training programmes and technical

equipment, on practical cooperation and exchange of information, migrant boats have also been intercepted and forcibly returned by the border guards of North African countries, while thousands of people have been prevented from departing.

The operational cooperation between Italy and North African countries in maritime border control began as early as in the 1990s. Military vessels and aircraft carrying out both rescue missions and security activities were not a novelty either, when *Mare Nostrum* was launched. In October 2013 the Italian government opted less for a qualitative than for a quantitative change, by strongly increasing the already existing patrolling activities. Before the launch of *Mare Nostrum*, indeed, Italian military vessels and aircraft had been patrolling the Strait of Sicily within the operation *Constant Vigilance* 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. In terms of what Italian authorities actually did, there was hardly a difference because *Constant Vigilance* was also engaged in both rescue missions and security activities. Moreover, if we go further back in time, we realize that military vessels and police vessels started patrolling the international waters of the Strait of Sicily as early as 1995. 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 (Comitato parlamentare Schengen-Europol 1997). Then, from 2002 onwards, the number of Navy ships involved in migration controls was increased. At that time the emphasis was mainly put on security, not on humanitarian concerns. However, people were still first “rescued” and then brought to Italy, except in the few cases in which Tunisia accepted to take migrants back from international waters, upon the request of the Italian authorities intercepting the boats. In 2003, a governmental decree regulated the “continuous patrolling activities” of Italian Navy ships and aircraft in international waters, specifying that activities tackling irregular migration must always aim at “safeguarding human life and respecting human dignity” (Ministero dell’Interno 2003a). Activities did not change significantly under *Constant Vigilance* either: the priority of interceptions was still rescuing lives (Consiglio dei Ministri 2005). 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” (Pastore and Roman 2014). With regard to the geographical extent of patrolling activities, *Mare Nostrum* surely covered on a more regular basis the area bordering Libyan national waters. However, Italian military aircraft and ships often spotted vessels and rescued people close to the Libyan maritime boundary in the past as well, albeit less regularly, and they kept doing so even after *Mare Nostrum* was stopped.

In sum, there was 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 surrounded the *Mare Nostrum* mission and that presented its search and rescue activities as something new. After all, humanitarian institutions have long played an important role in migration and border management (at both

global and local level): the most obvious examples are the obligation to rescue lives and the principle of non-*refoulement* (especially after its codification through the 1951 UN refugee convention and its 1967 protocol). What has changed over time is less the fact that such principles have been respected (although they have also been disregarded, at times, as pointed out in the next section) than the fact that respecting them has been increasingly publicized in order to present the European migration and border regime as a good-hearted one, while in fact it is still aimed at limiting the freedoms and rights of large numbers of people.

The humanitarian rhetoric about the innovative, life-saving aim of *Mare Nostrum* was thus an instrumental move for making restrictive and delocalized border control policies and practices acceptable to a public opinion that was increasingly shocked by the high death toll at sea.

This is not to say that all politics is cynical, and humanitarian action at the EU borders is simply a theatrical *mise-en-scène*. Indeed, Edelman (1988:21–22) has explained that the construction of the “political spectacle” is “not necessarily self-conscious or deliberately deceptive”, and Goffman (1959) has shown that much of what is staged in everyday life is less the result of a director’s orchestration than the mechanical repetition of routine acts. To some extent, this may also apply to humanitarianized migration and border controls.

Mare Nostrum, however, was a turning point not only for the *discursive* appropriation of humanitarianism. Indeed, the *Cap Anamur* case cited in the previous section helps us to understand the role played by *Mare Nostrum* in the re-appropriation of rescue *practices* as well. The German ship did not immediately inform state authorities about the rescue intervention: before asking for the permission to dock, it waited for the head of the organization and some journalists to join the ship in international waters, and kept looking for boats in distress instead. The aim was to turn the humanitarian act of rescuing people into a political act against the extant border regime. The criminalization of the *Cap Anamur* was thus the reaction to an attempt to challenge the monopoly of the state over life and death. The highly publicized humanitarian mandate of *Mare Nostrum* has restored such monopoly and thus allowed for non-state actors to participate in search and rescue activities, provided that they bow to the state and accept its conditions. Indeed, the first non-governmental search and rescue mission ever after the *Cap Anamur* case was launched by the humanitarian organization MOAS as late as in August 2014, during *Mare Nostrum* and after informal permission from Italian authorities had been granted. The subsequent development of non-governmental rescue missions by other non-state actors (Cuttitta 2016b; Stierl this issue) was only made possible by this re-appropriation by the state at both a symbolic and practical level.

The Exclusionary Power of Humanitarianism

What remained hidden behind the humanitarian veil of *Mare Nostrum* was the exclusionary nature of the Euro-African migration and border regime that the Italian operation was contributing to strengthen. *Mare Nostrum* was presented as based on the respect of the rights to life and to asylum: people were rescued and brought

to Italy; there, those entitled to apply for asylum were allowed to do so, while the others were detained and, if possible, repatriated. The dominant representation of the *Mare Nostrum* period is the picture of a humane and orderly management of migration carried out by state authorities as opposed to the wild inhumanity of smugglers. At the same time, however, Italian and EU policies were clearly aimed at preventing people from attempting the Mediterranean crossing.

This attitude was not new for the Italian authorities. Under the second Prodi government (2006–2008), for example, Italy put a great effort into presenting its border policy as humane (Cuttitta 2014). This was done by stopping the unlawful deportations to Libya that had been carried out by the previous government between October 2004 and January 2006, as well as by stepping up cooperation with UNHCR, IOM and the Red Cross, on Lampedusa, to make sure human rights would be respected.⁴ At the same time, however, the Prodi government strengthened police cooperation with Libya and other North African countries, in order to support them in controlling their borders and, thus, further delocalize migration control. This resulted in thousands of people being prevented from attempting the sea-crossing or being apprehended by the border guards of Libya, Tunisia, Algeria and Egypt, either in national or in international waters, and forcibly returned to North African ports. From there, some were forcibly repatriated in breach of the principle of non-*refoulement*, while others were forced to remain in countries in which they would be exposed to gross human rights violations (e.g. unlawful detention, torture, inhuman and degrading treatments, no effective judicial remedy), as documented by several reports (Amnesty International 2013, 2015; Human Rights Watch 2008, 2014; Jesuit Refugee Service Europe 2012).

During and after *Mare Nostrum*, Italy kept providing North African countries with aid programmes (e.g. training courses for border guards) and technological equipment (e.g. all-terrain vehicles and patrol boats), in order for these countries to step up border control and prevent people from setting off for Europe. In 2013, the EU started a two-year border assistance mission (EU-BAM) in Libya, with the aim to train and advise Libyan authorities. In October 2016, in international waters, the EU started training Libyan Coast Guard and Navy personnel on board two military ships of its common security and defence policy (CSDP) mission Eunavfor Med. The 2017 Malta Declaration of the EU Council proposes to further step up cooperation with Libyan authorities, e.g. by providing “training, equipment and support to the Libyan national coast guard and other relevant agencies” (European Council 2017).

Before, during and after *Mare Nostrum*, thousands of people have been forced to remain in (or have been forcibly returned to) Libya and other North African countries by the relevant local authorities. Before, during and after *Mare Nostrum*, the primary aim of Italian and European humanitarianized border policies has been to prevent people from arriving in Europe, where most of them would be granted refugee status or humanitarian protection, while others would manage to remain irregularly.

Thus, Italy and Europe have been forcing large numbers of people to remain in countries where they are exposed to massive human rights violations for which no state authority can be effectively held responsible and accountable. Indeed,

relieving European states from legal responsibilities is famously one of the main aims of the delocalization of border controls (Ryan and Mitsilegas 2010): despite significant exceptions (in 2012 Italy was condemned by the European Court of Human Rights for pushing back Somali and Eritrean migrants to Libya in 2009), legal responsibilities for actions carried out directly by European countries have been successfully circumvented by outsourcing the “dirty job” to actors that are not subjected to any international court.

However, the humanitarian character of *Mare Nostrum* can be questioned not only because of its indirect consequences on those who were immobilized in North Africa, but also in the light of the activities directly carried out within the Italian operation. Even if there were dead migrants on board or people reportedly missing, Italian police authorities on *Mare Nostrum* vessels primarily interrogated migrants as to their own identity, and tried to gather information useful for arresting presumptive smugglers, while only limited efforts were made to identify 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 do not collect or disclose to the public systematic data on border deaths (Last and Spijkerboer 2014), is an indicator of their ambiguous attitude towards humanitarian issues, if we only consider the high humanitarian relevance of identifying the dead (Grant 2011). In the specific case of *Mare Nostrum*, it suggests that the security aims of the Italian operation still outweighed the humanitarian ones. Importantly, the identification of live migrants was often achieved through the unlawful use of force (ASGI 2014). This had been the case already before *Mare Nostrum* (Feliziani 2014), but things did not change during the humanitarian mission: human rights were violated by Italian authorities both on board the Navy vessels (Borderline Europe 2014) and upon arrival on the mainland (Escapes 2014).⁵

The Inclusionary Power of Humanitarianism

Pointing only to the fact that delocalized humanitarianism has become a fig leaf for exclusionary policies and practices would overlook its inclusionary power. Albeit within the *status quo* of a restrictive border regime (which, incidentally, it did not challenge but rather reinforce), *Mare Nostrum* aimed to protect and enforce the right to life of those who were trying to cross the Mediterranean by increasing border patrols as well as by permanently expanding their geographical extent. Thus, the Italian operation went beyond the need to comply with human rights obligations. In order to respect the duty to rescue people in distress, it was not necessary for Italian authorities to permanently deploy their vessels and aircraft in international waters. Maritime border controls could have been easily limited to the edges of Italian territorial waters, and rescue interventions on the high seas carried out only “on demand”, in response to distress calls. Thus, many people would have died unnoticed (because unable to successfully send a distress call) and many others would have lost their lives because the fewer vessels available would have required more time to reach the place of the incident, but Italy would not have been liable for any human

rights violation. Significantly, most rescue interventions were carried out not only in international waters, that is outside Italian territory, but also outside the Italian search and rescue region (SRR).⁶ Furthermore, the Italian mission did not only contribute to saving lives: indeed, rescued people were also brought to Italian territory and funnelled into the Italian reception system. This would open four alternative paths: the first was the recognition of refugee status; the second was the recognition of other forms of humanitarian protection, granting beneficiaries a much more limited set of rights for a limited period of time; the third was illegalization (and then either deportation or subaltern inclusion as “illegals”); the fourth was the informal decision by authorities to leave those who were likely to be granted asylum unidentified, and thus free to travel (albeit with an irregular status) to other European countries to ask for asylum there. Therefore, saving lives under *Mare Nostrum* also contributed to the differential inclusion (Mezzadra and Neilson 2013) of rescued people into the Italian and European polity. Such inclusion was based on a humanitarian gesture—expanding the reach of patrol operations to the utmost southern part of the high seas in order to rescue people—that went (from a legal perspective) beyond human rights obligations and was delocalized (from a geographical perspective) to international waters, outside Italian territory and even outside the Italian SRR. To some extent, this was and still is also the case of border controls before and after *Mare Nostrum*. Although the difference between *Mare Nostrum* and previous Italian operations was much less qualitative than quantitative, it must be stressed that *Mare Nostrum* enhanced the rescue capacities and made the Italian policy of patrolling international waters not only more effective but also much more visible (Tazzioli 2016). Thus, it marked a turning point: since then, all patrolling operations (e.g. the Frontex operation *Triton* and the EU mission *Eunavfor Med*) have been made highly visible in both their security and their humanitarian dimension (Garelli and Tazzioli this issue; Tazzioli 2016).

Other examples help to understand the inclusionary power of delocalized humanitarian border management beyond human rights obligations. In 2007 Italy launched its first “resettlement” action ever.⁷ This followed calls from the UNHCR and from the Eritrean diaspora in Italy, as well as a parliamentary question, all asking the Italian government to allow the entry of around 600 Eritrean asylum seekers who were being held in the Libyan detention centre of Misratah. Between 2007 and 2008, around 70 of them were transferred to Italy. In the first group of 39, there were “26 lone women and two unaccompanied minors” (Ministero dell’Interno 2007), which suggests that the supposedly most innocent and vulnerable were selected in the first place. For Italy, there was no obligation under international law to grant those people access to Italian territory. By accepting to relocate them, Italy took humanitarian action going beyond human rights obligations.⁸ Importantly, this was a sharp turn away from previous policies. The second Berlusconi government (2001–2005) had not simply turned a blind eye to unlawful returns from Libya but it had also actively supported them, e.g. by financing return flights to Asmara to repatriate Eritrean citizens (European Commission 2004:61), who were thus exposed to the risk of persecution in their home country.

A similar case occurred in March 2011, at the outbreak of the Libya war, when the Italian government decided to open a tiny humanitarian corridor to relocate 108 Eritreans from Tripoli to Italy, responding (if only partially) to the request by the Italian Refugee Council, the association Habeshia and the Bishop of Tripoli to evacuate around 2000 people exposed to violence (Puccio and De Donato 2013).⁹

Also with such actions, like with *Mare Nostrum*, Italy anticipated its compliance with human rights obligations in time and space, by allowing access to its territory and granting protection status to a number of persons towards whom it bore no responsibility under international law. The inclusion of those people into the European territory and polity took place as a result of a delocalized humanitarian action going beyond human rights obligations.

While it must be borne in mind that resettlements and relocations can also be used instrumentally, with a view to limiting the number of incoming refugees (van Selm 2004), the Italian gestures are in themselves acts of generosity (albeit small ones). Like in the French case illustrated by Fassin and Ticktin, they privilege those (women, children) who are perceived as the most endangered but also as the most unspoilt and passive (while leaving out the others), and they largely rely on arbitrary decisions of administration officials (e.g. on how many people to admit and on the criteria to be used to select them). Yet, there are two differences. The first is that Italy has no legal responsibility towards the persons to be relocated: it is responsible neither for their asylum procedure nor for their rights being respected outside Italian territory. The second difference is that, while those cases regard French policies and practices in France, here compassion stretches out geographically to reach the territories of transit countries like Libya. The same can be said about rescue interventions at sea, with the Italian authorities going beyond their legal obligations as well as beyond the borders of Italian territorial waters. On 29 April 2016, the Italian authorities went as far as to organize the transfer of 26 people from Libyan (not international) waters to Italy: they instructed a merchant ship to pick up the only survivors of a shipwreck, to reach international waters and to tranship the rescued on an Italian Coast Guard vessel.

This clearly shows that humanitarian inclusion can be more encompassing than what human rights obligations require. However, this does not result in an enhancement of human rights as such but rather in isolated paternalistic gestures, in which inclusion is an act of generosity within a context of emergency (Sciurba and Furri this issue). While going beyond human rights obligations, humanitarian inclusion is left to the fate—determining whether someone will be rescued or not, and whether s/he will be brought to Europe or not, depending on who the rescuer is (Cuttitta 2016a)—and to the arbitrariness of administrative decisions—determining where to send patrols as well as whether to carry out relocations, and according to what criteria.

Thus, humanitarianized border management develops asymmetric relationships across different geographical scales with vulnerable and helpless people, over whom state institutions have the power of life and death—or at least of inclusion and exclusion, of acceptance and rejection.

Albahari (2006:29) argued that the *death* of migrants at sea “is partly a ritualized spectacle through which the state confirms, reinforces, and performs its power over

its own citizen subjects". Arguably, the same can be said about the *life* of migrants at sea, about the gesture of rescuing them. Indeed, the Latin name *Mare Nostrum* inspires a link with the classical antiquity, since the power of ancient Roman fathers towards the new-born shows some similarities with the Italian operation. Once the baby was delivered, the father had the power to accept or refuse it. Acceptance resulted in the duty to raise the baby within the *familia* and was ritually communicated through the spectacularized gesture of lifting it in the air. Thus, the inclusion of a new subject into the social group of the family coincided with a ritual confirmation of sovereign power. Given the high level of (state-driven) mediatization of *Mare Nostrum*,¹⁰ the spectacularized gesture of rescuing people at sea is comparable to that of lifting the new-born. Significantly, in 2015 the military mission EUNAVFOR MED was renamed "Sophia" after the name of a baby who was born on board a ship of the EU task force, shortly after her mother had been rescued at sea.¹¹ Along the same line, those who die at sea may be seen as the victims of "miscarriages" resulting either from acts of violence (by the smugglers) or from carelessness and indifference (Basaran 2015; Fekete 2009:94–96; Heller et al. 2012; Squire 2014).

Conclusions

This paper has shed some light on the relationship that humanitarianism entertains with border delocalization, with human rights, as well as with migrants' exclusion and (subordinate) inclusion, at the Italian–North African border of the Central Mediterranean.

First, the paper pointed out that the humanitarian arguments used instrumentally by European policymakers to justify restrictive (and often inhuman) migration controls also include human rights concerns, which provides an argument for regarding human rights as an essential component of the humanitarian Mediterranean border. In such context, rescuing lives and providing immediate relief is a crucial issue, but it does not exhaust the spectrum of border humanitarianism.

From such a perspective, the crucial question regarding the humanitarian border should be which understanding of humanitarianism is dominant and which human rights are and can be actually invoked and enforced, under what conditions, where and by whom. As the remaining part of the paper shows, the currently prevailing form of humanitarianism materializes in policies and practices highlighting and increasing the asymmetry between those giving a helping hand and the beneficiaries, while preventing the latter from enjoying their rights (and improving their human condition in general) by forcing them to remain in North Africa. More specifically, dominant human rights concerns are focused on the right to life (to be protected against the threat of smugglers), while other fundamental rights are either ignored (e.g. the right to leave any country) or, again, considered only in relation to violations committed by the smugglers or to the lack of human rights capacities in third countries. This ends up supporting restrictive border policies and limiting the freedom of movement.

Furthermore, putting the blame on smugglers (and, indirectly, on third countries) for border deaths and human rights violations implicitly creates an image of inhumanity as opposed to European institutional humanitarianism. Thus, responsibilities can be delocalized outside the European space, while the humanitarianization of institutions such as Frontex allows for them to be defended against accusations of disregarding humanitarian principles in their delocalized activities.

Then, the paper analysed the Italian operation *Mare Nostrum*, highlighting its instrumental role in the (re-)appropriation of humanitarianism by state power, not only at a discursive level but also at the level of practices of search and rescue. More specifically, the (re-)appropriation of the task of saving lives by state authorities plays an important symbolic role as a ritual confirmation of sovereign power.

Moreover, the paper showed that *Mare Nostrum* was embedded in a framework of cooperation aimed at delocalizing (rather than eliminating) inhumanity. The Italian operation bore therefore indirect (and to some extent even direct) responsibilities for the inhuman effects of the Mediterranean border regime. This confirms the instrumental function of humanitarianism as well as the fact that delocalized humanitarianism is not incompatible with exclusionary border policing. Humanitarian and securitarian discourses and practices are, indeed, not mutually exclusive but rather support each other in enforcing and delocalizing the border.

However, seeing humanitarianized border policies and practices as only aimed at precluding entry would be as reductive and misleading as associating humanitarianism only with an attitude of opening. Indeed, the paper also showed that delocalized humanitarianism has not only exclusionary but also inclusionary effects, and that this inclusionary dimension of humanitarianism ends up producing subaltern subject positions. On the one hand, this happens through compassion: those who succeed in entering Europe are framed as fragile and powerless, and therefore subordinate subjects. The endangered lives saved at sea, as well as the resettled women and children, deserve compassion, which strengthens the asymmetry of the relationship between hosts and guests, between generous benefactors and subaltern beneficiaries. On the other hand, subaltern subject positions are also produced through the multiplication and differentiation of legal statuses resulting from humanitarian action.

Resettlements and relocations, as well as rescue operations carried out in international waters, lead to two further conclusions regarding humanitarian processes of differential and subaltern inclusion based on the victimization of migrants. First, such processes are not limited to the territory of the destination country but can also occur on the high seas, as well as in the territories of third countries, under conditions of delocalization. Second, they are not just the legally inevitable side effect of border policing practices, insofar as they do not only result from the legal obligation to respect human rights (e.g. the prohibition of push-backs to Libya and the duty to rescue people in distress). On the contrary, humanitarian inclusion can be wider than what legal obligations would require, insofar as it can result from actions—such as proactive patrolling next to Libyan waters and relocations from Libyan territory—going beyond the duty to respect

human rights. However, this does not result in an enhancement of human rights but rather in isolated paternalistic gestures, which are left to the discretion of administrative decisions.

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Endnotes

¹ The concept of management (Geiger and Pécoud 2010) entails the idea of technocratic decision-making resulting in politically neutral practices, with both decisions and practices being more likely to shirk scrutiny. The humanitarianization of the EU migration and border regime can contribute to enhancing a “managerial” and “depoliticized” view of the border.

² Indeed, the scope of the activities of many humanitarian organizations was expanded during the 20th century. Significantly, this happened simultaneously with the gradual establishment of an international human rights regime. The activities of such organizations often include both short-term emergency relief and long-term development projects with much wider aims, also including the protection and/or promotion of human rights. Arguably, humanitarianism at large could simply mean following the “golden rule”, which, incidentally, also includes the principle of hospitality.

³ After a five-year trial, the Italian court acquitted them, recognizing that they had acted for humanitarian reasons and not for profit.

⁴ In this case the humanitarian delocalization consisted of the internalization, rather than externalization, of borderwork.

⁵ Before, during and after *Mare Nostrum*, however, there have also been periods in which the Italian authorities have given up forcible fingerprinting, either because of the resistance opposed by migrants (Lendaro 2015) or in order to circumvent the Dublin regulation.

⁶ International waters are divided into SRRs identifying the country responsible for coordinating search and rescue operations. Since 2013, Italy has de facto taken over responsibilities for both the Maltese and the Libyan SRR.

⁷ This was not a resettlement proper (from an asylum country to another one) because the beneficiaries, who were considered as refugees by the UNHCR, were not granted protection (instead they were held in detention) by the authorities of the country from which they were resettled.

⁸ The Italian government did not publicize the resettlement, probably fearing domestic criticism from the opposition. Therefore, the interpretation of humanitarian action as a fig leaf for inhuman border policies would be flawed in this case.

⁹ At that time, the UNHCR office in Tripoli had just been closed by the Libyan regime. More recently, upon the initiative of a number of Christian organizations, the Italian government accepted to open two humanitarian corridors for people from different nationalities in particularly vulnerable conditions: one from Lebanon, for 1000 people (FCEI 2015), and one from Ethiopia, for 500 people (Ministero dell'Interno 2017).

¹⁰ *La scelta di Catia* (Burchielli 2014), a television documentary co-produced by Rai and *Corriere della Sera*, is a prime example of the popularization of humanitarian intervention through the public media (Musarò 2017).

¹¹ The change was proposed by the EU High Representative for Foreign Affairs and Security: “I will suggest to Member States that we change the name of our Operation: instead of calling it Eunavfor Med, I suggest we use the very same name: Sophia. To honor the lives

of the people we are saving, the lives of people we want to protect, and to pass the message to the world that fighting the smugglers and the criminal networks is a way of protecting human life” (Mogherini 2015).

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