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Compasses or chains? The SAR NGOs and ethical dilemmas in the EU mis-management of the migration crisis in the Mediterranean

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Abstract

The goal of this paper is to retrace a *fil rouge* of the ethical dilemmas related to the role of the search and rescue (SAR) operations in the Mediterranean, investigating the political responses of the main actors involved such as non-governmental organizations (NGOs) along with national and international actors as well. This paper wants also to provide a general understanding of the background of SAR operations, usually characterized by the presences of compasses and chains. Furthermore, the paper will analyse some of the provisions of the August 2017 Code of Conduct in order to understand whether and how far it has impacted the SAR NGOs activities. Finally, a special focus is given to the idea of the Mediterranean Sea as a *quasi-humanitarian* space in which the humanitarian logics at the base of the activities usually produce securitarian effects.

Keywords: SAR, non-governmental organizations, humanitarianism, EU

1. Introduction

‘Lampedusa boat tragedy is “slaughter of innocents” says Italian President’. This is how The Guardian¹ has titled the 3rd October 2013 edition, when the entire world eyes were staring at a 20.2 km² small island, 205 km far from the Sicilian shores, at the centre of the Mediterranean Sea: Lampedusa. Why, then, such a small portion of territory has risen the focus of the international interest? When one simplistic reply could suggest that Lampedusa was just *the* centre of the “migratory storm” of the last decade, a further reading sees Lampedusa as something more than a simple *Porto salvo* for migrants. Lampedusa was -and still is- a crossroad where hopes, failures, lives, deaths and facts, especially political ones, meet. Since 2013 figures are dramatically increased, transforming the idea on the Mediterranean, typically described as the ‘cradle of civilization’, into a place of tragedy (Woff and Hadj-Abdou, 2017). In 2015 only, over one million people crossed the Mediterranean Sea to reach European shores scoring a tragic death toll of 3771 officially recorded casualties. Despite in the first half of 2016 arrivals by sea decreased to 222,291, it has been defined ‘the deadliest year ever in the recent history of migration movements to Europe’ (Cusumano, 2017:1) with a total of 5098 casualties officially declared in the Central Mediterranean route². Numbers are then the testament of the fact that we are not facing a temporary crisis (Barbulescu, 2017), but a humanitarian and permanent one in which we still move through short-term solutions while people continue to die. As a matter of fact, it would be wrong as well as naïve to conceive the migration phenomenon as an emergency to solve in the short-run. It is, actually, a historical fact that has always accompanied human societies in their developments and that enters the emergency dimension in its management, or better yet in its mis-management.

¹ The title refers to the then Italian President Giorgio Napolitano

<https://www.theguardian.com/world/2013/oct/03/lampedusa-boat-tragedy-italy-migrants>

² International Organization for Migrations, Missing Migrants Project, 2016 <http://missingmigrants.iom.int/>

This paper aims at retracing a *fil rouge* of the ethical dilemmas that grip the search and rescue (SAR) operations and SAR actors such as non-governmental organizations (NGOs) and the Italian Maritime Rescue Coordination Centre (MRCC), along with international actors that move between compasses and chains of a bleary political and legal framework.

In the first section, the paper offers a short examination of SAR operations and the main NGOs involved providing also a focus on the August 2017 Code of Conduct and its consequences on the so-called INI scheme, i.e. the operational label used to refer to the principles of Impartiality, Neutrality and Independence at the base of each humanitarian activity. The second section provides a comparative analysis of the different political responses of the SAR NGOs involved, in order to understand whether and how far they contributed, in a depoliticized space, to repoliticize the EU maritime borders control (Cuttitta, 2017). Finally, the third section aims at defining the Mediterranean as a space in which political and ethical dilemmas strive in a *continuum* made of uncertainties and humanitarian narratives with securitarian effects.

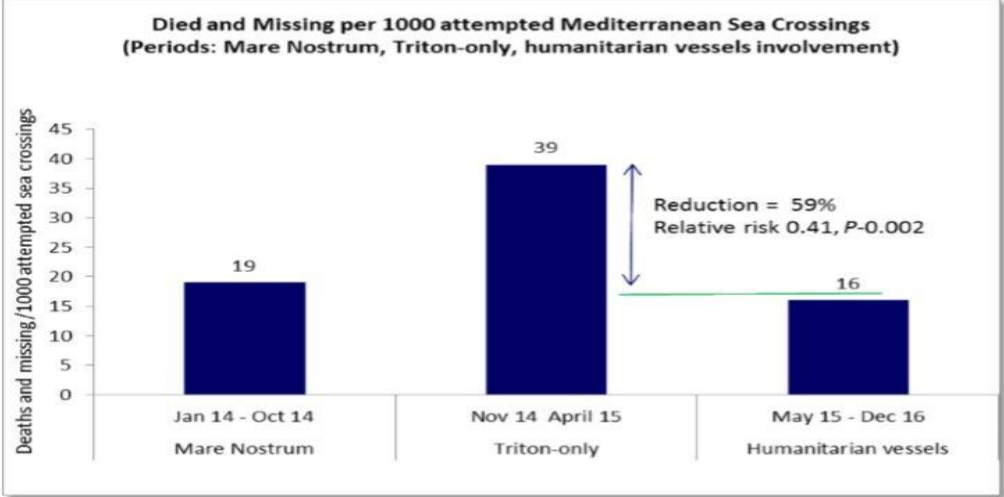
2. SAR operations and the code of conduct within the INI scheme

Even if 2014 is the catalyst year for non-governmental SAR operations in the Mediterranean, they are far from being a novelty. The Italian government yet in 2004 launched the operation *Constant Vigilance* to face the dramatic loss of lives at sea (Cusumano, 2017). A continued practice reinforced after the shocking shipwreck occurred half a mile from Lampedusa in October 2013 costing life to 368 people. It was the breaking point that led to the inauguration of a proactive SAR operation launched by the Italian government: *Mare Nostrum*. With the declared aim both to save human lives and to fight against smuggling activities, *Mare Nostrum*, lasted from 18 October 2013 to 31 December 2014, being praised as the symbol of humanitarian border management (Cuttitta, 2017). However, it also left unresolved questions and

criticisms worth to be mentioned. For instance, the operational practices of *Mare Nostrum* were far from being as innovative as described since they had already been implemented in past. Furthermore, it also represented a security program within a cooperation frame on maritime border control between Italy and North Africa countries (Bialasiewicz, 2012) that had begun yet in the 1990s. Thus, it comes from Cuttitta the idea that the humanitarian rhetoric behind the praiseworthy aim of *Mare Nostrum* was, in reality, an instrumental mechanism to yield tolerable a set of restrictive border control practices to a shocked public opinion (Cuttitta, 2017). If it is true that thanks to *Mare Nostrum* a lot of *good practices* developed and have been shared among all the actors involved, its deployment left sentiments of bitterness and frustration as well, due to the lack of an EU burden sharing, and to the accusations of being a smuggling catalyst and a pull factor for migrants to cross the Mediterranean (Panebianco, 2016). Was then a ‘*Nightmare Nostrum*’? (Patalano, 2015). Not entirely. Certainly, it had the merit of having promoted common good practices and having recognized NGOs as an important multiplier of SAR capabilities (Cusumano, 2016), but unfortunately very little of the *Mare Nostrum* heritage remained in its successor *Triton*. A completely different strategy was displayed: the Frontex Operation *Triton* was far from being a humanitarian backed operation, acting, indeed, as a border-patrol mission within 30 miles from the Italian coast and letting, therefore, the emergence exacerbate.

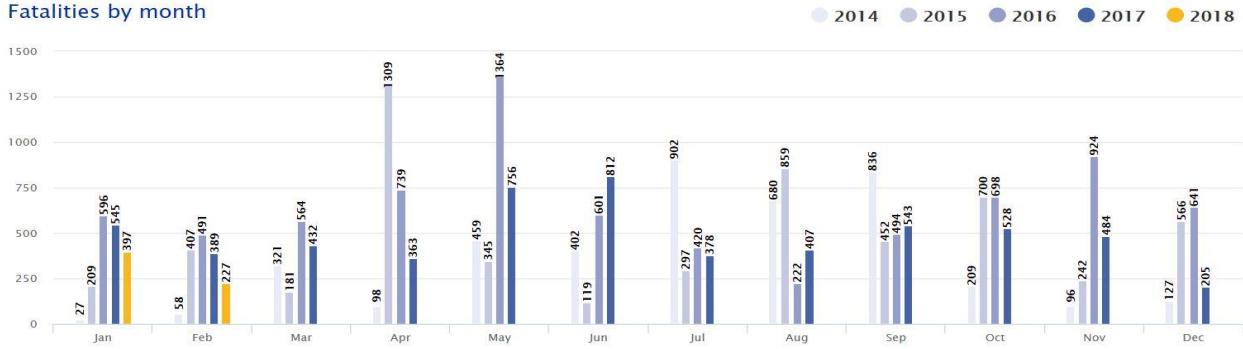
It is clear from Figure 1 that in the temporal *continuum* from January 2014 to December 2016, the peak of casualties and missing people in a ratio of 1000 attempts in the Mediterranean, happened right during *Triton* activities. Despite accusations of pulling smugglers’ activities, the NGOs humanitarian vessels involvement definitely decreased the risk of death to 0.41 and the demises as well met a reduction of 59% in only six months. Figure 2 provides, indeed, a general shot of the fatalities’ trend by month from January 2014 to February 2018.

Figure 1.



Source: searchandrescuemsf.org

Figure 2.



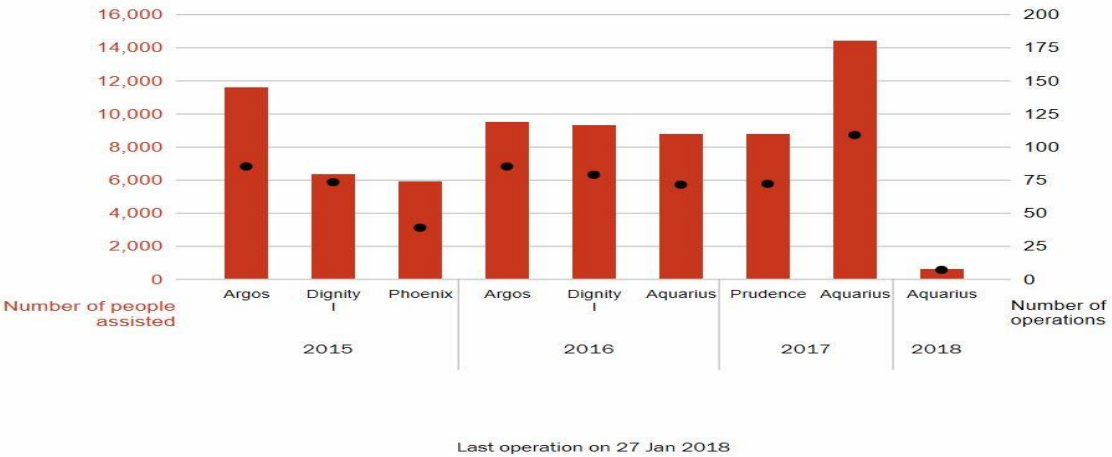
Source: <http://missingmigrants.iom.int> [Last accessed on 16/02/18]

As described before, 2014 is the year of interest in the proliferation of non-governmental SAR operations thanks to the launch of the Migrant Offshore Aid Station (MOAS), i.e. the harbinger of an increasing mirrored operational scheme aimed at lessening the casualties in the Mediterranean. Everything started with the initiative of the spouses Catrambone converting a Canadian fishing boat, the *Phoenix*, into a SAR

vessel for a total cost of 4 million EUR³. The *Phoenix* with a crew of 11 personnel cooperated in partnership with doctors and paramedics from Médicines Sans Frontières (MSF) Amsterdam, and thanks to the financial support received from crowdfunding activities it saved more than 12,000 human lives during the year, collecting the praise from the Italian authorities but also an international media coverage that drove towards an ‘emulation process’ (Cusumano, 2017: 92). The idea of emulation there entailed the tendency to develop similar structures and procedures from past experiences (Di Maggio and Powell Walter, 1983), seeking at mirroring those mechanisms seen as suitable solutions to current problems (Beckert, 2010).

The public opinion was not, hence, the only sensitive *apparatus* touched by MOAS’ activities, but several other NGOs had been inspired as well, deciding to launch new SAR operations with different SAR vessels.

Figure 3.



Source: searandrescuemsf.org [Last accessed on 27/01/18].

³ Tremlett, T. (2015): *The millionaire who rescues migrants at sea*, The Guardian (8 July 2015) <http://www.theguardian.com/news/2015/jul/08/millionaire-who-rescues-migrants-at-sea>

As shown in Figure 3 from 2015 to 2018 different vessels and NGOs were involved in SARs, assisting an average rate of 8,000 people in distress *per* year. However, what it is imperative to recall is the fact that MOAS just opened the gates for NGOs such as MSF, Sea-Watch, Sea-Eye, Pro-Activia and SOS Méditerranée to operate in the Mediterranean, but its model has not been strictly followed. The comparison of the different NGOs involved, points up, *de facto*, the various operational schemes adopted by them, albeit the shared aim of mitigating the loss of lives at sea and also to hurl a strong signal of criticism against the vacancy of a large-scale state-backed response. As mentioned before, two non-governmental SARs' templates can be set up: the MOAS' design sustained by the Brussels and Barcelona branches of MSF and SOS-Med, consisting on a complete SAR operation able of piloting not only the immediate first-aid, but also the disembarking procedures established in accordance with the MRCC's guidance, the *conditio sine qua non* without which the risk of prosecution comes into force. Within this template, one main difference can be epitomized by MSF and SOS-Med's refusal of the usage of drones and the presence of former military personnel on board, considered as definitely inappropriate for an NGO (Cusumano, 2016). At the same time, smaller NGOs such as Sea-Watch, See-Eye and Pro-Activia have decided to follow a different path of SAR. These NGOs forbore to commute rescued migrants to disembarking safety places at least on two grounds. Firstly, because the activities of such organizations rely on providing first-aid life vests, water and urgent medical treatments. Secondly, due to the low breadth of the vessels, these NGOs prefer to patrol the situation offshore controlling and assisting migrants and waiting for bigger boats to come in help. As a matter of fact, they strongly believe that the duty to shuttle migrants to places of safety must be assured by governments harshly shamed, indeed, for their failures in acting. Thus,

according to them, to intervene in transferring migrants would have represented a further abdication of the states' responsibilities, legitimating their silence.

With the increase of non-governmental SAR operations, suspicious and criticisms came to the light. The idea of being a pull factor facilitating smuggling activities came again to force in summer 2017 when the 'Mediterranean angels' seemed to have 'lost their wings' (Berretta et al. 2017). Only two months before, during the European Council meeting in Tallin, the Italian Government had received the praise and the endorsement of the EU institutions on a code of conduct wording, aimed at disciplining non-governmental SARs. The Code, submitted by the Italian Interior Ministry to the NGOs operating in the Mediterranean, consists of 13 provisions which have risen since their implementation not few criticisms, due to a redundant and pleonastic form⁴.

The analysis of some of the clauses can help us in better understanding. For instance, the second provision asserts that NGOs should not interfere with satellite tracking devices, a practice that in the past was used to be applied by merchant ships in order to avoid the involvement in SAR operations (Aarstand, 2015). Something that in this context appears to be paradoxical. NGOs activities' rationale is the migrant rescuing, and to expect them to switch off their geo-localization, pursuing not only an offense under maritime law but also a counterproductive activity is, then, ironic. Furthermore, provision 11 fully enters the sphere of redundancy by imposing NGOs to declare their sources of financing both to the flag state and to the Italian Government. This specific point rises a double-questioning, firstly related to the fact that all the NGOs involved in migrant rescuing are registered charities whose budgets are publicly

⁴ http://www.interno.gov.it/sites/default/files/allegati/codice_condotta_ong.pdf

available⁵; secondly because the request, as worded, enhances the suspicious on the lack of transparency of the financial donation's management, increasing a further de-legitimation on their activities. Nonetheless, the Code contains distinct provisions ostensibly violating the principles of independence, neutrality and impartiality at the base of the humanitarian action and representing a real risk for non-governmental SAR operations. The reference is here to the clauses related to the loyal cooperation between the organizations and the public security authorities, providing them with sensitive information in advance like the presence of suspected smugglers. Whether this type of cooperation could blatantly enhance the fight against smuggling, on the other hand, it could hinder certain people's possibility for asylum, creating tight connections between the parts at stake and violate, therefore, the principles of impartiality and independence. Moreover, the principle of neutrality has been put under constraints as well with the request of receiving on board police and judicial authorities. To have armed personnel on board not only enhance the risk of conflicts offshore with the Libyan authorities that could conceive it as a threat to their national sovereignty, but also infringe the "no arm" policy sustained by NGOs such as MSF that, consequently, did not sign the Code (Cusumano, 2017). The consequences of the refusal to sign are still unclear. Although the Code is not a binding act, it involves crucial practical consequences: NGOs depend on Italian authorities for disembarkation activities and, moreover, they are subject to the Italian jurisdiction in national waters and territories, then, to receive support from Italian law enforcement is imperative for SAR NGOs to continue their activities without the risk of prosecution.

⁵ <http://www.medicisenzafrontiere.it/chi-siamo/bilancio>; <https://www.moas.eu/wp-content/uploads/2015/12/MOAS-Administration-Report-2014.pdf>.

In the light of these aspects, it is unquestionable that the Mediterranean has been -and still is- the stage where humanitarian activities perform, albeit the aim to preserve human life and dignity has been challenged. The INI scheme, an operational label used to refer to the principles of impartiality, neutrality and independence at the base of each humanitarian action has been pulled and managed by political objectives. Then, it became problematic for non-governmental actors to remain aloof from political agendas and maintain the INI attitude as genuine as possible. However, SAR operations are not only a matter of moral calling but also a duty regulated by art. 98 of the UN Convention on the Law of the Sea. Moreover, imposing legal obligations and restrictions to activities -such as SAR operations- aimed at rendering assistance to those in distress at sea, not only seems to be an unfair political game but also a contradictory judiciary ploy.

3. NGOs: a political actor in a depoliticized space?

A central view of this paper is to understand whether and how far non-governmental actors such as SAR NGOs have played a pivotal political role in shaping the frames and the judgments on the humanitarian emergency taking place at the centre of the Mediterranean. Is then possible to conceive SAR NGOs activities as an attempt to re-politicize the migration and border management at the EU-level? And furthermore, how did they react against those policies focused on harshening migration and border control? Complex questions deserving clear answers.

First of all, the idea of de-politicisation frequently links with the marketization (Bordieu, 2002) of the policy-making system and the increase of technocrats models of governance (Wood and Flinders, 2014). But it also refers to the habit

of depicting policies as neutral and necessary, in which the political alternatives are seen as something difficult to be implemented (Cuttitta, 2017). Then, if depoliticizing means to transform politics into a ‘dull, technical discussion about means for promoting goals questioned by none’ (Himmelstrand, 1962: 83); to re-politicize means, indeed, to bring back the plural and conflictual character of the politics, which is nothing but its essence (Schmitt, 1932). It is in this context that takes place the European tendency to locate the issue of migration within a technocrat frame, making it appear as inevitable and hardly questionable (Cuttitta, 2017). Re-politicize migration and border policies would have meant, then, to promote the ‘existence of antagonism, conflict, difference and choice’ (Wood and Flinders, 2014:162) against the top-down compliance with a depoliticized framework, in which the concept of humanitarianization plays the role of a double-key factor, referring both to the ‘deployment of moral sentiments in contemporary politics’ (Fassin, 2012: 1), but also to the ‘tremendous growth of humanitarian governance’ (Barnett, 2013: 379), defined as the internationalized attempt to save human lives and reduce the suffering of world populations (ibidem). However, scholars such as Aradau (2004) consider humanitarianization to be apparent in the field of migration and border management, by the virtue of its justificatory tendency to the implementation of restrictive and externalizing policies. Others, such as Fassin (2007) consider the fact that in the increasing relevance of humanitarian border works, NGOs played a political role engaging relationships, alliances and systems of negotiations with states and international actors. It comes not surprising, hence, that NGOs turned out to be a crucial actor of political relations (Manji and O’ Coill, 2002), but their being ‘agents of change’ (Tanguy and Terry, 1999: 33) comes problematic with the principles expressed by the INI template.

The fact’s chronology related to SAR operations, clearly expresses that a re-politicizing program of migration and border policies has been carried out by

the NGOs involved, whose consequence was, indeed, a re-appropriation, symbolically and practically, by states and supranational institutions of rescuing actions. It was the humanitarian governmentalization of international waters by states that allowed SAR NGOs to be operative (Cuttitta, 2017). However, NGOs took different political positioning towards migration and border policies. MOAS, for instance, was inclined to a more diplomatic and neutral profile, avoiding open political disputes. The idea was to ‘Save life first. Sort out the politics later’.⁶ On the contrary, MSF stressed the fact that humanitarian-activity discourses could not have been kept outward the criticisms on the causes that made *those* specific activities indispensable at sea (Cuttitta, 2017). In other words, the real presence of humanitarian activities by NGOs was addressed at rising criticisms against those policies of securitization which had made the development of humanitarian responses indispensable. MSF primary aim was hence to exploit SAR visibility both to disseminate a human image of migration, but also to develop a radical re-thinking of migration policies⁷. Sea-Watch albeit sharing with MSF the idea of legal venues for refugees and migrants in general, established a further tougher attitude, acting as the watchdog of international waters. NGOs such as MSF and Sea-Watch posed themselves as the “talking cricket” of the Mediterranean, putting pressures on the responsibility vacancy of the states. Some practices, such as the refusal of shuttering migrants to the nearest place of safety are, in this perspective, clear political acts.

⁶ C. Catrambone, *Phoenix Rising*, available at <http://www.christophercatrambone.com/diary-of-moas/>, [last accessed on 30 June 2017].

⁷ MSF, *Migration: MSF's Response to European Council Meeting*, available at <http://www.msf.org/article/migration-msfs-response-european-council-meeting>, [last accessed 30 June 2017].

SAR NGOs equally operate within a *continuum* of depoliticization and repoliticization. In the first instance, by cooperating with Frontex and Eunavfor Med operations they not only decrease governmental actors responsibilities but also provide support to the border control regime they contest, becoming an active part of that hybrid border management system that limits the freedom of asylum seekers because of the Dublin regulation (Cuttitta, 2017). However, it is also true that thanks to their political positioning, SAR NGOs animate the political arena, sometimes through open and harsh criticisms, in order to make vivid, even in the public opinion dimension, the dialogue on migration and border-check. Public demonstrations such as putting a dinghy used by migrants just in front of the German Parliament House as a response to the launch of phase 2 of EUNAVFORMED, ostensibly exhibit the wave of criticisms raised by some SAR NGOs like Sea-Watch.

4. The Mediterranean Sea: a humanitarian space in struggle

Taking into consideration the factors analysed above, it would not be surprising to define the Mediterranean Sea as a humanitarian space in struggle, in which different actors, interests, and resources come into the same game ground, sometimes colliding and others following the same directions of a single purpose: provide humanitarian assistance. However, in order to understand how the commitment to humanitarianism let ethical dilemmas flourish in the Mediterranean, it is useful, foremost, to define the concept of humanitarian space itself.

The notion of humanitarian space refers to those scenarios of crisis, both spatial and symbolic ones, in which humanitarian agencies seek to provide assistance and aid, operating in compliance with the humanitarian principles of neutrality,

i.e. the tendency not to enter political controversies, impartiality -in providing assistance heedless of race, nationality and any other kind of discrimination- and independence, the liability to operate separately from political actors (Cusumano, 2017). On the other hand, with the proliferation of peacekeeping and peacebuilding interventions in sensitive areas, it has become harder for humanitarian agencies not to enter the political and military spheres at least on lands. With regard to that, the sea seemed to be the fittest place for NGOs to operate in complete accordance with the humanitarian principles, but unfortunately, different variables intervened in shaping the Mediterranean as a *quasi-humanitarian* space. Defining the Mediterranean as a *quasi-humanitarian* space implies not only the awareness that the principles expressed by the INI scheme are often counteracted by the legal constraints of the reality, but also to be mindful of the fact that the Mediterranean is far from being the *locus amoenus* of humanitarianism.

As a matter of fact, as stressed by Cuttitta, humanitarianism determines both the strengthening of disincentive policies for migrants to cross the sea, excluding them from the rights and protection they deserve; but it also prompts SAR operations intensifying relocation mechanisms that allow migrants to reach Europe (Cuttitta, 2017). The relationship between humanitarianism and human rights is, then, controversial and not straightforward as it could be thought (Perkowski, 2014). Then it equally produces exclusionary effects -often supported by process of externalization - and inclusionary side effects of the border management that unfortunately are likely to appear most of times as paternalistic concessions. What is worthy to be mentioned, moreover, is the gradual EU tendency to externalize -and to *extra-territorialize*- the migration crisis management (Zaiotti, 2016). As Cremona and Rijpma (2007) argue, the trend to externalize borders control seeks to prevent non-EU people from leaving

their countries as well as attempts at keeping them outside EU Member States territory. This has led towards networks of cooperation -and agreements as well- with third countries and countries of origin. The 2017 Italy-Libya agreement is a clear example of that. In the wake of criticisms related to the 2003 Italian agreement with Gadhafi's Libya, due to the well-backed fears of violations of migrant's human rights, the late *memorandum* signed with Al-Sarraj kindles not few doubts about the respect of human rights and human beings as well inside the centres of detention and in the whole Libyan territory.

For all these reasons, the discourse on humanitarianism, at least in the Mediterranean, rises several dilemmas. Especially, ethical ones. It could be possible then to examine what kind of humanitarianism is at stake in the Mediterranean, especially in the regard of those invoked human rights that are still subscribed into a grid made of conditions and restrictions as well. This form of humanitarianism seems to be the one that makes nothing but reinforcing the skewness between those actors involved in providing assistance -such as NGOs- and beneficiaries -migrants- which are indeed countered in enjoying their rights, by being forced to remain in North Africa countries under inhumane conditions. For instance, the Libyan detention centres have been at the core of a denunciation report by the CCN at the end of 2017⁸. The investigation spotlighted the extremely inhumane conditions and slavery treatments under which migrants were forced to be submitted, denouncing what was going on in Libya. Something that cannot remain unobserved by a Europe which, on the contrary, must be aware and responsible for the consequences of its delocalizing and externalizing attitude on migration and border management policies. As a matter of fact, Federica Mogherini, the High

⁸ <https://edition.cnn.com/2017/12/23/world/migrant-rescue-brutality-libya/index.html>

Representative of the Union, during the 2017 edition of Med- Mediterranean dialogues stated that the EU is still the biggest donor of humanitarian aids in the world: ‘the main challenge is the prevention of conflict and the exposure of the population to poverty, deprivation of rights, lack of access to resources and radicalization’ (MED, 2017). However, unlike the hopes derived from the worldwide dialogues, the reality we are facing now shows us an extreme image of impoverishment and suffering.

Conclusions

The fact that migration in the Mediterranean is a structural condition is undeniable. Neither a new phenomenon nor a temporary one. It changed over time modifying its routes, formulas, and points of access, re-shaping its features according to the structural characteristics of the European system, and its frame changed as well. The idea of EU’s ‘international migration relations’ (Lavenex, 2004) refers to the understanding of migration as a multidimensional process embedding both a domestic and a foreign policy issue. As a matter of fact, migration has always been conceived as an experience led by economic and political asymmetries (Geddes and Hadj-Abdou, 2017), but today it strictly relies on the idea of a humanitarian crisis that saw the Mediterranean Sea to be the stage of a “theatre of horrors”.

This paper started with the idea of retracing a *fil rouge* of the ethical dilemmas that occurred in the Mediterranean. The analysis of the main search and rescue operations from the humanitarian *Mare Nostrum* operation to the securitarian *Triton* has made evident the narratives and the underlying logic that accompanied them. *Triton*, substituted the 1st February 2018, by *Themis*, seems

to have left a lot of its security heritage on the new-born, despite the inclusion of humanitarian activities such as the SAR operations.

Moreover, a specific attention has been given to the analysis of the major NGOs involved in the Mediterranean, depicting them as clear political actors, even better as agents of change that through their political positioning and sometimes open contests tried to make lively and meaningful the attention over the migration and humanitarian crisis. This contributed both to depoliticize the issue by framing it within a set of restrictive, securitarian and externalizing policies, but also to re-politicize it creating above all valid alternatives to the *status quo*.

Finally, starting from the idea of the Mediterranean as a humanitarian space, it was concluded that it is more likely to appear as a *quasi-humanitarian* space, in which the respect of human rights often collides with delocalized policies that put at risk those human rights they praise to protect.

In conclusion, the migration phenomenon that has characterized the Mediterranean in the last decade, is a key issue of the Euro-Mediterranean relations. Thus, it is inconceivable to confront it by short-run attempts, making patches adhere to the deep wounds of entire populations; on the contrary, it would be necessary as well as honourable for a Europe which stayed too long in silence, to re-think over new long-standing solutions that put at the core of dialogues and practices the respect of human beings who in the Mediterranean, unfortunately, continue to die.

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