Shrinking of Humanitarian Space
Impact of Italian Political Discourse onto Non-Governmental Search and Rescue Operations

A thesis submitted in fulfilment of the requirements for the LL.M. degree in Law and Politics of International Security

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“We will sanction and seize the [migrant rescue] ships that show no respect for international conventions and disobey the orders of the maritime coast guard.”

- Italian Deputy Prime Minister and Minister of the Interior Matteo Salvini

“As public officials and as thought leaders, we need to use our power of public pronouncement to accurately articulate the positive contribution of migrants to our communities.”

- International Organisation of Migration Director General William Lacy Swing
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Abstract

This study addresses the impact of political discourse onto NGO Search and Rescue services within the context of migration. It analyses how Italian politics have used discursive strategies, i.e. securitisation and ‘informal’ criminalisation, in order to contribute to a shrinking of humanitarian space within the Mediterranean Sea. It will be argued that these two discursive strategies, in combination with inadequate protection for humanitarian aid workers of SAR missions within international, maritime and Italian law, have created a shrinking of humanitarian space. In addition, it will be seen that through formal criminalisation of humanitarian operations, the Italian politics are moving to a phase of normalisation of shrinking of humanitarianism, which will lead to further alienation, discrimination and marginalisation of migrants, including their defenders.

KEY WORDS: Search and Rescue operations, (irregular) migration, Non-Governmental Organisations, political discourse, Italy
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Amsterdam, 14 June 2019

Lieke Antonissen
**List of Abbreviations**

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<tr>
<th>Abbreviation</th>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>HRC</td>
<td>Human Rights Council</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic Social and Cultural Rights</td>
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<td>IOM</td>
<td>International Organisation for Migration</td>
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<td>LCG</td>
<td>Libyan Coast Guard</td>
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<td>MN</td>
<td>Mare Nostrum</td>
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<td>MRCC</td>
<td>Maritime Rescue Coordination Centre</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>SAR</td>
<td>Search and Rescue</td>
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<td>SRR</td>
<td>Search and Rescue Region</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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Introduction

Police Replacement of Humanitarian Initiatives in the Mediterranean Sea

Migrants seeking safety from persecution or better opportunities for their future have forever been crossing borders throughout the world. However, following the Arab Spring, it is perhaps in the Mediterranean Sea where this phenomenon has gained most visibility due to ever more dangerous trajectories and human rights abuses that occur en route.\(^1\) It seems that States and EU have become reluctant in carrying out operations for the safe passage and well being of the migrants.\(^2\) This sense of disinclination can be seen in, for example, the ending of the Search and Rescue (SAR) initiative called Mare Nostrum (MN), which had accomplished to save a total of 170,000 lives in only a time span of one year.\(^3\) Despite the fact that the European Union’s (EU) organisation Frontex said to take on the humanitarian duties of MN, in essence, its primary operational aim is the controlling of ‘its’ European borders. In the words of Rösler, the Frontex Director of the Operations Division, “the operational aim of Frontex joint maritime operations is the control of irregular migration flows and the tackling of cross border crime”\(^4\) and therefore, should Frontex’s assets only be dispatched after “indication of a state of emergency”,\(^5\) making SAR missions secondarily to the control of European borders.\(^6\) As such, the core of Frontex’s Operation called Triton has been a police operation with security concerns and hence never replaced the humanitarian operation led by MN.\(^7\)

Between December 2014 and early March 2015, a series of incidents occurred that were directly linked to the gap in SAR capability left by the ending of MN and the

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\(^1\) United Nations, General Assembly, Human Rights Council, Report of the Special Rapporteur on the Human


\(^4\) Frontex, Operations Division, Concerns about Engagement of Frontex Deployed Assets in Activities outside the Operational Area, by Klaus Rösler, November 25, 2014, 1

\(^5\) Frontex, Concerns, 4

\(^6\) See also: Regulation (EU) 656/2014

(non-)replacement by Triton. As the humanitarian emergency intensified in 2015, the budget of Triton tripled and the operational area expanded from the initial 30 to 138 miles off the Italian coast, nevertheless its focus remained on border control. In the same year, the EU launched operation EUNAVFOR Med Sophia and additionally, the Italian Navy launched operation Mare Sicuro but similarly, both of these missions aimed to disrupt smuggling networks and protecting commercial activities rather than providing SAR services. The numbers of 2017 have shown that 119,310 migrants and refugees reached Italy from Libya contrarily to 20,859 people in 2018. Despite the decrease in 2018, the journey has become more dangerous. Between January and July 2018, 1095 people died on the Central Mediterranean Route, mainly taking place from Libya to Italy, which amounts to one death for every eighteen arrivals.

Critiques of the EU-led operations have stated that the EU fails to prioritise “the saving of lives” and “predominantly focuses on the challenges posed to the EU, rather than on those faced by the human beings whose lives continue to be lost at sea.” Moreover, it has been admitted by the Commissioner for Human Rights that ending the MN Operation has created conditions that have led to massive life loss in the Mediterranean. Notwithstanding, the EU and Italy remain firm in their decision not to relaunch any large-scale SAR operation.

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9 Sergio Carrera, Jennifer Allsopp, and Lina Vosyliute, “Policing the Mobility Society: The Effects of EU Anti-Migrant Smuggling Policies on Humanitarianism,” International Journal Migration and Border Studies 4, no. 3 (2018): 247; Nikolaj Nielsen, “Frontex Mission to Extend Just Beyond Italian Waters,” EUObserver, October 7, 2014, https://euobserver.com/justice/125945; To clarify, MN initial budget and available assets were only able to patrol an area of thirty nautical miles from Lampedusa
13 Forensic Architecture Agency, Death
16 Forensic Architecture Agency, Death
Shrinking of NGOs’ Space Driven by Humanitarian Principles

After the halting of the MN, several SAR Non-Governmental Organisations (NGOs) attempted to fill the rescue gap left by the lack of large-scale operations. NGOs seem the ideal actor to do so given the fact that SAR work primarily operates as acts of solidarity driven by humanitarian principles. According to Cusumano, “the humanitarian principles embrace humanity – the effort to protect human life and dignity anywhere those are threatened – neutrality – hence the effort to refrain from taking part in hostilities and political controversies – impartiality – the tenet that aid should be delivered based on need alone, irrespective of the race, nationality and political status of those in need – and independence – the commitment to operate autonomously from political actors and refrain from supporting their economic and security agendas. However, the idea of humanitarianism being fully separated from politics seems debatable. In the words of Walters, the humanitarian border consists of a space of possible contestation and thus, is politics. Yet although humanitarian actions may always have political consequences, humanitarian agencies are never apolitical and humanitarian organisations have become political actors engaged in power relations, humanitarian assistance should not be driven by political priorities.

However, despite the fact that NGOs and additional civil society actors were the first and often sole actors to respond to non-existent governmental structures as in the scenes of humanitarian needs and gaps, they are now being forced out through a combination of various modes. While humanitarian activities have mostly been filling the gap where States have failed due to a systematic policy of indifference, civil actors have become the object of

17 Cusumano, and Pattison, “The Nongovernmental Provision,” 53
18 Maurice Stierl, “A Fleet of Mediterranean Border Humanitarians,” Antipode 50, no. 3 (February 2017): 719
20 Stierl, “A Fleet,” 719
22 Barnett, and Weiss, “Humanitarianism,” 4
25 Carrera et al., Policing Humanitarianism, 180
intense State harassment and criminalisation.\textsuperscript{26} National governments have paved the path towards criminalising humanitarian actions by defining new types of crimes, being “crimes of solidarity”.\textsuperscript{27} Through such approach, State authorities create a climate of hostility for migrants as well as individuals and organisations working to counter the securitisation of migration and to fight for migrants’ rights.\textsuperscript{28} This unprecedented focus to restrict or even prohibit the actions of NGOs by Member States and also by the EU itself, coupled with a lack of legal protection for humanitarian aid workers and access to rights of migrants has made the EU, for one of the first times, an arena in which the capacity of humanitarian aid has shrunk to an extent that the rights of a certain group have become discriminately infringed.\textsuperscript{29}

**Italian Hostility Towards SAR NGOs in the Mediterranean Sea**

As part of the broader context of EU reluctance against SAR operations, Italian politics has used discursive strategies in order to advance power on the supposably independent solidarity work of SAR NGOs, which eventually contributes to a shrinking of the humanitarian space. Although international migration is per definition a transnational phenomenon, migration and migrant integration policies are mostly affiliated to national practices.\textsuperscript{30} Analysing international migration at national practice is insightful as it is part of a larger phenomenon taking place at both EU level and domestically within other Member States.\textsuperscript{31} For that reason, the primary focus point of current thesis is on Italian discursive acts towards SAR services provided during the Libya-Italy transit rout. In researching this, European discourse or policy documents will only be invoked in case of relevance.

The several reasons to pick this focus point, meaning (i) Italian discursive acts, (ii) SAR services and (iii) the Libya-Transit route, are explained below. First of all, Italy can be regarded as the epicentre of the debate since it is the main point of disembarkation for


\textsuperscript{27} The Institute of Race Relations, Liz Fekete, “Introduction,” in *Humanitarianism: The Unacceptable Face of Solidarity*, ed. Liz Fekete, Frances Webber, and Anya Edmond-Pettitt, 2017, 1

\textsuperscript{28} Jalusic, “Criminalising,” 110

\textsuperscript{29} Carrera et al., *Policing Humanitarianism*, 179


\textsuperscript{31} Allsopp, “Solidarity, Smuggling,” 24
migrants rescued in the Mediterranean.\textsuperscript{32} In the beginning of July, non-governmental migrant rescue was still a lawful, feasible and financially viable activity for NGOs to perform.\textsuperscript{33} Only in late 2017 did Italian authorities turn increasingly critical within its measures towards non-governmental SAR operations, including through the imposing of a Code of Conduct in 2017,\textsuperscript{34} which requires SAR NGOs to collaborate in the fight against human smugglers and accept the presence of law enforcement personnel on board,\textsuperscript{35} accusations of collaboration with smugglers,\textsuperscript{36} the impounding of rescue ship, the prohibition by the new Italian Minister of Interior to allow rescue ships from docking in the Italian ports\textsuperscript{37} and the overall ordering of rescue ships to not obstruct the Libyan Coast Guard (LCG).\textsuperscript{38} It seems evident that these criminalising measures breach NGO’s ability to conduct humanitarian relief at sea free of any political inference.\textsuperscript{39} As a result, the acts executed by the Italian government have contributed to the before-mentioned incredibly high death rate of migrants and refugees at sea and impacted the live-saving work of defenders of the human rights of migrants.\textsuperscript{40} Due to the increase of restrictive measures aimed at the work of SAR NGOs, the question remains whether any constraints can also be derived from political discourse.

Secondly, emphasis will be on SAR services as they provide a vital part of addressing the human rights challenges faced by migrants trying to reach EU by precarious route.\textsuperscript{41} As of the beginning of July 2017, nine organisations operated actively within the SAR humanitarian

\textsuperscript{34} Republic of Italy, \textit{Code of Conduct for NGOs Undertaking Activities in Migrants’ Rescue Operations at Sea
\textsuperscript{36} Carrera et al., \textit{Policing Humanitarianism}, 108; Cusumano, “Straightjacketing,” 107; In fact, one of the NGOs conducting SAR is currently under investigation, as some of the volunteers involved had an unclear past and were therefore suspected of being smugglers and abetting illegal immigration
\textsuperscript{39} Carrera et al., \textit{Policing Humanitarianism}, 108; Cusumano, “Straightjacketing,” 107
\textsuperscript{40} United Nations, \textit{Desperate Journeys}, 17
scene. According to data provided by the Italian Maritime Rescue Coordination Centre (MRCC), these organisations were able to rescue 41% of all persons rescued at sea, which is a total of 46,600 people, being the largest contribution to SAR in the Central Mediterranean. Also, the Human Rights Council (HRC) has stated that the EU could play a global leadership role on the issue of migration once it develops more coherent and holistic human rights based approaches, which starts, in the short term with, the stepping up of SAR operations.

Thirdly, the Italy-Libya route, which is part of the Central Mediterranean Route, will be used. The Central Mediterranean Route, from Sub-Saharan Africa to Italy is regarded to be one of the most active and dangerous routes, which currently accounts for the largest number of people crossing to Europe by sea. Within this route, Libya remains the main point of departure for the majority of migrants from Africa arriving in Italy. Besides, with regard to the transit route between Libya and Italy, the EU and its Member States have prioritised the operational capacity of the LCG, while restricting the lifesaving search and rescue activities of humanitarian NGOs through several measures.

Italian Political Discourse onto the Shrinking of NGO SAR Operations

It should be pointed out that this research does not particular focus on the criminalising measures themselves and the consequences thereof on the shrinking of humanitarian space. It can be derived from scholarly work that this matter has been researched thoroughly in recent times. Therefore, the focus lies on the discourse enhanced by Italian (right-wing parties within) politics, and how this political discourse has contributed to and/ or effectively realised a shrinking of the humanitarian space.

In the words of Huysmans, speech acts have the potential to lead to abnormal scenes in which political actors can move beyond politics. Security and governmental actors have

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42 Carrera, Allsopp, and Vosyliute, “Policing the Mobility Society,” 248; Carrera et al., Policing Humanitarianism, 179
43 United Nations, Desperate Journeys, 13; To compare, the Italian Coast Guard, the Italian Navy and other Italian authorities rescued 26% collectively, vessels deployed to Frontex’s Operation Triton (including Italian vessels) only 13%, commercial vessels 10% and EUNAVFOR MED vessels 9%
46 United Nations, Central Mediterranean Route, 3
47 Cusumano, “Emptying the Sea,” 94-5
increasingly appropriated discursive techniques that contribute to a strengthening of the Mediterranean migration regime.\textsuperscript{50} Due to the rise in nationalist populist parties and the tragic terrorist attacks that happened around the world, xenophobia and hate speech have increased, which could be used by political actors to cause an upward trend in negative perceptions of migrants.\textsuperscript{51} Immigration has been one of the major issues in extreme right-wing discourse, in which national preference is overtly supported, implying the exclusion of foreign ‘Others’ on all social, economic and political tiers.\textsuperscript{52} For the populist radical right, the effects of international migration not only mean a loss of traditional group ties, values and culture but also increasingly as a security threat.\textsuperscript{53} Although the attitudes of political parties towards migration vary, the differences get diluted as a consequence of the bargaining involved in the process of forming coalitions.\textsuperscript{54}

With respect to Italy, this is indeed the case. Italian political elites have played a crucial role in the spreading and legitimating of overt as well as covert forms of xenophobia and racist discourse over time.\textsuperscript{55} Right-wing politicians – in particular Northern League or Lega Nord - made immigration a political issue during the 1990s, by blaming immigration for the social and economic problems on the rise,\textsuperscript{56} or linking immigration to criminality and social unrest.\textsuperscript{57} Despite the fact that left- and right-wing parties discuss immigration differently, when in government, parties adopt similar policy positions.\textsuperscript{58} For instance, the largest regularisation adopted in Italy took place in 2002 under a centre-right government led

\textsuperscript{50} Nina Perkowski, “Deaths, Interventions, Humanitarianism and Human Rights in the Mediterranean Migration Crisis,” Mediterranean Politics 21, no. 2 (February 2016): 332
\textsuperscript{57} Colombo, “Discourse,” 165-66
\textsuperscript{58} Cetin, “The Italian Left,”; Zincone, “The Making of,”
by Berlusconi, whereas the first bilateral cooperation agreements with Egypt and Libya were set up by a centre-left coalition, while those countries engage in poor human rights records. Hence, although the tones between right- and left-wing parties differ when addressing immigration, the two sides come closer to each other within their policy outputs. Compromises are very common in the polarised party system that has dominated Italian politics for decades. It seems that overall public discourse on immigration in Italy focused on the differences, threat and deviance represented by migrants, hereby only framing migration as a problem. For that reason, this study multiple times refers to ‘Italian politics’ instead of solely focusing on the extreme and/or populist right narratives.

Clarification of Key Terms

In order to clarify the terms used within the research, it is necessary to delineate the most frequently used words that could be ambiguous, i.e. migrants, humanitarian space, toxic narratives and lastly, Search and Rescue operations, including distress.

First of all, since the 1990s, changes in the global economy and political conflicts coupled with political and economic priorities of destination European States have led to increasing emphasis on the use of legal categories of migrants for political purposes. Here, however, the general term of migrants will be used as there cannot be a formal assessment during the transitional journey whether the people concerning are actually refugees, irregular migrants or asylum seekers but they all belong to the overall group of migrants. The definition mentioned on the website of International Organisation for Migration (IOM) will be guiding, which describes migrants as persons “who are moving or have moved across an international border or within a State away from his/ her habitual place of residence,

59 Claudia Finotelli, and Joaquin Arango, “Regularisation of Unauthorised Immigrants in Italy and Spain: Determinants and Effects,” Documents d’Analisi Geografica 57, no. 3 (February 2011)
60 Cetin, “The Italian Left,” 392
61 United Nations, Press Coverage, 82
62 Colombo, “Discourse,” 168
regardless of (1) “the person’s legal status, (2) whether the movement is voluntary or involuntary, (3) what the causes for the movement are or (4) what the length of the stay is”.

Secondly, while there is no widely or commonly accepted definition of what ‘humanitarian space’ actual entails, there is a broadly shared understanding that this space safeguards the principles of impartiality, neutrality, independency and humanity which were already mentioned before. Within this study, a shrinking of the humanitarian space would therefore entail any encroachment on, impeding or compromising of (any of) these principles, which consequently restrict civil society actors to conduct their humanitarian work.

Thirdly, the term ‘toxic narratives’ is derived out of Heller and Pezzani’s Blaming the Rescuers Report and indicates the political discourse that blame SAR NGOs to be a “pull factor”, “unintentionally helping criminals” or “actors that help make the crossing more dangerous for migrants”.

As for the term Search and Rescue operations, the 1979 SAR Convention states that a SAR service is “the performance of distress monitoring, communication, co-ordination and Search and Rescue functions, including provision of medical advice, initial medical assistance, or medical evaluation, through the use of public and private resources including co-operating aircraft, vessels and other craft and installations.” Since this article refers to the concept of ‘distress’, this will also be highlighted. In accordance with article 1.3.13 of the same Convention, the distress phase is “a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance”.

Structure of the Thesis
Throughout the research, the question that will eventually be answered is:

“How has the Italian political discourse contributed to and/or realised a shrinking of the humanitarian work of Search and Rescue Non-Governmental Organisations?”

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66 Carrera et al., Policing Humanitarianism, 171
67 Forensic Architecture Agency, Blaming the Rescuers Report
68 International Convention on Maritime Search and Rescue, Chapter 1, 1.3.4
69 International Convention on Maritime Search and Rescue
In this thesis, it will be argued that the Italian politics is currently undertaking a three-step approach that effectuates a humanitarian shrinking, i.e. securitisation, ‘informal’ criminalisation and formal criminalisation. The discursive tactics that are used throughout this research are divided in the chapters on securitisation and ‘informal’ criminalisation. It will be assessed whether the discourse on securitisation and ‘informal’ criminalisation have contributed to and/ or fully realised a shrinking of humanitarian aid.

In order to assess this, the research will be divided up in five chapters. The first chapter will set out the literature review, including the concept of securitisation as developed by the Copenhagen School and the correlation of humanitarianism and international law. Subsequently, the methodology of current thesis will be explained.

Followed by the second chapter that assesses the Italian discourse on migration through the lens of securitisation, and how this has had implications for Italian’s non-provision of SAR operations. As Italy lacks to provide State SAR operations, it is essential that this gap is filled in by NGO SAR operations.

For that reason, the third chapter on ‘informal’ criminalisation analyses the consequences of negative political discourse onto NGO SAR operations. The term ‘informal’ criminalisation is used in order to emphasise that the chapter only looks at rhetoric within political statements and language within policy and soft law documents, however not at any binding legal instruments. Within the scope of this chapter falls the above-explained toxic narratives and incorrect terminology. As these two discursive techniques make migrants and their helpers become associated with illegality, they are together here called ‘informal criminalisation’. Both toxic narratives towards NGOs and incorrect terminology towards the group of migrants could have potentially led to an incapability to provide SAR operations from the side of NGOs as well.

After that, it will be assessed whether the work of SAR NGOs is actually in accordance with the international legal framework. There is no blank obligation to provide humanitarian aid, however once this has been provided, it needs to comply with the international legal framework. If the acts of humanitarianism do not abide by the framework, then Italy could argue the discursive shrinking of humanitarian space to be justified. Here, different legal interpretations from both sides, being the Italian authorities and SAR NGOs, will be addressed in order to explain how a discursive shrinking of SAR NGOS can take place. It will be seen that the international legal framework does not provide sufficient
protection to humanitarian aid workers, which contributes to a shrinking of the humanitarian space in a way that it allows the discursive Italian strategies to happen.

Lastly, the fifth and final chapter will show that the discursive approaches are about to being legally realised. As it has been shown in the previous chapters that the Italian political discourse has contributed to a shrinking of humanitarianism, it will be argued here that the Italian government is about to accomplish a formal criminalisation of humanitarian operations. By including the criminalisation of SAR NGOs within hard law instruments, the Italian government is taking this shrinking to the final level of ‘normalisation’ within society. As a consequence, the shrinking of humanitarian aid by SAR NGOs has not only been realised but is becoming an increasingly acceptable rule or practice within the (domestic or international) community, leading to alienation, discrimination and marginalisation of a certain group of people, including their helpers.

Significance

As though political rhetoric on migration often does not reflect, it shapes the public perceptions of migration. Member States are largely driven by the strong influence of domestic public opinion, which is easily swayed against migration. This attitude often does not reveal the benefits of migration. Any attempt to develop an agenda for migration should outline an inspiring narrative of how well-governed mobility could positively contribute to the prosperity and stability of a society. It is without doubt that migrants make a major contribution to cultural, economic and social fabric of the EU. As has been stated by prominent institutions like the HRC, migration should not be formulated as a crime or a problem but having the potential to concise a solution. According to the HRC, the best approach for the EU would be to not govern migration as a matter of closing off borders but one of regulating mobility by opening accessible, regular and safe migration channels and in this way, promote and celebrate diversity. Migrants are drivers and enablers of development and could highly contribute to economic growth wherever they go. It is unfortunate that the economic role of foreign workers has generally been on the background, while issues such as

70 Jalusic, “Criminalising,” 108
border control and judicial treatment of migrants have been at the forefront of public discourse.  

Instead of security-related agendas, the EU should develop a human rights based framework in compliance with the rule of law. This would tackle the most pressing concerns and sustain the political will needed to stay the course of reform over a generation that allows the EU to acquire the economic and social benefits of mobility. Applying the EU’s core values to policies based on facts rather than fiction leads to migration strategies that facilitate mobility and celebrate diversity. The need for more efficient human rights-based policies makes it necessary to conduct academic research to the language employed by policy-makers as negative perceptions of migrants create a stumbling block in the development of human rights based approaches. It is essential that appropriate language and facts are used in order to present policies that favour diversity and inclusion of migrants in order to integrate migrants properly.

76 Colombo, “Discourse,” 165
Chapter 1: Literature Review

In order to conduct this research, some essential concepts will first be discussed with the use of existing materials, which are securitisation and the correlation of humanitarianism and international law. The theory of securitisation will be briefly explained since, within the second chapter, it will be argued that the first discursive strategy enhanced within Italian politics is the approach of perceiving migration as a security issue that consequently allows for extraordinary measures. Also, the fifth chapter of formal criminalisation will refer back to the process of securitisation. Secondly, the interconnection of humanitarianism and human rights will be addressed as the conclusive chapter will emphasise on the essence of human rights within humanitarian work.

Concept of Securitisation

Deepening-Widening Perspective of Security

In traditional times, security policies consist of military groups designed to repel any attacks by foreign states and police forces attempting to uphold the rule of law and deal with criminality; security was all about survival. However, this approach of security has been re-constructed within, in the words of Beck, the “master narrative” of the modern-day State, in which the State’s primary role is protecting people against any kind of risks. Hence, the contemporary security discussions enhance a wider approach than the traditional concept of security by also including, among many other things, climate change, food insecurity and migration. This acknowledgement of a ‘new security world’ has resulted in a more inclusive and holistic view of peace and international stability based on the protection of individuals.

The rapid growth of security labels characterises a deepening-widening perspective of security studies, including constructivism – later divided into conventional and critical -,
human security, post-colonialism, critical security studies, post-culturalism and feminism added by the Copenhagen School. Current study will focus on the Copenhagen School due to its relevant concept of securitisation, and its particular attention to discourse or speech acts.

**Relation between Politics and Security**

According to the Copenhagen School, security is a self-referential practice, in which the issue does not have to consist of a real existential threat but because the issue is presented as a threat. Security refers to the process of presenting an issue in security terms. Within this process, the concept of security is implied from its ‘social’ construction within security discourse, and thus emphasises authority, the ‘framing’ of threats and enemies, an ability to make decisions and the adoption of emergency measures. The Copenhagen School argues that security has an inherent discursive as well as political force, making it a concept that creates a sense of urgency rather than an objective condition - when calling something a security issue, it immediately results in something but what it does, depends on how the term security is understood or how successfully certain actors persuade audiences. It seems that there is wide scholarly agreement on a certain relation or connection between politics and security, however the thoughts on the interconnectedness vary.

According to Huysmans, security studies are strongly connected to politics as security analyses almost always take place in heavy politicised contexts. Besides, Selchow argues that security policies are always shaped or guided by conceptions of ‘what/who’ is to be secured ‘against what’. This defining of risk is about decisions and responsibilities, which is

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88 Buzan and Hansen, *The Evolution*, 212-13
90 Buzan and Hansen, *The Evolution*, 214
92 Buzan and Hansen, *The Evolution*, 213-14
93 Buzan and Hansen, *The Evolution*, 214
at the heart of security practices. However, some scholars go a step further in arguing that security takes place not in the same sphere as politics but in a different sphere existing above politics. In the words of Buzan, Waever and de Wilde, security is “the move that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics”. Therefore, the advocates of the Copenhagen School argue that securitisation is in fact a more extreme version of politicisation. In the words of Lemberg-Pedersen, securitisation is successful when being removed from the political sphere and placed into the sphere of security concerns. Moving back to Selchow, she says that in modern politics, the ‘what/who’ that is to be secured has been the nation-state.

Securitisation or (Mis-)Use of Political Power

When relying on the Copenhagen School and some additional scholars, it could be argued that securitisation could be used or misused as a political strategy. Within Neocleous’ line of thought, security is a technology of government used to reshape political subjectivity. According to him, those aiming to ‘humanise’ the security agenda, make a great mistake. Calling anything a security issue plays into the hands of the State; it provides the State with the possibility of tightening its grip on civil society. This thought is shared further by Jayasuriya who argues that the State has the potential to use ‘security’ to marginalise all else. In the opinion of Huysmans, speaking and writing about security can never be regarded as innocent as it always risks to a potential opportunity for a ‘fascist mobilisation’ or an ‘internal security-gap ideology’: speaking of security takes place in a political field where social questions are already contested in terms of crisis, threats or dangers.

In this way, the process of securitisation works in the hands of political powers affecting the capacities of the humanitarian space, which could also be invoked in the context of migration. By calling a certain phenomenon a security issue, it creates a sense of emergency that requires direct – and often exceptional - action. It will be seen later in

99 Buzan, Waever and de Wilde, Security: A New, 23
100 Buzan, Waever and de Wilde, Security: A New, 23-4
102 Selchow, “Security Policy,” 70
103 For instance, Huysmans, Jayasuriya, Lemberg-Pedersen, Selchow
104 Mark Neocleous, Critique of Security (Edinburgh: Edinburgh University Press, 2008), 184
108 Huysmans, “Defining Social,” 43
primarily, the chapter on the discursive approach of securitisation and secondarily, in the chapter on formal criminalisation that Italian politics indeed often refer to migration as a security issue. It will show that through the securitisation of migration, the Italian government in fact ‘allows for’ the adoption of extraordinary rules that go beyond the normal rules of politics, and in this way, can ‘legally’ limit SAR activities.

**Correlation Humanitarianism and Human Rights**

**Humanitarianism and Human Rights**

To reiterate, the terms humanitarianism and human rights are very distinct.\(^{109}\) Broadly speaking, human-rights institutions are largely shaped within the boundaries of law, whereas humanitarianism is more about the ethical and moral imperative to bring relief to those suffering and to save lives; here the appeal to law remains to be opportunistic.\(^{110}\)

Despite the distinction within definitions, it could be argued that the correlation surely exists, or as Ticktin mentions, there is a clear overlap between human rights and humanitarianism.\(^{111}\) Walters has stated that one axis for knowing the humanitarian border “is constituted by certain forms of legal know-how”,\(^ {112}\) meaning the numerous ways in which the border is documented as a regime which denies certain human rights.\(^ {113}\) In addition to that, the humanitarian border is constructed as a socio-legal space and its subjects governed in the image of rights-bearing individuals. For these two reasons, for Walters, human rights are an essential component of the humanitarian border.\(^ {114}\) Similarly written by Mezzandra and Neilson, “humaneness implies a certain humanitarianism potentially to be claimed by policing

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109 Radice, “Humanitarian Assistance,” 4
111 Ticktin, “Where Ethics,” 36
114 Cuttitta, “Mare Nostrum,” 2; Walters, “Foucault,” 175
borders according to United Nations (UN) protocols or observing principles of human rights”.

Nevertheless, the relation between humanitarianism and human rights is not as easy and straightforward as it seems, meaning that the opinions of scholars widely vary on this issue. For instance, Fassin argues that humanitarianism is not about human rights in general, but in particular about the right to life or the “power of life”; saving lives is its higher mission. Or, as Calhoun states, there is not yet full agreement on the objective definition of humanitarian action where only some include the enhancement and protection of human rights an even broader aims such as promotion of the well-being of mankind.

**Exclusionary versus Inclusionary Role of Humanitarianism**

Supportive of the interrelation between humanitarianism and human rights, Cuttitta distinguishes two roles of humanitarianism, being exclusionary and inclusionary, which results in various interactions with both the delocalisation of the EU border as well as human rights. On one hand, humanitarianism can legitimise policies and practices aimed at preventing migrants from reaching Europe and hence exclude a group from rights they would otherwise have enjoyed here. On the other hand, humanitarianism could enhance SAR operations that contribute to the embarking for Europe. Also, it is shared by Crepeau, Nakache and Atak that it is essential to recognise the pre-eminence of fundamental rights upon security concerns, thereby supporting the inclusionary work of humanitarianism.

Notwithstanding, these dual roles of the exclusionary and inclusionary seem controversial; in one way, human rights rhetoric is instrumental to exclusionary aims, ending up restricting the human rights of migrants, and in another way, humanitarian action can be more inclusive than what human rights would require, seeming to provide acts of grace or solidarity instead of an enhancement of human rights. Regarding the latter, going beyond human rights obligations, humanitarianism results in an arbitrary admission of suffering people left to administrative

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116 Cuttitta, “Delocalization, Humanitarianism,” 785; Cuttitta, “Mare Nostrum,” 2;
117 Cuttitta, “Mare Nostrum,” 2; Didier Fassin, “Another Politics of Life is Possible,” *Theory, Culture & Society* 26, no. 5 (August 2009): 50
119 Cuttitta, “Delocalization, Humanitarianism,” 784
121 Cuttitta, “Delocalization, Humanitarianism,” 786
decision-taking.\textsuperscript{122} This does not result in an enhancement of human rights but in ‘isolated paternalistic gestures’.\textsuperscript{123} In this way, humanitarianised border management develops asymmetrical relationships across different geographical regions with vulnerable people, over which State institutions have the power of inclusion and exclusion, or acceptance and rejection.\textsuperscript{124}

With regard to the role of law to enhance humanitarian interests, Cook claims that humanitarian activists also have some discretion in opting between evasion or engagement of the law and hereby questioning the authorities’ power.\textsuperscript{125} It seems that humanitarian workers appeal to a higher law to escape from charges of their illegality, while also seeking assurances that their actions are within the sphere of law.\textsuperscript{126} As an appeal to a higher law, humanitarian activists often advocate for a humanitarian exception to national laws arguing that humanitarian work could never be in violation of the law because its aim is the protection of human life.\textsuperscript{127} In doing so, they negotiated or subverted the law to enhance their interests or in other words, challenge the law and legal boundaries authorities had set.\textsuperscript{128} Thus, in one way, activists seek agreements or mutual understandings with authorities in order to be able to provide aid, which can be regarded in line with Cuttitta’s thought as he argues that State institutions have the power of life or death. However, in another way, activists emphasise the humanitarian nature of their work in neglecting they were breaking the law by appealing to international law and a higher moral authority. In the words of McCann, humanitarian activists reshape law to fit shifting visions of need and circumstance\textsuperscript{129} or as Cuttitta says, human rights can indeed be considered as part and parcel of humanitarianism, and humanitarianism as something that goes beyond the moral or even legal obligation to save human lives.\textsuperscript{130}

To reiterate, there is no blank obligation to provide humanitarian aid, however once this has been provided, it needs to comply with the international legal framework. If the acts of humanitarianism are not in line with the legal framework – or as Cuttitta says go beyond

\textsuperscript{122} Cuttitta, “Delocalization, Humanitarianism,” 795
\textsuperscript{123} Cuttitta, “Delocalization, Humanitarianism,” 798
\textsuperscript{124} Cuttitta, “Delocalization, Humanitarianism,” 795
\textsuperscript{125} Maria Lorena Cook, “Humanitarian Aid is Never a Crime: Humanitarianism and Illegality in Migrant Advocacy,” Law and Society Review 45, no. 3 (September 2011)
\textsuperscript{126} Cook, “Humanitarian Aid,” 561
\textsuperscript{127} Cook, “Humanitarian Aid,” 582-83
\textsuperscript{128} Cook, “Humanitarian Aid,” 583
\textsuperscript{129} Cook, “Humanitarian Aid,” 586; Michael McCann, “Law and Social Movements: Contemporary Perspectives,” Annual Review of Law and Social Science 2 (December 2005): xiii
\textsuperscript{130} Cuttitta, “Mare Nostrum,” 4
the legal obligations - then Italy could argue the discursive shrinking of humanitarian space to be justified. This will be analysed within the chapter on the legal contesting interpretations, which deals chiefly with EU treaties and directives,\textsuperscript{131} UN treaties and additional protocols,\textsuperscript{132} maritime law,\textsuperscript{133} and Italian law.\textsuperscript{134} Also, the conclusive discussion will touch upon the fundamental correlation of human rights and humanitarianism. It will be argued that, in line with Cuttitta’s approach, humanitarianism needs to play an inclusionary role with respect to human rights, which should be taken into account when interpreting international law within the context of migration.

**Method and Approach**

**Four Analytical Chapters - Three Italian Political Steps**

To answer the question “How has the Italian political discourse contributed to and/ or realised a shrinking of the humanitarian work of Search and Rescue Non-Governmental Organisations?”, the research will be divided up into four analytical chapters – securitisation, ‘informal’ criminalisation, legal contesting interpretations of NGO SAR Operations and formal criminalisation. The first two chapters will discuss the two discursive steps already taken by the Italian government to realise humanitarian shrinking, the third chapter will then explain the legal interpretative contestation regarding SAR NGOs and what consequences this would carry for humanitarian aid workers, and the last chapter will address the next – and final - step that will be shortly carried out in order to establish a ‘normalised’ shrinking of humanitarian aid. To clarify, this means that the analytical part consist of four chapters - securitisation, ‘informal’ criminalisation, compatibility of SAR operations with legal frameworks and formal criminalisation - whereas the Italian approach undertaking the


\textsuperscript{134} Republic of Italy, Constitution of Italy; Republic of Italy, Law No. 94/2009; Republic of Italy, Legislative Decree No. 286 of 1998: Testo Unico sull’Immigrazione
shrinking of humanitarian aid includes three steps excluding the chapter on the legal contestations. This chapter on legal contestation is included as it provides an essential explanation on how a political discursive shrinking can take place.

Critical Political Discourse Analysis

Throughout the entire research, and mainly within the first two chapters dealing with securitisation and ‘informal’ criminalisation, the research will be conducted through critical political discourse analysis. In the words of Fairclough, “discourse is a way of signifying a particular domain of social practice from a particular perspective.” As van Dijk states, racism or discrimination does not only consist of white supremacist ideologies of race or overt discriminatory acts, but can also be found in more subtle forms involving “seemingly subtle acts and conditions of discrimination against minorities.” This means that racism or discrimination or marginalisation of a specific group can be found within discourse, and if this is the case, could have implications in a broader spectrum. Within discourse, racist or discriminatory opinions are produced and reproduced, which prepare for and eventually legitimise discriminatory exclusionary practices.

Critical discourse analysis has extensively focused on the interrelatedness of political elite and the diffusion and legitimation of overt and covert forms of xenophobia and racist discourse. Due to the political control over public discourse, media and communication, the political elites play a special role in the formation of public opinion about immigration and other ethnic issues. As Wodak argues, political parties, especially the extreme right, adopt subtle forms of racism of which there is considerable evidence that this is found or normalised in all levels of discourse. It seems that negative representations of migrants by political parties or the government can relatively easy become normalised within society, which eventually has the potential to legitimise the exclusion of minority groups on social, economic

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and political levels.\textsuperscript{140} Discourse about ‘foreigners’ can be regarded as a resource which can be used to maintain established social hierarchies,\textsuperscript{141} in which ‘others’ are viewed as ‘different’ or sometimes even as ‘outsiders’ or ‘enemies’.\textsuperscript{142}

Despite the fact that multiple scholars have written in adherence to the critical discourse analysis approach,\textsuperscript{143} current thesis will mostly adhere to firstly, the work of van Dijk and Wodak and secondly, Richardson. In essence, van Dijk argues that racism, or as will be stated in current research, alienation, discrimination and/or marginalisation, can be found in more subtle forms and conditions,\textsuperscript{144} and in accordance with both Wodak and van Dijk, this can be exacerbated when expressed by the political elite.\textsuperscript{145} For that reason, the focus point of the discursive analysis will not entail the content of any legal and/or political documents or criminalising measures, in which traces of discrimination or marginalisation of certain groups - \textit{in casu} migrants and SAR NGOs - can easier or less subtle be found. However, the research will mostly look at the stock of language used by policy makers within the context of the migration situation. As Richardson states, racism is reproduced through discourse at three levels of communication, being social practices, discursive practices and texts themselves,\textsuperscript{146} the critical political discourse analysis used within this study will mostly touch upon the latter two. With the help of a critical political discourse analysis, it will be seen here whether the discursive strategies of the Italian politics have contributed and/or realised a shrinking of humanitarian space and if so, whether the Italian (discursive) political strategies have led to a normalised shrinking that alienates, discriminates and marginalises the group of migrants and their helpers with exclusionary practices.

\textbf{Methods and Approaches within Analytical Parts}

The first analytical part – thus the second chapter – will focus on the concept of securitisation and how Italian political discourse, within the context of the Mediterranean migration crisis, has established a ‘legitimate’ reason for their authorities to \textit{de facto} operate against human rights, international and maritime law. This section will draw upon previous work by the

\begin{flushleft}
\textsuperscript{140} Colombo, “Discourse,” 168
\textsuperscript{141} Emo Gotsbachner, “Xenophobic Normality: The Discriminatory Impact of Habitualized Discourse Dynamics,” \textit{Discourse and Society} 12, no. 6 (2001)
\textsuperscript{142} Obrad Savić, “Figures of the Stranger Citizen as a Foreigner,” \textit{Parallax} 11, no. 1 (2005); Colombo, “Discourse,” 170
\textsuperscript{143} Among other scholars, Fairclough, van Dijk, Krzyzanowski, Wodak, Richardson, van Leeuwen
\textsuperscript{144} van Dijk, \textit{Elite Discourse}, 5
\textsuperscript{145} Colombo, “Discourse,” 159; Wodak and van Dijk, \textit{Racism at the Top}, 9
\end{flushleft}
Copenhagen School, in principal by the key theorists associated with the School, being Buzan, Waever and de Wilde. The reasons for choosing the Copenhagen School are two-fold. First of all, the Copenhagen School can be regarded as the main developer of the theory of securitisation and secondly, although theoretical discussions have been focused on several single aspects, it puts particular emphasis on discourse or the so-called speech act theory. Whereas the Copenhagen School was not the only one including linguistics into security studies, their approach was among the most successful within international studies. According to Buzan and Hansen, securitisation theory has three roots: one in speech act theory, one in a Schmittian understanding of security and exceptional politics and the last in traditionalist security debates. As they argue, when combining these three threats, the general concept of security is drawn from its constitution with national security discourse. It should be pointed out that current study will only take into account the first two due to the idea that current migration issue cannot be fully pictured within the scheme of traditionalist security debate. As will be addressed in the chapter, the key political quality of a speech act is a break in the normal political rules of the game that sets something unpredictable into working. This thought of speech acts creating scenes in which actors and things are brought into a relation that challenges a given way of doing things, implies a move beyond politics. Subsequently, it will be analysed how the calling of an issue as an emergency or crisis leads to a suspension of normality. Similar to the first part of the securitisation chapter, this will be assessed with the work of Buzan, Hansen, Waever and de Wilde, and additionally with articles by Neocleous, Agamben and Campesi.

An analysis of Italian political discourse towards migration through the lens of securitisation will be helpful to discuss Italy’s radical shift from initiating MN to hindering NGO SAR Operations. It will be addressed how Italy’s legal documents – and most importantly, the statements of Italian government when announcing the anti-immigration reforms, Italy’s thought onto the allocation system of the European Union, and the calling of the migration situation a crisis or emergency, have all led to a securitised ‘justification’ that

148 Mainly established by Waever
150 Buzan and Hansen, The Evolution, 213
151 Buzan and Hansen, The Evolution, 213-14
152 Huysmans, “What’s in an Act?,” 372-73
153 Huysmans, “What’s in an Act?,” 373
can both withhold State SAR Operations under the name of protecting the Italian State as well as limit the space of NGO SAR operations by ‘legalising’ extraordinary restrictive measures.

The third chapter will explain how governmental discourse has resulted in restrictions towards SAR NGOs and other civil society actors, which makes them unable to carry out rescue operations. Here, special attention will be paid on the, what will be called, ‘informal’ criminalisation of SAR NGOs by the construction of toxic narratives and the use of incorrect terminology. As regards the first, the term toxic narratives is used in accordance with Heller and Pezzani’s ‘Blaming the Rescuers Report’ to refer to the statements that blame SAR NGOs to be, among other things, a ‘pull factor’, ‘unintentionally helping criminals’ or ‘actors that help make the crossing more dangerous for migrants’.\(^{154}\) By looking at the position of Frontex within its 2017 Risk Analysis Report and remarks of Frontex officials, statements by Italian political actors and parties - in particular the Lega Nord and the Five Star Movement - the existence of such toxic narratives and the consequences thereof will be analysed thoroughly. Secondly, the terminology used to address migrants within policy papers will be looked at and it will be assessed whether this is done in a correct and indiscriminate way. It seems that migrants are often referred to as illegal, which directly places them outside the scope of legality.\(^{155}\) In finding this incorrect terminology, the view of the Council of Europe, Stockholm Programme, statements by political representatives, the report on ‘NGOs and Transparency – Comparative Legislative Evolution and Controversy’ and the Italian Code of Conduct will be considered. Whereas Jalusic states that these two discursive approaches – use of toxic narratives and incorrect terminology – make up the first steps within the process of a completed circle of criminalisation of migration, or in her words the so-called ‘crimmigration’ process,\(^{156}\) here it will be argued that the discursive approaches also affect the shrinking of NGO humanitarian space.

Thirdly, the compatibility of (restrictions on) SAR operations within the international legal framework will be discussed. It could be argued that whenever the SAR NGOs are fully compatible with the legal frameworks, the discourse leading to a shrinking thereof is not. However, if the discursive shrinking of Italy could be interpreted to be in line with international framework, this could have further implications for SAR NGOs. In accordance

\(^{154}\) Forensic Architecture Agency, *Blaming the Rescuers Report*

\(^{155}\) Crepeau, Nakache and Atak, “International Migration,” 311

\(^{156}\) Jalusic, “Criminalising,” 118
with the common Statement of SAR Organisations,\footnote{Common Statement of Search and Rescue Organisations,” SOS Mediterranee, accessed May 19, 2019, https://sosmediterranee.com/common-statement/} the major actions of SAR NGOs are the rescuing of people in distress and disembark them in a safe place. The chapter will draw upon the idea that the rescuing of people is strongly correlated to the right to life, which includes the duty to render assistance within maritime context, and the disembarkation of migrants to facilitation of irregular entry. Therefore, in assessing the legality of this humanitarian work – and indirectly the legality of a discursive shrinking of this work - the legal contesting interpretations of Italy and SAR NGOs within the context of the right to life, including the duty to render assistance, and the facilitation of irregular entry will be assessed. This will be done with the use of EU treaties and directives,\footnote{Council Directive 2002/90/EC; Council Framework Decision 2002/946/JHA; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms; European Union, Charter of Fundamental Rights of the European Union, as amended by Protocols Nos. 11 and 14; European Union, Treaty on European Union (Consolidated Version); European Union, Treaty on the Functioning of the European Union (Consolidated Version);} UN treaties and additional protocols,\footnote{United Nations General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplemeting the United Nations Convention against Transnational Organized Crime; United Nations General Assembly, United Nations Convention against Transnational Organized Crime resolution / adopted by the General Assembly} maritime law\footnote{International Maritime Organization, International Convention for the Safety of Life at Sea; International Maritime Organization, International Convention on Maritime Search and Rescue; International Maritime Organization, International Convention on Salvage; United Nations General Assembly, Convention on the Law of the Sea} and Italian law.\footnote{Republic of Italy, Constitution of Italy; Republic of Italy, Law No. 94/2009; Republic of Italy, Legislative Decree No. 286 of 1998: Testo Unico sull’Immigrazione} In line with Adler, who states that two contesting legal interpretations can fit within the legal framework,\footnote{Matthew D. Adler, “Interpretive Contestation and Legal Correctness,” William and Mary Law Review 53, no. 4 (2012): 1124} it will be argued that the interpretations of international law from the point of view of either the Italian State or the SAR NGOs can lead to a shrinking or conversely, a (expanding of) humanitarian space. If a legal contestation is indeed the case, this could carry consequences for the humanitarian aid workers and the shrinking of humanitarian aid.

Lastly, the fifth chapter explains the final step of the discursive approach that is currently being undertaken by Italian politics. It will explain how the shrinking of humanitarian aid soon becomes formally realised and in this way, becomes normalised within society. In doing so, implications of the ‘new’ Decree Law Number 113/2018, which is going to amend the Migration Law of 1998, and more importantly, the recently-announced Decree planning to fine NGO boats, will be discussed.
Chapter 2: Discursive Approach of Securitisation

Introduction

As mentioned within the literature review, looking at certain issues through the lens of securitisation could lead to securitising strategies that have the potential to move beyond politics. Reitering the view of the Copenhagen School, security inherently possesses a discursive and political force.\(^{163}\) Calling an event a security issue creates a sense of urgency that could break into the normal political rules of the game,\(^{164}\) and in this way, ‘legalises’ abnormal strategies.\(^{165}\) Within this chapter, it will first be assessed whether the general concept of migration is still positioned within the normal process of politicisation or has indeed become affiliated with security. Subsequently, the chapter will discuss how securitisation of migration can be distributed through political discourse. After that, the Italian political discourse will be discussed through analyses of the announcements of immigration measures, the thought onto the allocation system of the EU and the calling of the migration situation as a crisis or emergency. All three sections will resemble the extent to which Italian politics has politicised or even securitised the migration issue. It will be seen whether Italian political actors associate migration with the concept of security and in this way, (mis-)use that to justify their securitising strategies. Analysing the discursive strategy of securitisation is helpful in order to explain how the Italian authorities not only refuse to provide SAR services themselves, but can also ‘legalise’ extraordinary measures leading to a shrinking of humanitarian space from the side of SAR NGOs.

Migration - Politicisation or Securitisation

As stated before, the connection between politics and security is prevalent, and a cloak of security could even be invoked as an enhancement – or abuse - of political power. Migration can be considered a public issue, and, according to Buzan, Waever and de Wilde, in theory, every public issue can be located on the spectrum ranging from non-politicised through politicised to securitised.\(^{166}\) In casu, migration has been multiple times related to a security issue created by a continuum of threats and general unease in which different actors exchange

\(^{163}\) Buzan and Hansen, *The Evolution*, 214
\(^{164}\) Huysmans, “What’s in an Act!?” 372-73
\(^{165}\) Buzan, Waever and de Wilde, *Security: A New*, 23
\(^{166}\) Buzan, Waever and de Wilde, *Security: A New*, 23
their fears and beliefs in the process of making a dangerous society.\textsuperscript{167} It has been argued that since the 1990s, and in particular since the events of September 11, 2001, the concepts of migration and security have been conjoined within society.\textsuperscript{168} This implies that migration has passed the phase of being politicised, approaching or finding itself in the latter phase of being securitised.\textsuperscript{169} In one sense, securitisation is a further intensification of politicisation, but in another sense opposed to politicisation. Politicisation signifies a matter of choice, something that is decided upon in the open and by contrast, securitisation reflects an urgent issue that could not be exposed to the “normal haggling of politics,”\textsuperscript{170} but should be dealt with decisively by top leaders prior to other issues.

Securitisation of Migration Through Political Discourse

In the words of Estevens, the securitisation of migration usually includes four distinct axes, being “socio-economic, securitarian, identitarian and political.”\textsuperscript{171} Political securitisation is a result of anti-immigrant, racist and xenophobic discourses spread through public society.\textsuperscript{172} Migration only becomes a security issue when it is presented as such by some professionals of threat management – i.e. politicians - in their struggle to maintain their position, which subsequently allows each bureaucracy to sell to the others its own fears.\textsuperscript{173} The post economic crisis context has laid ground for right-wing parties to gain support for conservative approaches to migration issues.\textsuperscript{174} Bigo agrees by saying that the securitisation of immigration is partly caused by the propaganda of the far right political parties, the rise of racism, a more efficient rhetoric convincing the population of a danger, or successful speech acts performed by actors coming from the state or society.\textsuperscript{175} Also, he states that the relation between security and migration is fully and immediately political; the wording is never innocent.\textsuperscript{176} Political action and media are key elements able to deconstruct any associations between immigration and terrorism or immigration and criminality, and in this way, could encourage tolerance, acceptance and cultural diversity. Within recent times, migration crisis associated with

\begin{thebibliography}{99}

\bibitem{167} Didier Bigo “Security and Immigration: Toward a Critique of the Governmentality of Unease,” \textit{Alternatives} 27 (2002): 63
\bibitem{168} Maribel Casas-Cortes et al., “New Keywords: Migration and Borders,” \textit{Cultural Studies} 29, no. 1 (2015): 67
\bibitem{169} Buzan, Waever and de Wilde, \textit{Security: A New}, 23
\bibitem{170} Buzan, Waever and de Wilde, \textit{Security: A New}, 29
\bibitem{171} Estevens, “Migration Crisis,” 4
\bibitem{172} Estevens, “Migration Crisis,” 4-5
\bibitem{173} Bigo “Security,” 76
\bibitem{174} Estevens, “Migration,” 5; Ulrike Vieten, and Poynting, “Contemporary Far-Right Racist Populism in Europe,” \textit{Journal of Intercultural Studies} 37, no. 6 (2016)
\bibitem{175} Bigo “Security,” 65
\bibitem{176} Bigo “Security,” 71
\end{thebibliography}
insecurity, terrorism or criminality has resulted in the sudden closing of borders, the development of xenophobia and increasing populist anti-immigration narratives, disclosing the incapacity of the EU and Member States to create a space of tolerance and diversity ambitioned throughout the nineties.177 With respect to migration, the major technique of securitisation is the transformation of structural difficulties into elements permitting specific groups to be blamed, even before they have actually done anything, solely by categorising them, anticipating profiles of risk from previous trends, and projecting them by generalisation upon the possible behaviour of each individual belonging to this risk category.178

Under the Cloak of “Security Guarantee”

While migration has been increasingly affiliated with security, which could transform structural difficulties into elements that allow certain groups to be blamed for, the question remains how the Italian political parties have perceived or anticipated on this. It is evident that Italian policies made a radical shift from a self-established humanitarian operation that saved a total of 150,000 people in Libyan and high seas,179 towards an anti-migrant approach now limiting civil society actors to conduct any rescue operation.180 Since the 1990s, the Italian right-wing managed to redefine the general climate of response towards immigration under a new restrictive political rhetoric, whereby they managed to turn immigration into a “political asset on which to capitalise.”181 In 1998, Italy’s first systematic Immigration Law was adopted which came to be known as the Turco-Napolitano Act that regulated the flows of immigration.182 With the adoption of the Bossi-Fini law in 2002 that partially reformed the Turco-Napolitano Law,183 the “countering of the danger of a real invasion to Europe” was identified as the object of stricter immigration controls.184 The core immigration measures introduced within this act have been regarded in a number of ways, as a weakening of migrants’ legal status, as harsh and repressive, as discriminatory and racist, or as a far more
ambiguous mix of extremism and implicit moderation.\textsuperscript{185} Likewise, it has potentially set
grounds for further restrictive securitising measures aiming at criminalising ‘would-be
immigrants’. Shortly after Berlusconi took office in 2008, the coalition government issued a
statement underlining its commitment “to guarantee more security in cities; to stop
clandestine immigration and to confront organised crime”.\textsuperscript{186} It immediately showed its
commitment on security in the political agenda and the priority of the centre-right coalition to
tackle irregular entries by passing a controversial security bill that aimed to make illegal
immigration a punishable offence.\textsuperscript{187}

It can be seen here that Italian politics construct an association between immigration
and illegality or organised crime. By linking migration to criminality, Italy is able to pass
laws that enhance stricter immigration controls. The fact that Italy prioritises its national
security can for a large part be explained by (inadequate) EU policies, which will be
addressed below.

**Lack of Allocation by EU**

It should be emphasised that this drift towards harsh border controls is not confined to Italy
but follows the direction of EU-level that has been informing the policy frames adopted by
southern Member States.\textsuperscript{188} The increasing framing of immigration in security terms at the
EU level resulted in southern European States, including Italy, developing immigration
policies that emphasises on border controls and expulsion of unwanted migrants. In Italy’s
opinion, the EU’s response to the crisis was widely seen as inadequate; the members of the
EU were seen as unwilling to share the burden for SAR operations, and the reception of
migrants, which is supposed to be governed by the principle of solidarity and fair sharing of
responsibility, as in line with article 80 of the Treaty on the Functioning of the European
Union (TFEU) juncto article 4(2) and 5(3) of the Treaty on European Union (TFEU).\textsuperscript{189} The
previous Italian Prime Minister, Matteo Renzi, stated that the Mediterranean does not belong
to Italy, but the European border.\textsuperscript{190} According to him, the problem of illegal immigration is
also a battlefield for ISIS terrorists and therefore, not a national security issue for Italy but for

\textsuperscript{186} Cetin, “The Italian Left,” 385
\textsuperscript{187} Colombo, “Discourse,” 164; Republic of Italy, *Law No. 94/2009*
\textsuperscript{189} United Nations, *Press Coverage*, 10
\textsuperscript{190} United Nations, *Press Coverage*, 72
the whole EU.\textsuperscript{191} Also, other Italian politicians, for example Angelino Alfano, the prior Minister of Inferior, have reiterated that unless the burden was shared more equitable there will be serious consequences for the other Member States.\textsuperscript{192} In Italy, the main policy debate was driven by the policing of the border and the attribution of responsibilities amongst EU Member States,\textsuperscript{193} which was also brought into attention within the rescue operations. The more centred-right criticised both MN and Triton to be the problem since, according to those parties, it is mainly Libya that should be dealt with by European intervention.\textsuperscript{194} The far-right, in particular the Northern League, went a step further by stating that the MN operation is an “insurance policy for illegal migrant traffickers that costs the government nine million euros from the public purse monthly.”\textsuperscript{195} Moreover, Matteo Salvini, who is the leader of the Northern League, claims that with the rescue operations, Europe is coordinating an operation of ethnic substitution.\textsuperscript{196}

While the main or ‘more-centred’ right focused their argument on the idea that rescue operations turned Italy into a “paradise for clandestine immigrants”\textsuperscript{197} and so should be tackled by European allocation, the far-right took on more radical arguments stating that Italian migration policy should defend its own nation.\textsuperscript{198} In essence, the migration crisis was primarily seen as a challenge the country had to address with minimal help and cooperation of the EU and other European countries. As a consequence, this domestication of the issue placed priority on national security since European countries, except for Greece being the second key entry point, did not share any burden.\textsuperscript{199} Given the fact that much of the focus of Italian discourse was placed on the need to reduce pressure on Italian soil, and in this way, characterised as a national security issue, it gives power holders many opportunities to exploit threats for domestic purposes.\textsuperscript{200}

**Legalising the Breaking of ‘Normal’ Rules**

As seen in the two previous sections, Italian politics considers migration as a security problem that needs to be combatted within domestic politics. This already implies that it has

\textsuperscript{191} United Nations, *Press Coverage*, 96
\textsuperscript{192} United Nations, *Press Coverage*, 72-73
\textsuperscript{193} United Nations, *Press Coverage*, 74
\textsuperscript{194} United Nations, *Press Coverage*, 87
\textsuperscript{195} United Nations, *Press Coverage*, 73
\textsuperscript{196} United Nations, *Press Coverage*, 86-87
\textsuperscript{197} United Nations, *Press Coverage*, 87
\textsuperscript{198} United Nations, *Press Coverage*, 90
\textsuperscript{199} United Nations, *Press Coverage*, 103
\textsuperscript{200} Buzan, Waever and de Wilde, *Security: A New*, 29
reached the level of securitisation, in which migration is presented “as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure”. Nevertheless, the designation of migration as a security issue can be undoubtedly established if Italian rhetoric refers to this issue as an emergency or crisis. Emergency can be regarded as a dynamic and ambiguous concept, for which no exact definition can be found, but solely points to a “state of affairs calling for drastic action”. Calling an event or phenomenon a crisis creates a state of exception, meaning a territorial space outside the normal juridical order, and at the same time the ultimate expansion of the logic of the exception. Owing to the idea that a certain moment constitutes an ‘emergency’ or ‘crisis’, it comes with the involvement of suspension of law in the name of reason of state and national security. According to Agamben, a state of necessity is not a state of law but instead a space without law. While Neocleous, together with many other scholars, bases its argument upon the ‘war on terror’ after 9/11 that caused a “permanent state of emergency and exception justified by the appeal to essential values of justice”, the assumption that the state of emergency is beyond law seems valid within this context as well. As for the situation in the Mediterranean, Neocleous is right that calling an issue an emergency or crisis, this creates legal black holes or at least dubious juridical status, in which basic liberties and rights are abandoned and the rule of law suspended. Mainwaring has also acknowledged that Mediterranean governments have constructed a crisis founded on the idea of a state of exception that warrants unusual measures. The state of ‘emergency’ introduced in parts of the EU in response to the European humanitarian ‘refugee crisis’ has adopted a raft of illiberal measures and allowed for unprecedented restrictions on civil society in a number of Member States, including in Italy.

201 Buzan, Waever and de Wilde, Security: A New, 23-24
203 Neocleous, “The Problem,” 192
204 Neocleous, “The Problem,” 193
205 Giorgio Agamben, State of Exception (Chicago: University of Chicago Press, 2005), 51
206 For example, Agamben, Hardt and Negri, Neocleous, Schmitt
208 Neocleous, “The Problem,” 204
209 Cetta Mainwaring, “Constructing a Crisis: The Role of Immigration Detention in Malta,” Population, Space and Place 18, no. 6 (November-December 2012): 687
210 Carrera et al., Policing Humanitarianism, 191
According to McMahon, 2015 became known as part of the Mediterranean migration crisis. De facto, Italy had already been in such a state for years. At least since 2011 followed the Arab Spring when 30,000 migrants landed on Italian shores, primarily on Lampedusa, the Italian government phrased the arrival of migrants across the sea as an emergenza. From February until December 2011, Berlusconi announced a state of humanitarian emergency, which made it necessary to enact “extraordinary and urgent measures”. April 5 marked a key moment in the emergency’s management when Berlusconi issued a Decree stating that citizens from North African countries who entered during midnight are eligible for temporary protective measures and the Italian government signed a bilateral agreement with Tunisia to manage the “migratory emergency”.

It should be pointed out that the emergency language deployed by the Italian government is rather ambiguous as it fluctuates between a humanitarian reading and a securitarian one given that these measures are framed either as protective measures to the needs of migrants or as security measures to protect Italians threatened by an unchecked influx of migrants. A clear example is during the period of the so-called Lampedusa crisis in 2011 when the Italian Minister for Home Affairs Roberto Maroni acted on some occasions as ‘Minister for Civil Protection’, speaking the language of humanitarian emergency, whereas on other occasions he positioned himself in the role of ‘Minister for Public Security’ acting out of securitarian emergency.

As developed by Waever, the securitisation approach makes the definition of security dependent on the construction in discourse. Campesi states that over the last ten years, border controls and the landing of irregular migrants have been managed under what can be called as a state of permanent emergency, to the extent that the phrase emergenza sbarchi

212 European University Institute, Robert Schuman Centre for Advanced Studies, Mediterranean Programme, The Arab Spring and the Crisis of the European Border Regime: Manufacturing Emergency in the Lampedusa Crisis, by Giuseppe Campesi, 2011, RSCAS 2011/59, 1
213 McMahon, “Criminalising Trust,” 28
215 In accordance with Republic of Italy, Legislative Decree No. 286: Testo Unico sull’Immigrazione, Article 20
216 Marchetti, “Framing Emergency,” 3
217 European University Institute, The Arab Spring, 6-7
218 European University Institute, The Arab Spring, 5
219 Buzan, and Hansen, The Evolution, 213
(‘landfall emergency’) has become common in legal speaking. The established conception of migration as a national security problem and emergency – despite being humanitarian or securitarian - as conducted by the Italian government gives the authorities a justification for their securitising moves in the first place, and secondly, a reason, to act outside or beyond normality or the scope of law. This tactic exercised by Italian politics to construct a state of crisis within its discourse leads to a suspension of law in a way that it ‘legalises’ the breaking of normal political rules. As mentioned, Article 5 of the country’s Civil Protection Law provides the prime minister with authorising power to issue Decrees (Decreto del Presidente del Consiglio dei Ministri) conferring emergency powers on specially appointed commissioners allowing them to charge specific critical situations and special powers to act above ordinary laws. More specifically, DPCM No. 21128/2002 declared a state of emergency “in order to deal with the continuous, massive influx of illegal immigrants”, which confers on public security and special civil-protection powers not provided for by ‘normal’ law. In February 2011, Berlusconi issued another state of humanitarian emergency and enacted extraordinary measures to provide adequate facilities and deliver humanitarian assistance. As part of this, under the Prime Ministerial Order No. 3924, a special commissioner was appointed having full powers to implement programmes in response to the crisis and additionally, got granted around 200 troops armed force. Subsequently in April, the President of the Council of Ministers, allowed an “effective contrast to the exceptional influx of non-EU citizens on national territory”, which consists of the “need to put in place measures of extraordinary and urgent character aiming at the preparation of necessary forms of humanitarian assistance while ensuring the effective fight against illegal immigration in the national territory”. As though the essence of humanitarian consideration is acknowledged
within Decree, it also provides legacy for securitising border operations under the cloak of restricting illegal immigration.

**Conclusion**

It is evident that the Italian political discourse reflects the thought of migration being a security issue that is not dealt with properly throughout the whole EU and therefore should be dealt with under national policies. By associating migration with security and even further, by calling migration an emergency situation that requires immediate action, the Italian government has found a way to circumvent the ‘normal rules of politics’. By issuing Decrees under the cloak of securitisation and emergency, Italy now makes it ‘legal’ to not provide any SAR operations by the State itself and replace humanitarian operations with securitising border control operations. This approach resembles a new mode of security management requiring specially appointed commissioners to act beyond the limits of the law.\(^{227}\) Further on in this research, it will be seen that the Italian government multiply invokes this power to issue Decrees that aim to shrink the humanitarian space. Although there always should be a general tension or balance between international human rights law and state sovereignty,\(^{228}\) it seems that the latter is taking the upper hand. The strategy of securitisation provides Italy with a legal and political basis for a crisis-management model built around an extensive use of administrative detention and systematic violation of migrants’ basic rights.\(^{229}\)

\(^{227}\) European University Institute, *The Arab Spring*, 8-9;  
\(^{228}\) Crepeau, Nakache and Atak, “International Migration,” 311  
\(^{229}\) European University Institute, *The Arab Spring*, 9
Chapter 3: Discursive Approach of ‘Informal’ Criminalisation

Introduction
As could be seen previously, the Italian government is unwilling to provide rescue operations itself. Under the cloak of national security, Italy has found a way to ‘legalise’ the State’s non-provision of SAR operations and the replacement of humanitarian operations with police services. This already results in a shrinking of the humanitarian space from the side of State SAR operations, however the current migration situation would not be such a giant concern leading to massive deaths in the Mediterranean if this gap could be filled up by NGO SAR services. However, the following step that prevents SAR NGOs from filling up the rescue gap is the ‘informal’ criminalisation of both civil society actors and migrants leading to the creation of SAR NGOs as illegitimate and/or criminal. SAR work should primarily operate as acts of solidarity guided by humanitarian principles, which includes that they are authorised to rescue people in distress at sea free of any political interventions. Yet, SAR NGOs are not able anymore to continue their humanitarian actions due to constant state harassment and criminalisation. Here, it will be assessed how this so-called ‘informal’ criminalisation takes place through the discursive approaches of spreading toxic narratives towards SAR NGOs and incorrect terminology towards migrants. It should be pointed out that although the incorrect stock of legal language is aimed towards migrants, it also has consequences for the perceived legitimacy of the people helping them. The rhetoric used within the Italian government serves to perpetuate a split between a unified national culture and identity versus ‘them’, being the foreigners and their helpers. Both of the strategies have marked SAR NGOs in a way that they are now considered to be illegitimate actors, or as Fekete calls them, “traitors of the nation.”

Toxic Narratives towards SAR NGOs
It seems odd that the very first accusations towards SAR NGOs did not appear on a far-right portal but on the mainstream Financial Times, which brought to light a leaked confidential

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230 Stierl, “A Fleet,” 719
231 Carrera et al., Policing Humanitarianism, 191; Cusumano, “Straightjacketing,” 107
234 Fekete, “Traitors to the Nation!,” 31
Within this context, Frontex has clearly positioned itself along the lines of the three toxic narratives, i.e. SAR NGOs being pull-factors, being helpers of criminals and actors that make the crossing more dangerous for the migrants. Within its 2017 Risk Analysis Report, Frontex has stated that SAR missions act as a “pull factor that compounds the difficulties inherent in border control”. Secondly, Frontex drew a parallel by affirming all actors involved in SAR operations in the Central Mediterranean to “unintentionally help criminals achieve their objectives at minimum cost and strengthen their business model by increasing the chances of success”. This statement is also in line with the first parallel of SAR missions being pull factors as Frontex implicitly claims that gaining more control over SAR NGOs would reduce the number of immigrants coming from Libya. Even worse, Frontex director Leggeri claimed that NGOs were encouraging human trafficking without being able to substantiate this allegation by any evidence. Lastly, Frontex created a correlation between the decrease of calls to the Italian Coast Guard Maritime Rescue Coordination Centre (MRCC) responsible for rescue operations and the increasing presence of SAR NGOs, assuming that SAR NGOs make the detection and rescue of migrants more complex, which

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235 Carrera, Allsopp, and Vosyliute, “Policing the Mobility Society,” 248; Carrera et al., Policing Humanitarianism, 109
236 As was used in the Official Frontex Annual Risk Assessment 2016
237 Carrera, Allsopp, and Vosyliute, “Policing the Mobility Society,” 248; Carrera et al., Policing Humanitarianism, 109; Fekete, “Traitors to the Nation!,” 32
238 Forensic Architecture Agency, Blaming the Rescuers Report
239 Fekete, “Traitors to the Nation!,” 32
240 Jalusic, “Criminalising,” 109
243 Carrera, Allsopp, and Vosyliute, “Policing the Mobility Society,” 249
244 Fekete, “Traitors to the Nation!,” 32
potentially results in vessels not being rescued. In line with this, the European border agency declared that NGO presence and activities close to, and occasionally within, the Libyan territorial waters nearly doubled compared to the prior year, however the number of incidents have increased dramatically.\(^{245}\) Considering the prominent institutional role and its advisory function to EU Member States, Frontex has massively contributed to the construction of the toxic narratives towards SAR NGOs.\(^{246}\) Indeed, Frontex’s line of thought of SAR NGOs helping criminals was echoed in a strategic note on migration patterns published by the European Commission, which stated that vessels provided by European navies, coast guards and NGOs facilitated the work of smugglers.\(^{247}\) In addition, shortly after the publication of the 2017 Risk Analysis Report, prosecutors in Italy opened investigations into SAR NGOs that accused them of complicity with traffickers.\(^{248}\) Hence, Frontex’s attacks and allusions have contributed to the generation of a climate of mistrust, in which national governments can grow doubts about NGO’s activities, create hostility and make further attacks possible.\(^{249}\)

After the outcomes expressed by Frontex, public opinion shifted towards the work of SAR NGOs. Immediately after, Italian government launched a series of anti-immigrant policies, including the prevention of migrant rescue ships from docking in Italian ports and inquiries were launched by public prosecutors as well as two distinct commissions of the Italian parliament.\(^{250}\) Due to the accusations of Italian Prosecutors together with the parliamentary hearings, the toxic narratives spread directly into media and were picked up by key political figures.\(^{251}\) As a matter of fact, the Italian Foreign Minister Angelino Alfano said he agreed a hundred per cent with the Prosecutor’s allusions of charity boats colluding with traffickers in Libya.\(^{252}\) Also, populist parties like the Northern League and the Five Stars

\(^{245}\) Frontex, *Risk Analysis for 2017*, 2017, 32

\(^{246}\) Forensic Architecture Agency, *Blaming the Rescuers Report*


\(^{248}\) Fekete, “Traitors to the Nation!,” 32

\(^{249}\) Forensic Architecture Agency, *Blaming the Rescuers Report*


\(^{251}\) Forensic Architecture Agency, *Blaming the Rescuers Report*

Movement called for a crackdown. For example, current leader of the Five Star Movement Luigi di Maio have likened sea rescues of migrants as a taxi-service provided by NGOs.

Moreover, in 2017, Italian authorities have adopted a EU-sponsored controversial Code of Conduct aimed at limiting NGOs humanitarian space offshore Libya. It should be emphasised that this Code of Conduct is not binding under international law, however it is conceivable that it creates legally binding obligations under national law if any of the NGOs refuse to sign it. As a matter of fact, the Italian Ministry of Interior has repeatedly emphasised that if any NGO declines to accept the terms, this entails serious consequences, including the risk to being barred access to Italian ports. Among several other commitments, NGOs have to respect the obligation not to turn off or delay the regular transmission times of signals, intended so that NGOs ensure the safety of navigation and security of vessels. Moreover, they are obliged not to make communications or send light signals so they cannot facilitate contacts with migrant smugglers and/or traffickers. It seems that these two commitments are in line with the spread toxic narratives of NGOs making the transfer routes for migrants more perilous and cooperating with migrant smugglers or traffickers. Lastly, all these commitments are established in order to limit the “migration pressure on Italy”, which implies that the policy makers indeed perceive SAR NGOs to attract migrants or in other words, acting as a pull factor. Thus, not only explicitly within the statements by right wing and anti-immigration parties, but also implicitly by soft law instruments, policy makers express toxic narratives towards migrant rescuers, which affects the humanitarian working space of SAR NGOs.

**Incorrect Terminology used for Migrants**

While the toxic narratives are primarily directed at SAR NGOs, incorrect terminology can be regarded as another strategy of ‘informal’ criminalisation, which is aimed at migrants but also has consequences for their defenders. It could be said that the use of the term illegal in a way discursively legally criminalises the issue. In the words of Crepeau, Nakache and Atak, the

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253 Cusumano, “Straightjacketing,” 107
255 Cusumano, “Straightjacketing,” 107; Republic of Italy, *Code of Conduct for NGOs Undertaking Activities in Migrants’ Rescue Operations at Sea*
258 Republic of Italy, *Code of Conduct for NGOs Undertaking Activities in Migrants’ Rescue Operations at Sea*
reinforcement of security-related migration policies results in the perception of the foreigner or irregular migrant as a category outside the legality.259 This categorisation of migrants as outside the scope of legality is not only enhanced by strengthened security-related migration policies, but also by certain terms used to address the group of ‘irregular migrants’. The choice of the language is extremely important for the image that the authorities project to their population and the world. Most international organisations, including the Council of Europe, and NGOs attempt to use a fairly neutral terminology when addressing the question of non-nationals whose presence on the territory of a state has not (yet) been authorised or is no longer authorised.260 For example, the Parliamentary Assembly of the Council of Europe has highlighted its preference to use the term ‘irregular migrant’ instead of references such as ‘illegal migrant’ or ‘migrant without papers’ due to the fact that ‘irregular migrant’ does not carry any stigmatisation of the term ‘illegal’.261

While the Council of Europe and international organisations working on migration issues clearly address their preference to use ‘irregular’ over ‘illegal’ or ‘migrant without papers’, it seems that the majority of the spokespersons within the EU institutions and representatives of Member State governments stick to the use of ‘illegal immigrants’ to address the group.262 In fact, even the Stockholm Programme, which has taken some important strides forward in terms of incorporating human rights into the migration policy,263 emphasises that the EU must continue to take measures to counteract “illegal immigration and cross-border crime and maintaining a high level of security”.264 It should be pointed out that the term ‘illegal immigrant’ or ‘illegal immigration’ is incorrect in two ways. First, the individuals have not necessarily committed a criminal offence under the laws of the Member States.265 In the words of the Special Rapporteur on the human rights of migrants, irregular migration does not constitute a criminal offence and should thus not be linked to security issues and crime.266 However, now illegality is used to refer to a ‘victimless’ crime with injury

259 Crepeau, Nakache and Atak, “International Migration,” 311
260 Council of Europe, Commissioner of Human Rights, Criminalisation of Migration in Europe: Human Rights Implications, by Elspeth Guild, September, 2009, 8
261 Council of Europe, Criminalisation, 8-9
262 Council of Europe, Criminalisation, 9
265 Council of Europe, Criminalisation, 11; In some Member States, irregular entry is also a criminal offence punishable by a fine or punishment and expulsion
to the State’s authority in controlling its borders rather than to an individual.\footnote{Council of Europe, The Human Rights, 17} Then, secondly, the term immigration is not legitimate when the individual is a national within his or her own territory and might or might not be considering traveling abroad.\footnote{Council of Europe, Criminalisation, 9} For these two reasons, ‘illegal immigration’ is incorrect and contributes to the negative discourse on migration as it reinforces negative stereotypes of irregular migrants as criminals.\footnote{United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, Francois Crepeau: Regional Study, 10} The political choice to use such terms focuses the attention on the relationship of the individual with the mechanisms of the state instead of individual dignity itself.\footnote{Council of Europe, Criminalisation, 10} This does not only harm the group of migrants themselves but also those who support them, including the providers of humanitarian assistance or persons who rescue migrants in distress at sea.\footnote{European Union, Fundamental Rights Agency. Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them. 2016, 8}

As for the Italian situation, the terms immigrant and clandestini (illegal immigrants), which are often used interchangeably, have become a focal point of public discourse on immigration in issues that have quickly infiltrated in institutional and official government language as well as the media.\footnote{Fabio Quassoli, “Clandestino: Institutional Discourses and Practices for the Control and Exclusion of Migrants in Contemporary Italy,” Journal of Language and Politics 12, no. 2 (January 2013): 204; Maneri, “Lo Straniero,” 273} The prevailing images used by political elites when talking about immigration have been that of a ‘threat’ and ‘invading and besieging army’. Besides, immigrants have been identified as ‘clandestine’, ‘irregular’, ‘illegal’ or ‘undocumented’.\footnote{Colombo, “Discourse,” 164-65; Jessika ter Wal, “The Discourse of the Extreme Right and its Ideological Implications: The Case of the Alleanza Nazionale on Immigration,” Patterns of Prejudice 34, no. 4 (2000) 274} Categorising immigrants as such results in two consequences. First of all, the concept generates a shared discourse regarding social problems and secondly, as the basis of an ideology that comprises a set of political positions regarding immigration management.\footnote{Quassoli, “Clandestino,” 221-22} One of the earliest statements was expressed by Enrico Letta, who was the prime minister of a coalition government between April 2013 and February 2014. During the beginning of the migration crisis, he frequently used the incorrect terminology. For instance, he had announced priority to sea rescue operations over the “apprehending of illegal migrants”,\footnote{Transnational Institute, The Shrinking Space for Solidarity with Migrants and Refugees: How the European Union and Member States Target and Criminalize Defenders of the Rights of People on the Move, by Yasha Maccanico, Ben Hayes, and Samuel Kenny, September 2015, 6} that “only a
united EU can manage illegal migration”,276 and the high priority of “the flux of illegal immigrants”.277 While he launched the MN operation, which implies that he was a very supportive politician towards the rise of migration,278 his expressions framed migrants within the scope of illegality or criminality and in this way, demean their dignity.279 

Likewise, in February, a report called ‘NGOs and Transparency – Comparative Legislative Evolution and Controversy’ was presented,280 which is for a large part bringing forward the ideas of the Northern League, one of the two governing parties. Besides the fact that the content of this report is very controversial, the use of language is also questionable. Basically, it only addresses immigration after mentioning the illegality, which implies, in the readers’ eyes, that immigration and illegality are intertwined and co-existent. While the considerations within the report are yet an early stage, it certainly contributes to the creation of an environment of suspicion against migrants and NGOs.281 

On the other hand, it should be emphasised that throughout the Italian Code of Conduct, not a single time the incorrect terminology of ‘illegal’ migrants or ‘migrants without papers’ is addressed. Throughout the Code of Conduct, the accurate word of ‘migrant’ is being used.282 It is evident that host States, of which Italy is the epicentre of the debate,283 tend to see irregular migrants as non-citizens who are illegally in the country and should be removed at earliest opportunity,284 however this thought is not enhanced through the Italian Code of Conduct. It seems that the Code of Conduct is attempting to reflect a human rights based approach by including migrants within the scope of legality, yet this approach is not substantiated by additional policy and practice.285 It is evident that since the summer of 2016, reports, testimonies and video evidence have been published by local as well as national

278 Transnational Institute, The Shrinking, 6
279 Transnational Institute, The Shrinking, 25
280 Centro Studi Politici e Strategici Machiavelli, ONG e Transparenza: Evoluzione Normativa Comparata e Controversie, by Carlo Sacino, February, 2019
282 Republic of Italy, Code of Conduct for NGOs Undertaking Activities in Migrants’ Rescue Operations at Sea
283 Forensic Architecture Agency, Blaming the Rescuers Report
284 Council of Europe, The Human Rights, 3
authorities in which migrants are only addressed as *clandestini*;\(^{286}\) and more importantly, its actual practices cut to the core of how it actually responds to difference and diversity.\(^ {287}\)

**Conclusion**

The criminalisation of persons seeking international protection within Europe, and indirectly of their helpers being SAR NGOs, takes place in a number of ways, including through the framing of NGOs and migrants within politics.\(^ {288}\) Despite the fact that most migrants arrive with tourist visas and overstay, the public discourse is filled with ideas of boatloads of *clandestini*.\(^ {289}\) Jalusic states that the discursive creation of migrants as criminal suspects, simultaneously with the legal definition of ‘non-persons’ or ‘illegal’ make up the two first steps in the process of ‘criminalisation’ of migration.\(^ {290}\) According to her, this provides legitimacy to address or treat migrants as a different kind of group, as non-citizens not belonging to Italian society and hence requires distinct strategies and responses,\(^ {291}\) one of which is the controlling of human movement.\(^ {292}\) Here, it is argued that, indeed, the incorrect terminology of ‘illegality’ towards migrants is an essential step within criminalisation. However, in addition, the toxic narratives spread towards NGOs make up an essential part of the – here called – ‘informal’ criminalisation process. Both toxic narratives towards SAR NGOs and the invalid terminology of migrants have constructed an association of humanitarian actions with criminalisation, resulting in new types of crimes, namely “crimes of solidarity”.\(^ {293}\) This ‘informal’ criminalisation has consequences for the broader course of the humanitarian space.\(^ {294}\) The credibility of the work of NGOs is heavily undermined, whereas the association of rescuing migrants with illegality is growing. The political discourse aiming to delegitimise the work of NGOs clearly affects NGO’s ability to execute its operations and so, negatively affects the space of humanitarian action from the side of NGOs. Taken together, the Italian discursive approaches of securitisation and ‘informal’

\(^ {286}\) Transnational Institute, *The Shrinking*, 25


\(^ {288}\) Cetta Mainwaring, “Small States and Nonmaterial Power: Creating Crises and Shaping Migration Policies in Malta, Cyprus and the EU,” *Journal of Immigrant and Refugee Studies* 12, no. 2 (2014): 103

\(^ {289}\) Marinaro, and Walston, “Italy’s Second Generations,” 6

\(^ {290}\) Jalusic, “Criminalising,” 107

\(^ {291}\) Civic Space Watch, “Italy: Debate,”

\(^ {292}\) Scott Watson, “The Criminalization of Human and Humanitarian Smuggling,” *Migration, Mobility and Displacement* 1, no. 1: 40-41

\(^ {293}\) Fekete, “Introduction,” 1

\(^ {294}\) Jalusic, “Criminalising,” 118-19
criminalisation have contributed to a very effective shrinking of the humanitarian space.\textsuperscript{295} The rescue gap that was left slightly open by the approach of securitisation of migration is fully shut through the process of ‘informal’ criminalisation. Through ‘informal’ criminalisation, authorities create hostile environments not solely for migrants but for all organisations and people working to counter the securitisation of migration, enhance migrants’ rights and do not allow themselves to be part of a racist framework.\textsuperscript{296}

\textsuperscript{295} Centre for European Policy Studies, \textit{The Criminalisation}, 27

\textsuperscript{296} Fekete, “Migrants, Borders,”; Jalusic, “Criminalising,” 110; Mainwaring, “Small States,” 103
Chapter 4: Legal Contesting Interpretations of NGO SAR Operations

Introduction
As seen before, the Italian political discourse has certainly contributed to the shrinking of humanitarian space on the side of State as well as NGO SAR operations. Following up on this, it seems an obvious question to ask whether this discursive shrinking is actually in line with international law. It could be argued that whenever the SAR missions are compatible with legal frameworks, in casu human rights, maritime and international law, the discourse leading to a shrinking of humanitarian space by the Italian right-wing parties is not permitted. Yet, the answer to this is not as straightforward as it seems and is highly dependent upon interpretation. Here, the interpretation of the measures of international law can lead to either a shrinking or conversely, a (expanding of) humanitarian space when this is perceived from different angles, being the side of Italy or SAR NGOs. As the common statement of SAR NGOs has emphasised, rescue at sea must always be carried out in compliance with international maritime law and cannot terminate with disembarkation in an unsafe place. This shows that the actions of SAR NGOs consist of two correlated cornerstones, being the rescuing of people in distress and ensuring that survivors are disembarked promptly in the nearest safe harbour. Within this chapter, these two major tasks of SAR operations will be held in the light of relevant international law. It will show the distinct interpretations that could be argued from both the side of Italy as well as from SAR NGOs. As the first phase of rescuing people is strongly connected to the right to life, including the duty to render assistance within the maritime context, this will gain closer attention. In the second part focusing on disembarkation, the association with facilitation of irregular entry will be taken into account. By providing interpretations from both the side of the Italian State as well as SAR NGOs, this chapter will assess the impact onto NGO humanitarian space.

Contestation of Legal Interpretations
The application of rules is highly dependent on legal interpretation, which is obviously distinct between opposing parties. Basically, rules and laws are subject to contestation; rules

297 SOS Mediterranee, “Common Statement,”
construct the space by determining what kind of conduct is allowed to happen where. Since Italy does not provide any rescue services itself in order to protect national security, it seems evident that the State would also look for additional arguments to prevent any SAR NGOs from conducting their operations. On the contrary is the view and approach enhanced by SAR NGOs, which is the idea that, following from an abdication of state responsibility, NGOs can exploit positive legal obligations to gain and maintain access to humanitarian space.\textsuperscript{298} Or, in the words of Cusumano, conducting SAR is not just a moral calling but also a duty.\textsuperscript{299} It will be assessed here if both opposing arguments and/or interpretations provided by the State and SAR NGOs fit validly within the legal framework. Whenever this is indeed the case, the question remains how it is possible for any of the interpretative methods to be legally correct and in this way,\textsuperscript{300} solves the contestation of legal interpretations. As Adler states, these interpretative methods can vary from the natural law response, to Hart’s rule of recognition or Dworkin’s constructive interpretation or multiple other methods.\textsuperscript{301}

**Right to Life and Duty to Render Assistance**

**Right to Life within International Framework**

During the journey, migrants are at particular risk of losing life and serious injury including as a result of the actions of private individuals at sea and excessive use of force by law enforcement officials charged with border control.\textsuperscript{302} There have been regular reports of people drowning, dying of exposure and dehydration, and deaths from violence by boat operators.\textsuperscript{303} Between January and July 2018, 1095 people died on the Central Mediterranean Route, mainly between Libya and Italy, which amounts to one death for every eighteen arrivals.\textsuperscript{304} In the first three months of 2018, already three incidents occurred that each resulted in a minimum of sixty deaths.\textsuperscript{305}

All fundamental rights should be protected and therefore, receive equivalent attention. The EU Commissioner for Migration has stressed the need to prevent not only ‘loss of life’

\textsuperscript{298} Cusumano, “The Sea,” 392  
\textsuperscript{299} Cusumano, “The Sea,” 390  
\textsuperscript{300} Adler, “Interpretive Contestation,” 1124  
\textsuperscript{301} Adler, “Interpretive Contestation,”  
\textsuperscript{302} Council of Europe, The Human Rights, 3  
\textsuperscript{303} Council of Europe, The Human Rights, 8  
\textsuperscript{304} Henley, “Sharp Rise,”  
\textsuperscript{305} United Nations, Desperate Journeys, 4
but also further human rights violations.\textsuperscript{306} Notwithstanding, it has been particularly mentioned in the Voluntary Code of Conduct for SAR Operations that SAR NGOs preserve the lives of those in distress throughout the Mediterranean and Search and Rescue Regions (SRR), which makes the fundamental right to life, specifically enshrined in 1946 Universal Declaration of Human Rights (UDHR), inherently interconnected with SAR conduct in the phase of rescuing people.\textsuperscript{307} Also stated in article 79 of the Treaty on the Functioning of the European Union (TFEU) dealing with ‘illegal immigration’ in accordance with EU’s area of freedom, security and justice,\textsuperscript{308} is that the EU’s policy should respect the rights affirmed in the Charter of Fundamental Rights of the European Union,\textsuperscript{309} which includes the right to life.\textsuperscript{310} Moreover article 2 of the European Convention on Human Rights (ECHR) clearly codifies that States shall secure the rights and freedoms defined to everyone within their jurisdiction, including the European territorial waters, additionally article 2 of the EU Charter of Fundamental Rights declares that everyone has the right to life.\textsuperscript{311} All European States are parties not only to the ECHR, but also to UN Treaties including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). All these treaties reaffirm the rights protected in the ECHR and in cases even go beyond the ECHR in order to provide wider protection to migrants. The UN treaties bodies have confirmed that all non-citizens are protected by human rights treaties. More specifically, the Parliamentary Assembly of the Council of Europe Resolution adopted minimum human rights standards for irregular migrants in Europe, drawn from international human rights law.\textsuperscript{312}

**Duty to Assistance within Maritime Framework**

Under the scope of the European minimum standards covering civil and political rights, the right to life means that no unreasonable force should be used to prevent the entry of non-nationals. Additionally to this, authorities have a duty to try to save those whose lives may be

\textsuperscript{306} Cuttitta “Delocalization, Humanitarianism,” 788
\textsuperscript{308} European Union, Treaty on the Functioning of the European Union (Consolidated Version), Article 67
\textsuperscript{309} European Union, Criminalisation of Migrants, 1
\textsuperscript{310} European Union, Charter of Fundamental Rights of the European Union, as amended by Protocols Nos. 11 and 14, Article 2
\textsuperscript{311} European Union, Fundamental Rights Agency, Fundamental Rights at Europe’s Southern Borders, 2013, 10
\textsuperscript{312} Committee on Migration, Refugees and Population, Parliamentary Assembly, Resolution 1509: Council of Europe, The Human Rights, 12
in danger of seeking to enter a country. \(^{313}\) During the journey, most States are bound by the two Palermo Protocols handling the trafficking and smuggling of people, but have also incorporated the State’s duty to rescue people experiencing distress under maritime law, and have required States to protect migrants’ rights regardless of their status. \(^{314}\) Within the maritime context, article 2 of the EU Charter of Fundamental Rights and of ECHR are explained as also including the duty to render assistance to persons in distress at sea and by SAR obligations. It should be made clear that this duty to render assistance is applicable to all vessels, both government as well as private ships. \(^{315}\) The duty is considered to be part of international customary law, \(^{316}\) however is also codified within the 1982 United Nations Convention on the Law of the Sea (UNCLOS) to which all Mediterranean coastal states are parties. Within this Convention, according to article 98, every State must oblige the master of any ship flying its flag to render assistance and rescue persons in distress at sea, inasmuch he can without serious danger to his or her ship, crew or passengers and so far as may be expected by him. \(^{317}\) This article reinstates the obligations enshrined in the 1974 Convention for the Safety of Life at Sea (SOLAS) \(^{318}\), the 1979 International Convention on Maritime Search and Rescue Convention \(^{319}\) as well as in the 1989 International Convention on Salvage. \(^{320}\)

Moreover, article 98(2) UNCLOS obliges coastal states to organise SAR services and operations and to enter into regional arrangements where circumstances so require. \(^{321}\) This responsibility to engage in rescue operations is re-instated by SOLAS, the SAR Convention and International Convention on Salvage mentioning that contracting governments \(^{322}\) or State parties \(^{323}\) have the obligation to establish, operate and maintain SAR operations as are deemed

\(^{313}\) Council of Europe, *The Human Rights*, 13  
\(^{314}\) Council of Europe, *The Human Rights*, 14  
\(^{315}\) European Union, *Fundamental Rights*, 10  
\(^{316}\) International Law Commission, *Eighth Session*  
\(^{318}\) International Maritime Organization, *International Convention for the Safety of Life at Sea*, Chapter V, Regulation 7 juncto 33  
\(^{322}\) International Maritime Organization, *International Convention for the Safety of Life at Sea*, Chapter V, Regulation 7  
practical and reasonable.\textsuperscript{324} In particular, the aim of the SAR Convention is to have every maritime space divided up into SRR so that every part is covered by SAR services.\textsuperscript{325} Italy has in accordance with the international framework established a Maritime Rescue Coordination Centre (MRCC). As for the Mediterranean, the responsibility was divided in 1997, which resulted in Italy being the principal responsible actor for approximately a fifth of the entire Mediterranean.\textsuperscript{326} More precisely, the MRCC of Rome has coordinated the rescue operations taking place in the Maltese, Libyan and Italian SAR zones, making NGOs highly dependent on Italian authorities’ consent to conduct rescue operations.\textsuperscript{327}

Thus, the right to life includes the so-called duty to render assistance within the maritime context. International maritime framework explains the duty to render assistance in the form of SAR operations falling under the responsibility of (coastal) states.\textsuperscript{328} It is evident that the largest SAR operation provided for by the Italian State was the Mare Nostrum, which terminated in 2014 and was never replaced by any equivalent European-led or Italian initiative. Hence, Italy fails to comply with the international standards established for coastal states with regard to SAR operations. Yet, the question remains whether NGOs are legally allowed, or interpreted from the point of view of the Italian State, to take over this duty under the right to life, including the duty to assistance.

**Legitimising Italy’s View - Purposive Political Engagement within State Territory and Responsibility**

Since NGO SAR operations partly take place in the territorial sea and, as seen before, the initial responsibility to carry these out lies with the State, Italy could relate its approach to shrink the humanitarian space to (i) state territory in combination with state responsibility and (ii) political implications of SAR actions.

First of all, as coastal states are required to put in place facilities allowing for the efficient coordination of distress events occurring within their SRR,\textsuperscript{329} they can be considered as the first and sole actor responsible for SAR operations. Indeed, many coastal states,

\textsuperscript{325} Gombeer, and Fink, “Non-Governmental Organisations,” 3
\textsuperscript{326} Italian Coalition for Civil Liberties and Rights, *Guidance*, 8
\textsuperscript{327} Cusumano, “The Sea,” 391
\textsuperscript{329} Gombeer, and Fink, “Non-Governmental Organisations,” 15
including Italy, seem to think that private vessels have to abide by the instructions of the relevant coastal authorities and have adopted legislation clarifying such obligation.\textsuperscript{330} As can be seen in the Italian Code of Conduct, the government emphasises that all vessels should follow instructions of the competent national authority.\textsuperscript{331} Whilst there are no specific rules under international law regarding the power of coastal states to issue binding instructions on SAR or restricting the operations thereof, the law of the sea does provide some guidance.\textsuperscript{332} One principal rule of maritime law is that within the territorial sea, states can exercise full sovereignty including over foreign-flagged vessels.\textsuperscript{333} Yet, as mentioned before, the MRCC of Rome has coordinated the rescue operations taking place in the Maltese, Libyan\textsuperscript{334} and Italian SAR zones.\textsuperscript{335} It should first be made clear that the law of the sea does not allocate any powers to restrict foreign vessels’ navigational rights in other coastal states’ territorial sea.\textsuperscript{336} Notwithstanding, it could be argued that, within the territorial sea of Italy SAR NGOs should abide by the Italian authorities,\textsuperscript{337} meaning that the restrictions of humanitarian operations within this area can be interpreted as legal.

In addition to this interpretation of state territory and responsibility, it could be argued that SAR work carries a certain level of political engagement. As seen before, it is in line with legal framework to render assistance, yet it is uncertain whether SAR NGOs are allowed to navigate freely, including within the territorial sea of a coastal state, to provide assistance.\textsuperscript{338} To reiterate the view of Stierl, the humanitarian border is a space of possible contestation and hence, is politics.\textsuperscript{339} Depending on the type of action, the relationship between humanitarianism and politics is distinct.\textsuperscript{340} Given the fact that humanitarian actions already engage in a political space, it could be very well argued that any active intervention within the territory of a State is problematic as it overrides the humanitarian standards of impartiality,
neutrality and humanity. In accordance with this thought, articles 17 to 32 UNCLOS establish that NGO vessels flying a foreign State’s flag have a right to access to the territorial sea of a coastal state, as long as they merely ‘pass’ and do so ‘innocently’. From the side of Italy, it could be argued that NGO vessels circle around and hovering, which is not similar to solely ‘passing’ and also does not qualify as ‘innocent’ as in ‘not prejudicial to the peace, good order or security of the coastal State’.

Article 19(2)(g) UNCLOS provides that a vessels’ passage is not innocent when it loads persons contrary to the coastal State’s emigration policies and secondly, coastal States party to the 2000 Protocol against the Smuggling of Migrants are under an obligation to prevent and suppress smuggling of migrants by sea as a place of departure.

**Legitimising NGO’s View: Human Rights Norms**

Italy could invoke international and maritime law on the grounds of state territory, responsibility and political engagement of NGO, which would be helpful to legitimise the shrinking of humanitarian space. Nevertheless, the legal framework can also be interpreted *vice versa* and in this way, in favour of a (expanding of) humanitarian space for SAR NGOs. NGOs and other human rights defenders are able to argue that any restrictions of NGOs that aim to save lives are clearly not in line with the object and purpose of UNCLOS. It can be stated that UNCLOS should be interpreted and applied in good faith and in light of the humanitarian objectives of UNCLOS. Especially article 98 of UNCLOS requires the primacy of saving lives over the enforcement of domestic laws of a coastal State. Moreover, UNCLOS stipulates that a court having jurisdiction to adjudicate should apply “other rules of international law not incompatible with the Convention”, meaning that UNCLOS articles on innocent passage should be interpreted in light of international human rights law. This is not only applicable for UNCLOS, but Treves states that rules of the law of the sea are usually inspired by human rights considerations and must therefore be interpreted in those considerations.

As held by the European Court of Human Rights in *Women on Waves v Portugal*, international human rights law should be applied autonomously and limit the

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343 Gombeer, and Fink, “Non-Governmental Organisations,” 11

344 Gombeer, and Fink, “Non-Governmental Organisations,” 12

possibilities of coastal States to deny foreign vessels entry within their territorial waters.\footnote{European Court of Human Rights, \textit{Women on Waves v Portugal}, No 31276/05, 3 February 2009} This case has decided that relying on emigration or anti-smuggling laws to preclude the innocence of a foreign vessels’ passage needs to be assessed in lights of human rights norms – whether via systematic interpretation of UNCLOS or autonomous application of human rights law.\footnote{Gombeer and Fink, “Non-Governmental Organisations,” 13} It is mentioned within numerous judgments that the right to life includes a positive obligation for coastal States to take adequate measures to prevent the deaths of those within its jurisdiction,\footnote{For example, \textit{B v UK}, No 23413/94; \textit{Berii v Turkey}, No 47304/07; \textit{Choreflakis and Choreflaki v Greece}, No 46846/08; \textit{Kemaloglu v Turkey}, No 19986/06; \textit{Osman v UK}, No 23542/94;} which is not any different within the context of Search and Rescue.\footnote{For example, \textit{Leray v France}, No 44617/98; Gombeer, and Fink, “Non-Governmental Organisations,” 13}

**Concluding Remarks on Right to Life and Duty to Render Assistance**

It should be pointed out that SAR operations on the Italy-Libya transit route usually take place in high seas where no state jurisdiction applies.\footnote{Cusumano, “The Sea,” 390} As was seen here, a coastal State has no legal basis to impede NGOs from conducting rescue operations of migrants within the high seas or territorial sea of another state.\footnote{Gombeer, and Fink, “Non-Governmental Organisations,” 21} This means that the provision of SAR operations within non-Italian territory should always be free of any political interference and thus, cannot be hindered discursively or in any other way.\footnote{Cusumano, “The Sea,” 390}

As for within Italian jurisdiction, international law – and its coherence to human rights law – and case law shows that the right to life encompasses the States’ obligation not to prevent passage of NGO vessels in territorial waters when they contribute to the prevention of the loss of life. Ambiguously, the international legal framework also mentions the importance of State territory, State responsibility regarding SAR operations and the obligation of innocent passage of vessels. It is to conclude that Italy founders in its international obligations to take responsibility to establish and coordinate adequate SAR operations, however the legal framework does not provide civil society actors with any certainty or unambiguity to overtake this essential role within territorial waters. Despite the fact that SAR operations are in the position to enhance migrants’ right to life, sufficient legal protection to realise this is not guaranteed.
Disembarkation of Migrants

It has been pointed out before that one of the other tasks of SAR operations is to bring rescued migrants to a place where they can disembark safely. Migrant disembarkations have to take place in the port indicated by the Italian Coast Guard and Ministry of Interior, which is based on the availability of migrant identification hotspots. As is stated in the SAR Convention, coastal States should authorise immediate entry into their territorial sea or rescue units of other States if their sole purpose is Search and Rescue. However, on the first of June 2018, the Minister of Interior Matteo Salvini prohibited rescue ships from docking in Italian ports. After Italy’s decision to not allow disembarkation for all persons rescued off the Libyan coast, 72 per cent were disembarked to Spain and 28 per cent to Malta. According to Salvini, “NGOs are no longer legitimate” due to allegations with human traffickers or smugglers. For that reason, Salvini states the closing to be legal since “Italy no longer wants to be an accomplice of human traffickers and contribute to the business of illegal immigration.” It is to be seen whether this argument is valid within the framework of international and national law.

Legitimising Italy’s View - Assisting Intentionally a non-EU National to Enter an EU Country

SAR operations come to an end when all the persons in distress are disembarked at a place of safety, which means that the services facilitate irregular entry. Lending support to migrants to enter a country in an irregular situation is discouraged and can even be penalised within EU law. The 2002 Facilitators package, comprising of Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA, provides a threshold in line with the argument of the Italian government. The Directive provides a common definition of the ‘facilitation of illegal immigration’ and defines the following infringements: (i) assisting intentionally a non-EU country national to enter or transit through the territory of an EU country, in breach

353 Cusumano, “The Sea,” 391
355 United Nations, *Desperate and Dangerous*, 16
356 United Nations, *Desperate Journeys*
359 European Union, *Fundamental Rights*, 8
360 Allsopp, “Solidarity, Smuggling;” 7; Fekete, “Introduction,” 8
of laws, (ii) assisting intentionally, and for financial gain, a non-EU country national to reside in the territory of an EU country, in breach of laws, and (iii) instigating, assisting in or attempting to commit the above acts. For infringements in their national laws, Member States are required to adopt effective, proportionate and dissuasive sanctions. In line with the second section of the first article, it is within the Member States’ discretion to decide not to impose any sanctions on abovementioned behaviour in case the aim is providing humanitarian assistance to the person concerned, meaning that States may decide to exempt humanitarian assistance from criminalisation, the so-called ‘humanitarian clause’. However, this exemption of humanitarian acts from criminalisation is not part of EU law. Due to the fact this provision is discretionary rather than mandatory, the variation in how each Member State has incorporated the package into its national law is enormous. It should be pointed out that only a quarter have a form of humanitarian safeguard in accordance with article 1(2) and only in half of the EU Member States, facilitation of entry is defined as a criminal offence even without a gain of financial benefit. With respect to Italy, the criminalisation of irregular entry (and stay) was introduced in the Security Package of 2009.

Due to the combination with articles 361 and 362 of the Italian Criminal Code, the Package includes the rule that “all public officials with whom a foreigner comes into contact is required to report the latter’s irregular condition”. Besides, the same Package provides for increased penalties of imprisonment for trafficking migrants, which implies a close correlation between trafficking and migrants, and so a tight association between criminalisation and migrants. Thus, the Italian approach to refuse migrant rescue boats to

366 Webber, “The Legal Framework: Where Law and Morality Collide,” 8
367 Italian Coalition for Civil Liberties and Rights, Guidance
368 Allsopp, “Solidarity, Smuggling,” 8
369 Centre for European Policy Studies, The Criminalisation, 11
370 Carrera, Allsopp, and Vosyliute, “Policing the Mobility Society,” 238
371 Allsopp, “Solidarity, Smuggling,” 8; European Union, Criminalisation of Migrants, 1; Jalusic, “Criminalising,” 109
372 Republic of Italy, Law No. 94/2009
373 European Migration Network, Italian National Contact Point, Italy: Annuale Policy Report 2009, 2010, 8; Republic of Italy, Penal Code; This rule was later upheld in Court’s decisions, namely Constitutional Court of Italy, Decision No. 249/2010; Constitutional Court of Italy, Decision No. 250/2010
374 European Migration Network, Italy: Annuale, 19-20
disembark in its ports can be interpreted to be in line with EU rules as well as Member States’ practice.

**Legitimising NGO’s View - Lack of Financial and/or Material Benefit**

As seen before, both principal tasks of SAR NGOs – the rescuing of people in distress and the disembarkation of migrants – can be interpreted to be in favour of the Italian government. Regarding the disembarkation of migrants, the Italian government can rely on the EU Directive 2002/90/EC. The notion of facilitation of entry and transit mentioned in article 1(1)(a) of the Directive does not require proof of financial benefit or other material benefit to be considered a crime, making it for the Member States possible to prosecute for actions that do not have a clear criminal intent. Nevertheless, this rule could also be argued to the benefit of the position of NGOs given the fact that the article is in contradiction with article 6 of the UN Protocol against the Smuggling of Migrants. In line with the UN Convention on Transnational Organised Crimes, the UN Smuggling Protocol clearly states that punishment of the facilitation of irregular entry can only be executed when exerted with the purpose of financial or material benefit. As SAR operations do not receive any financial or material gain, they should be permitted to disembark people within Italian territory. Next to the fact that this Directive breaches the UN Convention on Transnational Organised Crimes and its additional protocols, it is also not compatible with the 1951 Refugee Convention. Moreover, the EU Facilitation Package stands at odds with the EU’s founding values as enshrined in article 2 TEU (Treaty on the European Union), the EU’s Fundamental Rights Charter and its commitment to secure and protect humanitarian actors outside the EU, which is noted in article 214 TEU and has been widely agreed upon in the European High Level Consensus on Humanitarian Aid. A study conducted by the European Parliament acknowledged the “high degree of legislative ambiguity and legal uncertainty” within the


376 Fekete, “Migrants, Borders,” 72; Gkliati, “Registering Humanity,”


The article is not entirely clear as it criminalises humanitarian assistance despite the fact this actually conflicts with international law. In the evaluation of the Facilitators Package, whereby the Committee of the European Parliament called for a mandatory exemption for humanitarian aid as well as a monitoring of EU Member State’s practice, the European Commission indeed acknowledged that Member States who did criminalise humanitarian smuggling – and any other form of humanitarian assistance to irregular migrants – would be violating human rights and EU law. Despite this affirmation, the European Commission claimed that there was insufficient evidence to prove that the laws aiming at trafficking and smuggling were misapplied by Member States.

As mentioned above, under the EU Facilitators Package, the criminalisation of people (attempting to) assisting migrants to enter a EU Member State in the sense of providing SAR operations is dependent on domestic law. Within Italian law, it should first of all be emphasised that the Italian Constitution is based upon cooperation that is regarded as a fundamental obligation inherent in Italy’s legal framework. Thereby, sections 1113 and 1158 of the Italian Navigation Code point out that an unjustified failure to provide aid to shipwrecked survivors constitutes a criminal offence. For more specific attention to migrants and the criminalisation of their helpers, the Italian Migration Law of 1998 contains provisions criminalising the facilitation of irregular entry. Acts corresponding to the promotion, discretion, organisation, funding or material realisation to the transport of irregular migrants onto the territory of Italy are punishable with imprisonment and fine, even when the ‘smuggler’ does not receive any financial gain or profit. On the contrary, section 2 of article 12 stipulates that no rescue and humanitarian assistance services provided in Italy – so including its territorial waters – to foreigners in a “state of necessity” should be criminalised. Since SAR operations are conducted within the distress phase, this resembles a situation of grave and imminent danger requiring immediate assistance. To be more...
precise, the Italian authorities consider any unseaworthy vessel to be in distress and therefore subject to SAR operations. To determine the distress situation or “state of necessity”, the overcrowding of the vessels and lack of crew and navigation skills are taken into account. However, again, the legal framework does not provide explicit guidance as Italian law does not provide any criteria the term “state of necessity” needs to adhere to. It could be argued one way or the other, from the position of Italy or NGOs, whether this “state of necessity” entails the whole process of SAR service, including disembarkation or solely the rescuing of people in distress.

**Concluding Remarks Disembarkation of Irregular Migrants**

To summarise the analysis on the second major task of SAR NGOs, being disembarkation of migrants, the international framework again provides double standards that can be invoked by both the Italian authorities as well as the SAR NGOs. First of all, Italy can invoke its refusal to migrant disembarkation on primarily, the non-mandatory option of the ‘humanitarian clause’ within the EU Facilitators’ Package. This interpretation is substantiated by EU Member States’ practice since in half of the EU States, facilitation of entry is defined as a criminal offence without a gain of benefit. Besides, it can rely on the unclear term of “state of necessity”, and the Security Package of 2009 that formally criminalises irregular entry. As for the term “state of necessity”, this could be also argued vice versa, meaning in adherence to the work of the SAR NGOs by interpreting the phrase as including the whole process of SAR given the simple fact that the people on board are the whole time in distress. In this way, this interpretation of “state of necessity” would adhere to the standards set by the UN Migrant Smuggling Protocol, article 31 of the Refugee Convention, ECHR and the EU Charter of Fundamental Rights.

**Conclusion**

Contesting interpretations of the international legal framework can lead to either a lawful or unlawful discursive shrinking of the humanitarian space. As can be seen within this chapter, the international legal and maritime framework does not provide clear guidance onto the

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389 Carrera et al., *Policing Humanitarianism*, 104
390 Carrera et al., *Policing Humanitarianism*, 105
391 Jalusic, “Criminalising,” 109
392 Republic of Italy, Legislative Decree No. 286 of 1998: Testo Unico sull’Immigrazione, Article 12(2)
393 Republic of Italy, Law No. 94/2009
394 Carrera et al., *Policing Humanitarianism*, 182
395 Gkliati, “Registering Humanity,”
extent of the compatibility of SAR operations, or indirectly, onto the allowance of a political
discursive shrinking of SAR missions within a State’s territory. The legal phrases have led to
double-sided interpretations that could both enhance a shrinking as well as a (expansion of)
humanitarian space. Regarding the question on the compatibility of SAR operations within a
coastal State’s territory, the legal framework shows remarkable signs of ambiguity and
controversy, which does not benefit the already restricted position of SAR NGOs. This is first
of all shown with respect to the first task of SAR NGOs, which is the rescuing of people in
distress. On one hand, it seems that UNCLOS formally prohibits SAR operations to take
place due to the association with politics realised through an intervention within State
territory but on the other hand, should UNCLOS be explained as a human-rights based
instrument. Secondly, with respect to the task of disembarkation of migrants in a safe place,
the EU 2002 Facilitators’ Package allows for criminalisation of SAR operations that facilitate
irregular entry of migrants, yet the later Framework Decision includes an explicit reference to
the 1951 Refugee Convention that prohibits punishment for the facilitation of entry for
humanitarian assistance. 396 Due to the fact that a discursive shrinking enhanced by Italian
politics can be interpreted to be in line with law, the legal framework actually allows the
limiting of SAR NGOs to take place and in this way, contributes to the shrinking of
humanitarian aid. It can be said that these vague and contradictory rules within international,
EU and domestic law causes an extreme high level of uncertainty unable to protect
humanitarian workers acting under humanitarian principles. As the question on the
compatibility of (restrictions on) SAR missions within a coastal State’s territory remains
unanswered, aid workers remain to fear sanctions when delivering humanitarian assistance or
in facilitating, with humanitarian intent, the entry of irregular migrants. 397

396 Jalusic, “Criminalising,” 109
397 Carrera, Allsopp, and Vosyliute, “Policing the Mobility Society,” 242; Carrera et al., Policing
Humanitarianism
Chapter 5: Formal Criminalisation

Introduction

It is shown that the legal framework does not provide any full clarity on the allowance of (a discursive shrinking of) SAR NGOs. It is argued before that the implicit permission or non-explicit prohibition of a shrinking of the humanitarian space within the legal framework contributes to the actual taking place of the Italian discursive creation enhanced through securitisation and ‘informal’ criminalisation. On a more positive note, this lack of concreteness also shows the idea that there is not yet shared consensus on the allowance of a shrinking of humanitarian space. In turn, this would mean that the shrinking of humanitarian space has not yet become normalised within our community. To reiterate, normalised means that a feature has become an increasingly acceptable rule or practice within the (international) community. Within this chapter, it will be shown that the Italian government is not yet satisfied with the shrinking of humanitarianism as it is nowadays, but is on its way to legally enhance the criminalisation of migrants and of their helpers. It will be seen here that this formal criminalisation will be realised by another break through the ‘normal rules of politics’. This means that the government not only uses securitisation and emergency calling to legalise its non-provision of State SAR operations and replace those with police operations, but also to shrink the space of NGO humanitarian missions. As a consequence, this formal criminalisation of migrants and their defenders will contribute to a normalisation of the shrinking of humanitarian space. Once the shrinking of humanitarian aid becomes acceptable or ‘the norm’ within society, this would have additional implications on the alienation, discrimination and marginalisation of migrants, whereby the possibilities of human rights defenders to protect the rights of migrants diminish further.

Moving Onto a Normalised Shrinking of Humanitarian Space

On September 24 2018, the Council of Ministers approved unanimously Decree law No. 113/2018, which is going to amend the Migration Law of 1998. Under the cloak of

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398 Jalusic, “Criminalising,” 108
399 Decree Law No. 113 was later converted into Decree Law No. 132
“making Italy safer”\textsuperscript{401}, this will have huge consequences on the rights of those in need of protection, the reception system and the possibilities of integration of foreign nationals in Italy.\textsuperscript{402} The main provision of this new legislative act will be the abolition of humanitarian protection, which used to be a form of temporary protection issued to asylum applicants who did not qualify for refugee status or any other form of subsidiary protection.\textsuperscript{403} According to the Court of Cassation, the right to be issued a humanitarian permit, together with a refugee status and subsidiary protection, constitutes a fundamental part of the right of asylum enshrined in the Constitution,\textsuperscript{404} which will be replaced with this new Decree. Instead of a humanitarian protection status, few people can qualify for ‘special permits’ but only if they succeed in proving to be victims of a limited set of circumstances or have very severe health conditions.\textsuperscript{405} Although this new Decree does not touch upon the main focus of current research, i.e. SAR operations conducted by NGOs, it certainly marks a new phase in which its fundamental migration law is being formally replaced by more restrictive provisions.

While this change is limiting the rights of migrants, the question remains when this formalised ‘criminalisation and/or marginalisation’ of migrants will be passed onto their defenders in order to fulfil the Italian political goal of humanitarian shrinking. The next step for the Italian government would be the adoption of ‘special’ or additional limitations on the phrase “aid and humanitarian assistance carried out in Italy toward aliens in need”.\textsuperscript{406} Unfortunately, the answer to this question is sooner than expected. In mid-May of 2019, the government announced that it is planning to issue a Decree that would fine NGO rescue boats between 3,500 and 5,500 euros for every migrant they disembark on Italian soil.\textsuperscript{407} Furthermore, the announced bill includes that, in the most severe cases, Italian vessels caught transporting migrants rescued at sea would have their licenses revoked or suspended for up to


\textsuperscript{402} Italian Coalition for Civil Liberties and Rights, \textit{The Salvini Decree Has Been Approved: Legislative Changes on Immigration}, September 25, 2018, 1

\textsuperscript{403} Carta, “Beyond Closed Ports”; Republic of Italy, \textit{Legislative Decree No. 286: Testo Unico sull’Immigrazione}, Article 5(6) which is to be read within the meaning of the Republic of Italy, \textit{Constitution of Italy}, Article 10(3)

\textsuperscript{404} Carta, “Beyond Closed Ports”; Republic of Italy, \textit{Constitution of Italy}, Article 10(3); Among other judgments, Ordinary Tribunal of Milan, \textit{Judgment No. 64207} (31 March 2016)


\textsuperscript{406} Republic of Italy, \textit{Legislative Decree No. 286 of 1998: Testo Unico sull’Immigrazione}, Article 12(2)

\textsuperscript{407} Lorenzo Tondo, “Italy Plans to Fine NGO Boats Up to €5,500 per Rescued Migrant,” \textit{The Guardian}, May 13, 2019, \url{https://www.theguardian.com/world/2019/may/13/italy-fine-ngo-boats-migrants-salvini}
a month.\footnote{Tondo, “Italy Plans to Fine,”} It is evident that this provision on disembarkation associated with facilitation of irregular entry constitutes a breach of the 1951 Refugee Convention, the UN Convention on Transnational Organised Crimes and its additional protocols and Italian Migration Law.\footnote{Republic of Italy, Legislative Decree No. 286 of 1998: Testo Unico sull’Immigrazione; United Nations General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplemeting the United Nations Convention against Transnational Organized Crime, Article 3(a) juncto 6(1)}

As mentioned before, next to the contents of this legislative measure, it is also essential to widely debate the dubious constitutionality of the methods with which the Decrees were approved. To emphasise, the recourse to a Decree should only be reserved for “extraordinary cases of necessity and of urgency”.\footnote{Republic of Italy, Law No. 225/92: Civil Protection Law} It is highly contradictory that the Decrees under ‘securitised’ acts have set aside laws established within ordinary ‘politicised’ procedures despite the fact that over the past two years, the number of migrants disembarking in Italy has been dropping significantly.\footnote{European University Institute, Robert Schuman Centre for Advanced Studies, Migration Policy Centre, Evaluating the ‘Salvini Decree’: Doubts of Constitutional Legitimacy, by Cecilia Corsi, March, 2019}

**Conclusion**

The recently-announced measure on the fining of the NGO rescue boats can be regarded as the last in the process of the shrinking of humanitarian aid enhanced by Italian politics. As securitisation and informal criminalisation already effectively contributed to a shrinking of SAR NGOs, formal criminalisation helps this shrinking to becoming normalised within society. By formally criminalising the work of migrant rescue boats, the Italian government not only penalises acts of human, but also establishes crimes of solidarity.\footnote{Jalusic, “Criminalising,” 107} It should be pointed out that policies that criminalise contact with migrants have broader impacts on the population as a whole since it creates widespread feelings of subjective insecurity, stigma and distrust towards all groups of migrants.\footnote{Carrera et al., Policing Humanitarianism, 181-92} Besides, those, as Jalusic calls them, “criminalisation processes” do not only affect migrants and the people assisting them, but also have implications for the present and future framework for action and of the citizens of the states in question.\footnote{European Parliament, Fit for purpose?; Jalusic, “Criminalising,” 108} According to her, such policing is anti-human according to two reasons; it affects the lives and agency of potential migrants as well as the space and political potentials of the peoples of Europe.\footnote{Jalusic, “Criminalising,” 120} In addition, policies that criminalise migration have
shown to make life more difficult for other minority groups and negatively affects social trust within society.\textsuperscript{416}

\textsuperscript{416} Carrera et al., \textit{Policing Humanitarianism}, 191
Conclusion

Summary
As this research has shown, the ongoing deaths of seeking safe passage both to and within the EU is a price that many statutory actors appear willing to pay to deter future migrants. Allsopp, “Solidarity, Smuggling,” 24 The recent deaths occurring at the Mediterranean Sea cut deeper as they speak to how the EU – and its Member States - respond to difference and diversity. Allsopp, “Solidarity, Smuggling,” 24 Within the context of the Libya-Italy transit route, it seems as if the Italian (right-wing) politics have enhanced steps of securitisation and ‘informal’ criminalisation that contribute to an effective shrinking of humanitarian space. Despite the humanitarian nature of NGOs as justification for their SAR operations, Allsopp, “Solidarity, Smuggling,” 24 Italian discourse is attempting, and is very close, to finalising the last step required to make the shrinking of humanitarian aid becoming normalised within Italian, European and international community.

Regarding the first step, Italian discourse has clearly constructed the association of migration with security, which leads to an approach in which national security prevails due to inadequate European policies. Within this ‘securitised’ approach, various Italian coalition governments have expressed states of emergenza sbarchi allowing for controversial security measures. Although these Decrees are in line with Article 5 of Italy’s Civil Protection Law, Republic of Italy, Law No. 225/92: Civil Protection Law the implications of those measures are not in accordance with migrants’ basic rights. Since the Italian government sees its national security as key priority, the lack of State SAR operations ‘legalised’ under the issuance of Decrees already contribute to a shrinking of the humanitarian space. Although these actions by the Italian State carry heavy human rights implications, this would not be such a fundamental problem as it is currently if SAR NGOs could have had the opportunity to take on this obligation.

Additionally, the research highlighted two discursive approaches used to restrict NGO actions within the humanitarian space, being the three toxic narratives aimed at NGOs and the stock of incorrect language towards migrants. As the analyses on the two types of discourse have shown, migrants are often associated as clandestini, and besides, their helpers as pull-

417 Allsopp, “Solidarity, Smuggling,” 24
419 Allsopp, “Solidarity, Smuggling,” 24
420 Republic of Italy, Law No. 225/92: Civil Protection Law
factors for illegal migration or helpers of criminal businesses who make the crossing more dangerous. Despite both types of discourse having a distinct association with either migrants or SAR NGOs, both actors have become increasingly intertwined with a sense of criminality or illegality. By linking migrants and their helpers beyond the scope of legality, the Italian political discourse splits between a unified national culture and identity versus ‘them’ or ‘the other’. 421

As the first two chapters have shown, the Italian discourse has shrunk humanitarian space two-fold; by not providing any State SAR operations under the cloak of national security and by ‘informally’ criminalising migrants and SAR NGOs. Yet, the question remained whether these discursive restrictions on SAR missions could be interpreted to be in line with the legal framework. Since the major aims of SAR operations concise of rescuing people in distress and disembarking them safely, these two tasks were held against the light of the legal framework. To reiterate, the provision of SAR operations within non-State territory should always be free of any political interference, 422 and so cannot be restricted by a national government. However, within the territory of a coastal State, it was analysed that due to the ambiguous and controversial rules dealing with the compatibility of SAR operations, the legal framework could be argued against and in favour of NGO SAR work leading to either a shrinking of or a (expanding of) humanitarian space. Potential applicability of contesting legal interpretations results in a sense of uncertainty. Here, the vagueness inherent in the legal international, maritime and domestic framework with respect to SAR operations does not give adequate protection to the work of migrant defenders as rules or obligations remain to be tied to State authority. This means that the inadequate legal frameworks actually allow the discursive restricting of SAR NGOs to take place and in this way, play a major role in the realisation of a shrinking of humanitarian aid.

As is seen, the political discourse through securitisation and ‘informal’ criminalisation in combination with the inadequate legal protection for aid workers have resulted in an effective shrinking of humanitarianism. To extend this further, the shrinking of humanitarian aid is moving to a phase of ‘normalisation’. Through formal criminalisation, it will only takes time before the restrictions of humanitarian operations will become such an acceptable rule to the extent that the fundamentality of human security and dignity vanishes.

421 Marinaro, and Watson, “Italy’s Second Generation,” 6  
422 Cusumano, “The Sea,” 390
To answer the research question, discursive Italian tactics have heavily contributed to a shrinking of humanitarian space. However, despite the fact that the Italian discourse has laid the foundation of a shrinking of humanitarian aid, it cannot be considered to be the one and only factor realising it. It is the insignificant protection of the legal framework towards SAR NGOs or other migrant defenders that allows the shrinking of humanitarianism to really happen. Thus, whereas the Italian political discourse has severely contributed to a shrinking through acts of securitisation and ‘informal’ criminalisation, it is the final combination of Italian political discourse together with the inadequate legal protection for humanitarian aid workers that have realised the shrinking of the humanitarian work of SAR NGOs. Finally, with the formal criminalisation of humanitarian operations, the shrinking of humanitarian aid will soon become normalised and in this way, will lead to further alienation, discrimination and marginalisation of migrants including their defenders.

**Discussion and Recommendation**

Most European political documents are focused on the need to save lives, whereby the justification of existing border security regimes are largely based on human rights. In the words of Crepeau, Nakacha and Atak, there is a clear dichotomy between a State’s legitimate interest to ensure national security and its domestic and international obligations to protect human rights for everyone. The common goal for the European borderlands ought to be respect for fundamental rights and humanitarian principles in migration governance, but it has become evident that this goal exists with a continued desire of European policy makers to restrict migration and the people who eventually reach European territory. While today’s system of international human rights law has moved beyond citizens’ right to human rights, it is still within the power of States to include or exclude people from the realm of rights. States continue to reinforce their power to exclude people from rights while simultaneously deploying the discourse of universal rights, pretending to be coherent with human rights and international law. In order to shift this discourse of universality of human rights into reality, an actual human rights-based approach needs to be enhanced as the interpretative method that gives legally correct answers and in this way, solves existing contesting interpretations within

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423 Cuttitta, “Delocalization, Humanitarianism,” 787
424 Crepeau, Nakache and Atak, “International Migration,” 311
425 Perkowski, “Deaths, Interventions,” 333
the context of migration.\textsuperscript{427} Aligned with Cuttitta’s thought, humanitarianism would then be able to play its inclusionary role with respect to human rights and in this way, enhances the protection of migrants as is laid down in human rights conventions.\textsuperscript{428} In turn, this would provide human rights defenders with more certainty while conducting their humanitarian work and eventually, improves migrants’ capacity to assess their rights.\textsuperscript{429} Any approach that does not integrate human rights serves to fuel xenophobia, discrimination and marginalisation of migrants, which potentially has the effect of enabling a culture of impunity around the violation of migrants’ rights.\textsuperscript{430} It would be helpful to take the case of \textit{Women on Waves} as a concrete example to be followed. This decision clearly indicates that international human rights law should be applied autonomously even though it leads to restrictive possibilities of coastal States to refuse foreign vessels within their territorial waters.\textsuperscript{431} By applying this approach as an interpretative method within the context of migration, this would, first of all, conceptualise migrants as right holders under international and regional rights instruments along with each person under a State’s jurisdiction, based upon the concepts of equality before the law and non-discrimination.\textsuperscript{432} It has been observed that migrants could easily become excluded as rights-bearers,\textsuperscript{433} which would also target ‘disloyal’ citizens who assist or advocate for the rights of the ‘excluded’.\textsuperscript{434} Secondly, relevant maritime and international law would be interpreted in conjunction with human rights, meaning that SAR operations could continue their work on the simple but fundamental basis of ‘rescuing people’s lives’ and ‘disembarking them safely’.

\textbf{Future Research}

Given the fact that scholars agree with humanitarian aid in the migration crisis becoming politicised,\textsuperscript{435} this research has provided a first step in focusing on the extent to which

\begin{footnotesize}
\textsuperscript{427} Adler, “Interpretive Contestation,”
\textsuperscript{429} Centre for European Policy Studies, \textit{The Criminalisation}, 27
\textsuperscript{431} European Court of Human Rights, \textit{Women on Waves v Portugal}, No 31276/05, 3 February 2009
\textsuperscript{432} Centre for European Policy Studies, \textit{The Criminalisation}, 27
\textsuperscript{433} Hayden, “From Exclusion,” 267
\textsuperscript{434} Carrera, Allsopp, and Vosylute, “Policing the Mobility Society,” 263
\textsuperscript{435} Cusumano, “The Sea,” 390
\end{footnotesize}
humanitarian actors cannot adequately fulfil their job owing to negative political discourse. Within the political arena or daily life, discourses of securitisation continue to be so powerful, which is why the production of academic and alternative discourses should be encouraged.\textsuperscript{436} Alternative discourses are highly essential in order to restrict the further alienation, discrimination and marginalisation of irregular migrants and hence, prevent Europe from falling in a community driven by massive polarisation that enables a culture of impunity around the violation of migrants’ rights.\textsuperscript{437}

This research demonstrated that EU Member States are increasingly active and involved in restricting NGOs through discursive measures. Notwithstanding, it would have also been very interesting to research the kind of civil society actors that experience more discursive limitations and restrictions depending on their level of political activeness.\textsuperscript{438}

Besides, as this study has only focused on ‘informal’ criminalisation through the techniques of toxic narratives and invalid terminology, it would also be fascinating to discursively analyse the misapplication of the concepts of migration, smuggling and trafficking and how a misuse thereof eventually leads to a shrinking of humanitarian aid.

Lastly, it should be pointed out that further research needs to be conducted on the shrinking of humanitarian space realised by Italian government. Here, the study perceives the bill on the fining of NGO boats as the final piece the Italian politics have realised in order to complete the circle of humanitarian shrinking. Since this bill was only recently announced, i.e. May 2019, time will tell. Therefore, it is essential that future research is conducted to assess whether the Decree has actually resulted in a normalised shrinking of SAR operations.

**Concluding Remarks**

This unprecedented new concentration of powers to deter migrants and control the actions of civil society actors at the level of the EU, in combination with a lack of clear protection for citizens to provide humanitarian assistance to (irregular) migrants at the same level, has made the EU an arena of alienation, discrimination and marginalisation.\textsuperscript{439} In a context where the EU is increasingly joining individual nation states’ efforts to determine the boundaries between inclusion and exclusion, civil society actors are more important than ever for holding EU and Member State institutions to account in accordance with a liberal, democratic and

\textsuperscript{436} Bigo, “Security,” 65
\textsuperscript{438} Carrera et al., *Policing Humanitarianism*, 175
\textsuperscript{439} Allsopp, “Solidarity, Smuggling,” 24-25
humanitarian agenda.\textsuperscript{440} Civil society actors remain to play an essential role in mobilising politically against states’ practices and policies in case politics risk undermining or violating fundamental rights. It should never be forgotten that humanitarian aiders are fundamental in upholding democratic rule of law in societies and keeping social trust in liberal democracies.\textsuperscript{441} Parts of civil society have awoken across borders to contest policies and laws they believe to be contrary to the principles and values of the EU, its Member States, as well as to broader humanitarian or political principles.\textsuperscript{442} The work of NGOs should never be subjected to stigmatisation with a veil of suspicion and untrustworthiness.\textsuperscript{443} This does not only contribute to a shrinking of humanitarian space but attempts to destroy any spontaneity, which is one of the most fundamental elements of human action.\textsuperscript{444} Instead, civil society actors should be honoured as they are the sole actors under the concepts of humanity, universalism and cosmopolitanism capable to provide counterweight to the power of politics.\textsuperscript{445} It is recognised within international law that we all have a duty to act to save fellow human beings in need, and that human rights are universal.\textsuperscript{446} Reiterating the words of Mezzadra and Neilson, humaneness implies a certain humanitarianism to be claimed by principles of human rights.\textsuperscript{447}

\textsuperscript{440} Allsopp, “Solidarity, Smuggling,” 25; Carrera et al., Policing Humanitarianism, 190  
\textsuperscript{441} Carrera et al., Policing Humanitarianism, 176  
\textsuperscript{442} Carrera et al., Policing Humanitarianism, 179  
\textsuperscript{443} Carrera et al., Policing Humanitarianism, 178  
\textsuperscript{444} Jalusic, “Criminalising,” 119  
\textsuperscript{445} Barnett, and Weiss, “Humanitarianism,” 239; Carrera et al., Policing Humanitarianism, 178  
\textsuperscript{446} Allsopp, “Solidarity, Smuggling,” 24  
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