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*Mare Nostrum, Humanitarianism and Human Rights*

Exclusion and Inclusion at the Mediterranean Humanitarian Border

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ABSTRACT
This paper starts by examining the relationship between humanitarianism and human rights, arguing that human rights do not only exceed restrictive (e.g. medical-biological) interpretations of humanitarianism, but are also exceeded by broader (e.g. developmental) interpretations. Furthermore, it points out that the humanitarian arguments used instrumentally to justify restrictive (and often inhuman) border policies in the Mediterranean also include human rights concerns. The justificationist use of humanitarianism is exemplified through an analysis of the Italian military and humanitarian operation *Mare Nostrum*. Finally, the paper develops the argument made by Fassin and Ticktin about the relationship between compassion and rights, and about the inclusionary power of humanitarianism producing subaltern subject positions. By analysing resettlements from Libya and rescue operations carried out in international waters, the paper shows that humanitarian processes of differential and subaltern inclusion based on the victimization of migrants: a) are not limited to the territory of the destination country; b) do not only and necessarily go to the detriment of rights but can also go even beyond legal obligations.

Introduction
By focusing on the Central-Southern Mediterranean, this paper addresses three different issues regarding the humanitarian Mediterranean border. First, the paper analyses the meaning of humanitarianism and its relationship with human rights within the Mediterranean migration and border regime. Secondly, it analyses the Italian military and humanitarian operation *Mare Nostrum* and, more generally, Italian humanitarianized border policies and practices, to point out that humanitarianism is both a fig leaf used to legitimate exclusionary policies and practices and an instrument for the subordinate inclusion of migrants into the European space. In analysing such aspects of the Mediterranean humanitarian border, the paper tries to stress continuities and discontinuities with the work of Didier Fassin (2005, 2010, 2011) and Miriam Ticktin (2005, 2006, 2011). Fassin and Ticktin were among the first to point out the emergence of the humanitarian reason in migration management by analysing its increasing role in French policies. More particularly, they analysed the effects of the illness clause that was introduced in French immigration law in 1998. Such rule allowed authorities to grant residency status for humanitarian reasons to undocumented migrants affected by life-threatening pathologies who wouldn’t be able to receive appropriate health treatment in their home country. In the preceding years, restrictive norms on work immigration had been flanked by a sharp decrease of the recognition rates of asylum applications, based on the increasing suspicion against ‘bogus’ asylum seekers as well as on a negative attitude against ‘ordinary’ asylum seekers who were ‘only’ fleeing persecution. Importantly, the wide discretionary power enjoyed by both the medical offices and the members of the asylum commission resulted in moral sentiments to play a decisive role in the procedure to grant a residency permit based on the illness clause (Ticktin 2006) and in the asylum procedure alike (Ticktin 2005), with the refugee status being mainly granted to people who were in particularly exceptional and moving situations rather than to the ‘ordinary’ politically persecuted. Thus, asylum was degraded from a political to a compassion issue: “[t]he recognition of the refugee...”
status by European nations appears as an act of generosity on the part of a national community towards a ‘suffering stranger’ rather than the fulfillment of a political debt toward ‘citizens of humanity’” (Fassin 2005:376), and it privileges innocent, apolitical and non-agentive victims (Ticktin 2005) deserving pity rather than solidarity. Thus, while the main doors of work migration and asylum are almost completely closed by restrictive laws and administrative practices, a small window can still be opened by compassion. Although Fassin and Ticktin use the term ‘compassion’, they both fail to conceptualize it as a specific form of humanitarianism and to clarify the relationship between humanitarianism and human rights. Instead, they end up opposing humanitarianism to human rights. Instead, this paper suggests that the human rights discourse is a constitutive component of the discourse that established the humanitarian Mediterranean border.

Humanitarianism at large can, on the one hand, serve to mask the restrictive character of immigration policies and end up limiting the effectiveness of human rights, as pointed out by Fassin and Ticktin, but, on the other hand, it can also open up new avenues for migrants, going beyond what the mere respect of human rights would grant them. Importantly, processes of humanitarian inclusion also occur outside the state’s territory (not only inside it, as shown by Fassin and Ticktin) and in the absence of legal responsibilities for the relevant state towards the people involved (not only as a consequence of specific legal obligations).

**The relationship between humanitarianism and human rights**

William Walters (2011:151) has argued that one axis for knowing the humanitarian border “is constituted by certain forms of legal know-how. This is manifested in the numerous ways in which the border is documented as a regime which is violating certain norms of treatment and denying certain rights to migrants”. Moreover, “the humanitarian border is configured as a sociolegal space, and its subjects governed if not as, then certainly in the image of rights-bearing individuals”. Human rights are therefore to be seen – according to Walters – as an essential component of the humanitarian border. Along the same lines, Mezzadra and Neilson (2013:175) write that “humaneness implies a certain humanitarianism that might be claimed by policing borders according to UN protocols or observing principles of human rights”.

The relationship between humanitarianism and human rights, however, is not as easy and straightforward as it may seem, and there are diverging opinions about the meaning of humanitarianism (Perkowski 2014; Pallister-Wilkins 2015). According to Fassin (2009:50), “humanitarianism is not about human rights in general, but about the right to live in particular: saving lives is its higher mission”. While such an interpretation of humanitarianism is, of course, legitimate as an individual approach (and even more in an article, like the above-cited one, whose aim is to analyse the place of life and death in the Foucauldian concept of biopower), it shouldn’t be generalized and absolutized.

Indeed, the history of humanitarianism shows that “[t]here is no ‘objective’ definition of humanitarian action” (Calhoun 2008:73). On the one hand, there would be some reason to support the view that sees humanitarianism as limited to the rescuing of life and the provision of immediate relief in situations of emergency: the creation of the International Committee of the Red Cross (ICRC) in 1863 is often indicated as the starting point of modern (that is institutionalized and internationalized) humanitarianism (Barnett and Weiss 2011; Davey 2013), and the ICRC was established only to provide neutral, impartial and independent first aid and care to the victims of armed conflicts. In the same period, however, many charitable associations and boards were also created with the aim “to manage poor relief, sanitation, hospitals, and other projects” (Calhoun 2008:79). The activities of such (non-state) organizations went far beyond saving lives and providing immediate relief to suffering bodies. In sum, it can be argued that “[h]umanitarianism took root in the modern world not as a response to war or ‘emergencies’ but as part of an effort to remake the world so that it better served the interests of humanity” (Calhoun 2008:76). Even “[m]any of today’s best-known aid organizations […] that do more than provide emergency
assistance began as single-minded relief agencies but soon discovered that relief was not enough [...]. Many organizations now aspire to transform the structural conditions that endanger populations because saving individuals today makes little sense if they are in jeopardy tomorrow” (Barnett and Weiss 2011:11-12). Indeed, the scope of the activities of many humanitarian organizations was expanded during the twentieth century, and it’s no coincidence that this happened simultaneously with the gradual establishment of an international human rights regime. Now, the activities of such organizations often include both short-term emergency relief and long-term development projects that have much more structural and ambitious aims. Moreover, many humanitarian organizations explicitly include the protection and/or promotion of human rights among their main objectives or mention them as one of the indirect (and desired) results of their action. Even the ICRC, while describing itself as “an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance […] also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles” (ICRC 2009).

Besides showing that even the ICRC’s scope is in fact broader than it was at the time of its foundation, insofar as it also includes activities for the prevention of suffering, this quote also reminds us of the existence of international humanitarian law. Humanitarian law regulates the conduct of warfare (jus in bello, as opposed to jus ad bellum, which instead determines the criteria and legitimate reasons for engaging in war) with specific regard to the need to protect civilian people and infrastructure and to treat war prisoners humanely. The aim of humanitarian law goes, thus, beyond the obligation to rescue human lives and provide immediate relief. Moreover, the ambiguity with which concerns about the risk of ‘genocide’ have been mixed up with those about ‘massive human rights violations’ in order to justify the so-called ‘humanitarian wars’ that have been waged in the post-Cold War era also suggests that humanitarianism and human rights can hardly be kept separated, if at all (Kennedy 2004).

Furthermore, the roots of modern humanitarianism can also be traced in earlier phases of the Westphalian order, and even in its gestational phase: “[c]olonialism itself was often understood (with no cynicism) as humanitarian” (Calhoun 2008:78). Indeed, “humanitarian ideas appeared also as part of the rationale for colonialism. Humanitarianism was often part of the ‘civilization’ that colonial powers sought to bring to the peoples they conquered” (Calhoun 2010:39). Importantly, the criticism of colonialism based on the doctrine of human rights and made by authors like Francisco de Vitoria and Bartolomé de las Casas did not aim to put an end to colonialism but rather to humanize it. Therefore, it can be argued that the doctrine of human rights was part of the humanitarian justification of colonialism as a civilization mission.

Finally, the rooting of natural law in different religious traditions, and, more specifically, the just-naturalist interpretation of human rights as God-given in the Christian tradition disprove the argument made by Ticktin (2006) that distinguishes humanitarianism from human rights based on the respective origins (religious for the first, secular for the latter). Incidentally, the other argument made by Ticktin (2006:35) is that “human-rights institutions are largely grounded in law […], whereas humanitarianism is more about the ethical and moral imperative to bring relief to those suffering and to save lives”. While it is a truism to say that human rights are largely grounded in law (indeed, they are law), it would be wrong to see them as opposed to moral imperatives: human rights (and law, in general) are rather the positivization of moral imperatives, and their codification, interpretation and implementation change over time and space also as a result of differences and transformations in the dominant morality. However, it is true that different coalescences of humanitarianism can be identified. According to Redfield and Bornstein (2010), three are more clearly visible: a medical one aimed at saving lives and relieving physical and psychological pain, a legal one focused on rights as a tool for humanitarian aims, and an economic-developmental one focused on removing the main root causes of suffering. And yet, these distinctions should be thought of “as historical orientations, trajectories, and tendencies rather than categorical certainties”
(Redfield and Bornstein 2010:6), or as “rivers [that] share a headwater and have flowed into each other over the decades” (Barnett 2011:16). Furthermore, and importantly, not even these three streams cover the entire range of meaning of humanitarianism. Arguably, humanitarianism at large simply means following the ‘golden rule’, which, incidentally, also includes the principle of hospitality.

Having said this, the work done by Fassin and Ticktin is important because it addresses the relationship between humanitarianism and human rights by stressing the fact that rights are being gradually moved from the political to the compassion sphere. I will come back to this issue later, in order to discuss and further develop the analysis initiated by Fassin and Ticktin.

**Humanitarianism and human rights in the language of policy-makers**

The previous section has shown that there are good reasons for considering human rights as part and parcel of humanitarianism, and humanitarianism as something that goes beyond the moral (or even legal) obligation to save human lives and give first relief to people who are in urgent need of medical care. Human rights exceed the strictest interpretation of humanitarianism as limited to saving lives and provide immediate relief to the suffering caused by emergencies. However, human rights are, in turn, also exceeded by a broader interpretation of humanitarianism as aimed at combating poverty and exclusion, at promoting the well-being of mankind and at treating others the way we would want to be treated ourselves.

In this section I show that there is also a specific reason for addressing the human rights issue – and not only the issue of border deaths and the provision of emergency care – when analysing the humanitarianization of the EU external border. Indeed, both the part of the humanitarian discourse focusing on the need to save human lives (what we could call the minimalist interpretation of humanitarianism) and the part focused on human rights at large have contributed to the same discursive process that has accompanied the evolution of the European migration and border regime in the last fifteen years. In such period, European institutions (at both state and EU level) have increasingly tried to use humanitarian concerns to justify the established migration and border regime. While such regime was characterized from the beginning by strong criticism based on humanitarian reasons, policymakers, think-tanks, security professionals, experts and technocrats involved in the management of migration gradually appropriated (Fassin 2007:154), recoded and used the very same arguments to legitimize it. Importantly, they did this by focusing not only on the need to save the human lives of undocumented travellers (typically at risk of dying while trying to cross the Mediterranean) or relieve the suffering of the survivors of fatal journeys, but also on the need to protect their human rights.

At the EU level, the humanitarianization of the sea border can be first traced in official documents to late 2004. At that time the stress was put on the need to save human lives. In July that year, the shipmaster and the first officer of the humanitarian ship Cap Anamur, as well as the head of the organization owning the ship and bearing the same name, were all detained and prosecuted under the charge of aiding and abetting illegal immigration because they had rescued 37 migrants in the Strait of Sicily and brought them to an Italian port. This prompted a debate about border deaths in the Mediterranean, and the German Interior Minister, Otto Schily, proposed the establishment of European reception camps for asylum seekers in North Africa, arguing that this would also prevent casualties during the sea crossing. A measure aimed at keeping migrants at bay was thus presented as a measure aimed at saving their lives. The proposal was never formalised at EU level. However, the European Council of November 2004 expressed ‘its utmost concern about the human tragedies that take place in the Mediterranean’ and called ‘upon all States to intensify their cooperation in preventing further loss of life’ (Council of the European Union 2004). Since then, the need to save lives has been regularly mentioned by EU policy documents on migration, and rescuing migrants at sea has become, besides combating illegal immigration, the main declared objective of EU border control strategies (Council of the European Union 2006; European Parliament and Council of the European Union 2013). Vibrant calls for determined action to “prevent the loss of lives at sea”
came from the EU Council after the two deadliest tragedies ever occurred in the post-war Mediterranean history, which both took place in the Strait of Sicily on 3 October 2013 and 18 April 2015 respectively (Council of the European Union 2013, 2015).

In Italy, instead, the humanitarianization of the border had already become visible in 2002. The amendments made to the Italian immigration law that year introduced stricter penalties for smugglers if the lives or physical safety of the smuggled persons have been put at risk during the smuggling process, and if the smuggled persons have been subjected to inhuman or degrading treatment. By doing this, the Italian legislator seemed to aim at enhancing the safety of irregular travels in general, by protecting not only the right to life, but also the right to physical integrity, the right to be treated humanely, and the right not to be tortured. Gradually, human rights became a crucial issue for justifying the restrictive border regime. In 2003, the cooperation agreement signed by the Italian government with Gadhafi’s Libya was heavily criticized, both internally and internationally, because of the well-founded fear that increased cooperation with the Libyan regime would result in increasing violations of migrants’ human rights. However, the agreement was publicly justified with the “strong determination to jointly tackle criminal organisations devoted to the smuggling of human beings and the merciless exploitation of clandestine migrants” (Ministério dell’Interno 2003b). Indeed, smugglers often subject their customers to violence and inhuman and degrading treatments, and not only Italian authorities, but also those of other EU countries soon realized that “the hardships migrants face can be turned around to label control measures protective and benevolent” (Carling and Hernández-Carretero 2011:55). More recently, after over 700 people died on 18 April 2015, the Italian prime minister, Matteo Renzi, said migrant smuggling amounts to “the slavery of the 21st century” and labelled the smugglers as “the new slave traders” (Bbc.com 2015). I won’t linger here on the contradictory comparison between the slaves, who were deported and forced to cross the ocean against their will (yet ‘regularly’), and the present-day migrants, who by all means want to cross the Mediterranean but are not allowed to travel regularly. What I want to stress here is that comparing smugglers to slave traders explicitly addresses not only the right to life but also other human rights such as personal freedom, freedom from exploitation, and, again, the right to physical integrity and the right to be treated humanely.

Human rights are also at the core of what could be called the ‘humanitarian turn’ of the EU border agency Frontex, which was created in 2004, became operational in 2005 and launched its first border patrol mission in 2006. A number of studies (Perkowski 2012, 2014; Slominski 2013; Campesi 2014; Aas and Gundhus 2014) have documented a drastic increase of humanitarian rhetoric in Frontex’ regulations and policy documents, as well as in the self-presentation of the agency. As a first step, the EU border agency made an agreement with the United Nations High Commissioner for Refugees (UNHCR) in 2008. In 2010, specific rules for sea border operations were introduced, according to which all activities must be conducted in compliance with fundamental rights, also including the principle of non-refoulement, and Frontex border guards must be trained with regard to relevant human rights and refugee law as well as to the international regime on search and rescue. In 2011, the border agency adopted a Code of Conduct and a Fundamental Rights Strategy. Finally, Frontex instituted the post of the Fundamental Rights Officer (FRO) as well as a Consultative Forum on Fundamental Rights (CFFR) in 2012. While Frontex has also increasingly stressed its role as saviour of lives (Perkowski 2012:22, 2014: 5-6; Aas and Gundhus 2014:5), the humanitarianization of the EU border agency has been especially focused on the respect of human rights in general and of the principle of non-refoulement in particular. This discursive turn was necessary in order to defend Frontex from the accusation of being inhumane. As says Feldman (2012:83), in order “[t]o justify the [migration] apparatus in humanitarian terms, EU officials speak fluently in the language of human rights”.

**Humanitarian justificiationism**

The instrumental use of humanitarianism is best exemplified by the Italian operation Mare Nostrum. From 18 October 2013 to 31 December 2014 a number of vessels, helicopters, airplanes,
drones and personnel of the Italian Navy, Army, Air Force, Carabinieri, Guardia di Finanza, Coast Guard and Police continuously patrolled the international waters of the Strait of Sicily, in search for migrants to be rescued, within the Mare Nostrum framework. The mission was launched immediately after the Lampedusa tragedy of 3 October 2013, when 366 people drowned only half a mile before reaching the Italian island. As a response, the Italian government launched Mare Nostrum and presented it as a military and humanitarian mission, whose declared aim was both to save human lives and to intensify border control. As time went by, however, the stress was put more and more on the humanitarian side of the mission. Because of its life-saving goal, Mare Nostrum was praised and supported not only by almost all Italian political parties (the only criticism coming from a part of the opposition accusing it of attracting more migrants, and therefore also increasing the absolute number of casualties), but also by humanitarian organizations such as Amnesty International, Médecins sans Frontières and the UNHCR, which called on the Italian and European institutions not to reduce the search and rescue capacity in the Mediterranean when the Italian government announced that Mare Nostrum would end because of financial constraints in October 2014, only a year after its launch. In the end, Mare Nostrum was stopped on 31 December 2014, after around 177,000 people had been rescued, and its name remained the symbol of humanitarian border management. After the shipwreck of 18 April 2015, which caused the death of an estimated 700 people, the International Organization for Migration (IOM) requested the resumption of Mare Nostrum, while the UNHCR and the European Parliament called for a European Mare Nostrum-like humanitarian rescue operation.

To deconstruct the picture of a good-hearted and innovative humanitarian mission, it must be first reminded that, besides the thousands of migrants rescued, Italian authorities also boast about the hundreds of smugglers detained within the mission. Indeed, navy ships have been used to identify people, to interrogate them and to detect smugglers: in order to do this, not only military personnel but also police officers have been on board. Furthermore, Mare Nostrum aircraft and vessels were part and parcel of the operational cooperation framework that has long been established between Italy and North African countries (Cuttitta 2008, 2014a; Cassarino 2010; Bialasiewicz 2012). Within such framework, based on the provision of training programmes and technical equipment, on practical cooperation and exchange of information, migrant boats have been also intercepted and forcibly returned by the border guards of North African countries, while thousands of people have been prevented from departing.

The operational cooperation between Italy and North African countries in maritime border control began in the 1990s and is, therefore, not a novelty. Military vessels and aircraft carrying out both rescue missions and security activities were not a novelty either, when Mare Nostrum was launched. In October 2013 the Italian government opted less for a qualitative than for a quantitative change, by strongly increasing the already existing patrolling activities. Before the launch of Mare Nostrum, indeed, Italian military vessels and aircraft had been patrolling the Strait of Sicily within the operation Constant Vigilance since 2004. While Constant Vigilance was never presented as a ‘humanitarian mission’, Mare Nostrum only (yet significantly) increased the number of vessels, aircraft and personnel deployed in the framework of the previous operation: the estimated cost of Mare Nostrum was around 9.5 million Euro per month, whereas the monthly budget of Constant Vigilance was only 1.5 million Euro per month. In quantitative terms there was a big difference, but in qualitative terms – in terms of what Italian authorities actually did – there was hardly a difference, because Constant Vigilance was also engaged in both rescue missions and security activities. Moreover, if we go further back in time, we realize that military vessels and police vessels started patrolling the international waters of the Strait of Sicily as early as 1995. From the beginning, Italian border guards were confronted with the duty to rescue people: in 1997, they claimed that they were not able to forcibly divert migrant boats back to Tunisia, because migrants sinking their own vessels resulted in the legal obligation for authorities to rescue them and bring them to Italy (Comitato parlamentare Schengen-Europol 1997). Then, from 2002 onwards, the number of navy ships involved in migration controls was increased. Importantly, at that time the
emphasis was mainly put on security, not on humanitarian concerns. However, migrants were still ‘rescued’, first, and then brought to Italy, except in the few cases in which Tunisia accepted to take migrants back from international waters, upon the request of Italian authorities that first intercepted the migrants and then contacted their Tunisian counterparts. In 2003, a governmental decree was issued to regulate i.a. the “continuous patrolling activities” of Italian navy ships and aircraft in international waters. The decree specified that activities tackling irregular migration must always aim at “safeguarding human life and respecting human dignity” (Ministero dell’Interno 2003a). Then, after the launch of Constant Vigilance, the activities didn’t change significantly: according to governmental guidelines, the priority of interceptions was always rescuing lives (Consiglio dei Ministri 2005). Even in 2011, when arrivals to Southern Italy drastically increased in the wake of the Arab Spring, saving lives “was at the top in the hierarchy of priorities […] at that time maybe in daily operational activities more than in the public discourse” (Pastore and Roman 2014). With regard to the geographical extent of patrolling activities, Mare Nostrum has surely covered on a more regular basis the area bordering Libyan national waters. Not even this, however, is actually a novelty: Italian navy aircraft or ships often spotted vessels and carried out rescue interventions close to the Libyan maritime boundary also in the past, and they kept doing this even after Mare Nostrum was stopped.

In sum, there was a continuity in qualitative terms as regards the engagement of Italian authorities in rescuing migrants in distress at sea, in spite of the humanitarian rhetoric that surrounded the Mare Nostrum mission, presenting it as something new. After all, humanitarian institutions have long played an important role in migration and border management (at both global and local level): the most obvious examples are the obligation to rescue lives and the principle of non-refoulement (especially after its codification through the 1951 UN refugee convention and its 1967 protocol).

What has changed in the course of time is less the fact that such principles have been respected (although they have been also disregarded, at times, as pointed out in the next section) than the fact that respecting them has been increasingly publicized in order to present the European migration and border regime as a good-hearted one, while in fact it is still aimed at limiting the freedoms and rights of large numbers of people. Indeed, the humanitarian character of Mare Nostrum was not novel within the framework of Italian sea border controls, instead innovations were apparent in intelligence, most notably the identification procedure and the fact that migrants were sometimes held on board for several days before they were brought to land, thus turning navy ships to floating detention centres. The humanitarian rhetoric about the life-saving aim of Mare Nostrum was thus an instrumental move for making restrictive border control policies and practices acceptable to a public opinion that was increasingly shocked by the high death toll at the Mediterranean border.

This is not to say that all politics is cynical and humanitarian action at the EU borders is simply a fake. Indeed, Edelman (1992: 21-22) has explained that the construction of the ‘political spectacle’ “is not necessarily self-conscious or deliberately deceptive”, and Goffman (1959) has shown that much of what is staged in everyday life is less the result of a director’s orchestration than the mechanical repetition of routine acts. This also applies to migration and border controls as well as to the Mediterranean humanitarian border.

The exclusionary power of humanitarianism

What remained hidden behind the humanitarian veil of Mare Nostrum was the inhuman nature of the Euro-African migration and border regime that the Italian military operation was contributing to strengthen. The humanitarian character of Mare Nostrum was best exemplified by the respect of the right to life and the right to asylum: people were rescued and brought to Italy; there, those entitled to apply for asylum were allowed to do so, while the others were detained and, if possible, repatriated. The dominant representation of the Mare Nostrum period is the picture of a humane and orderly management of migration carried out by state authorities as opposed to the wild inhumanity of smugglers. However, this attitude was not new for the Italian authorities. Under the second Prodi government (2006-2008), for example, Italy put a great effort into presenting its border policy as
human. This was done by stopping the unlawful deportations to Libya that had been carried out by the previous government between October 2004 and January 2006, as well as by establishing a cooperation with UNHCR, IOM and the Italian Red Cross (CRI) on Lampedusa to make sure human rights would be respected on the island (Cutitta 2014b). At the same time, however, the Italian government strengthened cooperation with the police of Libya and other North African countries, with the aim to prevent people from crossing the Mediterranean. By dispatching liaison officers to the Italian embassies, Italian police kept supporting their North African colleagues in controlling their borders. This resulted in thousands of people being prevented from leaving or apprehended by the border guards of Libya, Tunisia, Algeria and Egypt, either in national or in international waters, and forcibly returned to North African ports. From there, many people where then forcibly repatriated in breach of the principle of non-refoulement, many others were forced to remain in countries in which they would be exposed to gross human rights violations (e.g. unlawful detention, torture, inhuman and degrading treatments, refoulement, no effective judicial remedy), as documented by several reports of human rights organizations (see among others: Human Rights Watch 2008, 2014; Jesuit Refugee Service Europe 2012; Amnesty International 2013, 2015).

Even during Mare Nostrum, Italy kept providing the police authorities of North African countries with aid programmes (offering training courses for border guards as well as funding for the construction of border police facilities) and technological equipment (all-terrain vehicles, patrol boats, night vision devices, instruments for the detection of false and falsified documents). In 2013, also the EU started a two-year border and assistance mission (EU-BAM) in Libya, with the aim to train and advise Libyan authorities. Before, during and after Mare Nostrum, thousands of people have been forced to remain in (or have been forcibly returned to) Libya and other North African countries by the local authorities. Before, during and after Mare Nostrum, the primary aim of Italian and European policies has been to prevent people from arriving to Europe, where most of them would be granted refugee status or humanitarian protection, and many others would be able to remain irregularly as undocumented migrants.

A number of studies (among others Rijpma and Cremona 2007; Ryan and Mitsilegas 2010; McNamara 2013) have shown how the externalization of border controls aims at relieving European states from legal responsibilities. Indeed, despite significant exceptions (in 2012, Italy was condemned by the European Court of Human Rights for pushing back Somali and Eritrean migrants to Libya in 2009), legal responsibilities for actions carried out directly by European countries have been successfully circumvented by outsourcing the ‘dirty job’ to third countries that are not subjected to any international court. However, while it has been argued that legal responsibilities might arise also for indirect action – e.g. in the case of outsourced push-backs (Giuffré 2013) –, the humanitarian character of Mare Nostrum can be questioned not only because of its indirect consequences on those who were immobilized in North Africa, but also in the light of the activities directly carried out within the Italian operation. Even if there were dead migrants on board or people reportedly missing, Italian police authorities on Mare Nostrum vessels primarily interrogated migrants as to their own identity and tried to gather information useful for arresting presumptive smugglers, while abstaining from any investigation activity that could have helped to identify the dead or missing people. Generally speaking, the fact that state authorities regularly collect information and compile statistics regarding the apprehension of live migrants, while they don’t collect or disclose to the public systematic data on border deaths (Last and Spijkerboer 2014), is an indicator of their ambiguous attitude towards humanitarian issues, if we only consider the high humanitarian relevance of identifying the dead (Grant 2011; Kovras and Robins forthcoming). In the specific case of Mare Nostrum, it suggests that the security aims of the Italian operation still outweighed the humanitarian ones. Importantly, the identification of live migrants was often achieved through the unlawful use of force (Asgi 2014). This had been the case already before Mare Nostrum (Feliziani 2014), but things didn’t change during the humanitarian mission: human rights were violated by Italian authorities both on board the navy vessels (Borderline Europe 2014) and upon arrival on the mainland (Escapes 2014).
The inclusionary power of humanitarianism

Pointing only to the fact that humanitarianism has become a fig leaf for exclusionary policies and practices would overlook its inclusionary power. Indeed, human rights “are increasingly becoming a key component in migration and border regimes worldwide” insofar as they play “just as much a role in establishing the conditions under which border crossing can be blocked or slowed as those under which it is facilitated” (Mezzadra and Neilson 2013:175-176). Albeit within the status quo of a restrictive border regime (which, incidentally, it didn’t challenge but rather reinforce), Mare Nostrum as such protected and enforced the right to life of those who were trying to cross the Mediterranean by permanently expanding the geographical extent of border patrols as well as by increasing them. Thus, the Italian operation went beyond the need to comply with human rights obligations. In order to respect the duty to rescue people in distress, it was not necessary for Italian authorities to permanently deploy their vessels and aircraft in international waters. Maritime border controls could have been easily limited to the edges of Italian territorial waters, and rescue interventions on the high seas carried out only ‘on demand’, in response to distress calls. Thus, many people would have died unnoticed (because unable to successfully send a distress call) and many others would have lost their lives because the fewer vessels available would have needed more time to reach the place of the incident, but Italy wouldn’t have been liable for any human rights violation. Furthermore, and more importantly, the Italian mission, by stretching the reach of patrol activities up to the borders of Tunisian and Libyan national waters, did not only contribute to saving lives: indeed, rescued people were also brought to Italian territory and funnelled into the Italian reception system. This resulted either in the rescued to be granted residency status as refugees, or in their illegalization (and then either in their deportation or in their subaltern inclusion as ‘illegals’). Therefore, saving lives under Mare Nostrum also meant including rescued people into the Italian and European polity. Their inclusion was based on a humanitarian gesture – expanding the reach of patrol operations to the utmost southern part of the high seas in order to rescue people – that went (from a legal perspective) beyond human rights obligations and was delocalized (from a geographical perspective) outside Italian territory and into international waters. To a lesser extent, this was and still is also the case of Italian maritime border controls before and after Mare Nostrum. Although the difference between Mare Nostrum and previous Italian operations was much less qualitative than quantitative, it must be stressed that Mare Nostrum enhanced the rescue capacities and made the Italian policy of patrolling international waters not only more effective but also much more visible.

Another example helps to understand the inclusionary power of delocalized humanitarian border management beyond human rights obligations. In 2007 Italy launched its first resettlement action ever. This followed calls from the UNHCR and from the Eritrean diaspora in Italy in the summer of 2007, as well as a parliamentary question posed in October that year, all asking the Italian government to allow the entry of around 600 Eritrean refugees who were being held in the Libyan detention centre of Misratah. Between 2007 and 2008, around 70 of them were resettled to Cantalice, a small town in Central Italy. In the first group of 39, there were “26 lone women and 2 unaccompanied minors” (Ministero dell’Interno 2007), which suggests that the main criterion used to select refugees for resettlement was to pick those who are or are generally perceived to be the most innocent and vulnerable. For Italy, there was no obligation under international law to grant those people access to Italian territory. By accepting to resettle a number of refugees, Italy took humanitarian action going beyond human rights obligations. Importantly, this was a sharp turn away from previous policies. The second Berlusconi government (2001-2005) had not simply turned a blind eye to unlawful returns from Libya but it had also actively supported them, e.g. by financing return flights to Asmara to repatriate Eritrean refugees (European Commission 2004:61), who were thus exposed to the risk of persecution. Following the strong criticism from domestic opposition as well as from international institutional actors and human rights organizations, such policy was not continued, and Libya was also asked to refrain from violating the non-refoulement
principle. Another case of resettlement occurred in March 2011, at the outbreak of the Libya war, when the Italian government, as a response to calls from the Italian Refugee Council (CIR), the association Habeshia and the Bishop of Tripoli to evacuate the around 2000 Eritreans who were exposed to violence in the Libyan capital, decided to resettle just 108 of them (Puccio and De Donato 2013).

Also with such resettlement actions, like with Mare Nostrum, Italy anticipated its compliance to human rights obligations in time and space, by allowing access to its territory and granting protection status to a number of persons towards whom it bore no responsibility under international law. The inclusion of the Eritrean refugees into the Italian territory and polity took place as a result of a delocalization of humanitarian principles that went beyond human rights obligations. There are some differences that deserve to be stressed between the permanent deployment of patrol boats on the high seas and resettlement schemes. Rescue missions are carried out permanently, and the number of people that can be saved and brought to Italy is potentially unlimited. The Italian resettlement actions, instead, were ad hoc measures taken at specific times and for a very limited number of beneficiaries. Both permanent rescue missions in international waters and resettlement schemes, however, can be analysed from the perspective used by Fassin and Ticktin.

While it must be borne in mind that resettlement can also be used instrumentally as an alternative to asylum proper, with a view to limiting the number of incoming refugees (van Selm 2003), the Italian gesture, taken in itself, is undoubtedly an act of generosity (albeit a small one), and it privileges those (women, children) who are perceived as the most endangered but also as the most unspoilt and passive (while leaving out the others). Yet, there are two differences with the cases illustrated by Fassin and Ticktin. The first is that Italy had no legal responsibility towards the persons that were resettled: it was responsible neither for their asylum procedure nor for their rights being respected in Libya. The second difference is that, while those cases regard French policies and practices in France, here compassion stretches out geographically to reach the territories of transit countries like Libya. The same can be said about Mare Nostrum rescue interventions, with the Italian authorities going beyond their legal obligations as well as beyond the borders of Italian territorial waters, and bringing to land people who can be presented as vulnerable and helpless human beings over whom state institutions have the power of life and death, or at least of inclusion and exclusion, of acceptance and rejection.

Albahari (2006) argued that the death of migrants at sea “is partly a ritualized spectacle through which the state confirms, reinforces, and performs its power over its own citizen subjects”. Arguably, the same can be said about the life of migrants, about the gesture of rescuing people at sea. Indeed, the Latin title of the Italian operation inspires a link with the ancient Romans, whose habits regarding the power of fathers towards the new-born show some similarities with Mare Nostrum. Once the baby was delivered, the Roman father had the power to accept or refuse it, with acceptance – which resulted in the duty to raise the baby within the familia – being symbolically communicated through the spectacularized gesture of lifting it in the air. Given the high level of (state-driven) mediatisation of Mare Nostrum, the spectacularized gesture of rescuing people at sea is comparable to that of lifting the new-born. The difference is that the rejected are, in the case of Mare Nostrum, unknown to the father, or they have fallen victims to ‘miscarriages’ resulting from carelessness and indifference (Fekete 2009:94-96; Heller, Pezzani and Situ Studio 2012; Squire 2014; Basaran 2015).

**Conclusion**

This paper has contributed to the scholarly debate on the relationship between humanitarianism and migration management from different perspectives such as the meaning of humanitarianism, its relationship with human rights, its exclusionary and inclusionary power, its ability to create subordinate subject positions.

The introduction has summarized Fassin’s and Ticktin’s approach to such questions, while the following sections of the paper have analysed the evolution of border controls at the Central-
Southern Mediterranean EU border, highlighting continuities and discontinuities with the conclusions drawn by Fassin and Ticktin.

First, this paper has addressed the relationship between humanitarianism and human rights by arguing that human rights do not only exceed the restrictive interpretation of humanitarianism as limited to the right to life, but are also exceeded by a broader interpretation of humanitarianism as aimed at preventing poverty, suffering and injustice, thus promoting the well-being of mankind.

The paper has then focused on the Mediterranean. First, it has argued that human rights should be seen as an essential component of the humanitarianization of the Mediterranean migration and border regime, since the humanitarian arguments used instrumentally to justify restrictive (and often inhuman) border policies also include human rights concerns.

Secondly, the paper has analysed *Mare Nostrum*, the quintessential embodiment of the Mediterranean humanitarian border, and pointed out that not only was the Italian military and humanitarian operation embedded in a framework of cooperation aimed at delocalizing (rather than eliminating) inhumanity (and *Mare Nostrum* bore therefore indirect responsibilities for the inhuman effects of the Mediterranean border regime), but it was also directly involved in human rights violations. This confirms the justificationist function of humanitarianism as well as the fact that humanitarian and securitarian logics are not incompatible but rather contribute jointly to enforcing the European migration and border regime (Aradau 2004; Carling and Hernández-Carretero 2011; Aas and Gundhus 2014; Williams 2014, 2015).

Furthermore, the paper – moving beyond the mere insight that humanitarianism is not incompatible with policing borders, and that humanitarian and securitarian discourses and practices are not mutually exclusive but rather support each other in enforcing the border – has further developed the argument made by Fassin and Ticktin about the increasing role of compassion in restrictive migration policies and practices, about the relationship between compassion and rights, and about the inclusionary power of humanitarianism producing subaltern subject positions.

Humanitarianism, indeed, is not only an exclusionary (Williams 2015) but also an inclusionary strategy. However, resettlements from Libya and rescue operations carried out in international waters show that humanitarian processes of differential and subaltern inclusion based on the victimization of migrants: a) are not limited to the territory of the destination country but can also occur on the high seas as well as in the territories of third countries; b) do not only and necessarily go to the detriment of rights but can also go even beyond legal obligations.

Finally, the paper confirms that humanitarian inclusion ends up strengthening the perception of migrants as fragile and powerless subjects (the endangered lives saved at sea; the women and children that are the privileged beneficiaries of resettlements). Such people can the more be seen as innocent and unspoilt subjects, the more they are presented as the victims of a context of exploitation matching the image of non-Western countries and of their inhabitants as backward and therefore lacking an adequate culture of human rights and sense of humanity. From this latter perspective, the humanitarianization of the Mediterranean border through the increasing rhetoric of humanitarian values and norms can also be linked with the postcolonial representation of Europe “as a ‘force for good’ in the world, whose internal values presumably drive its external conduct as well” (Bialasiewicz 2011:300) and as a global actor that tries to consolidate its dominant position towards its neighbours within asymmetrical relationships (Walters 2009).

**Acknowledgements**
(to be added)

**Endnotes**
(after the references; to be moved here)

**References**


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Oxfam International, for example, was founded in 1942 as the Oxford Committee for Famine Relief, campaigning “for food supplies to be sent through an allied naval blockade to starving women and children in enemy-occupied Greece”. Today, “[a]s well as becoming a world leader in the delivery of emergency relief, Oxfam International implements long-term development programs in vulnerable communities”, and it declares its explicit and ambitious aim to change the world: “One person in three in the world lives in poverty. Oxfam is determined to change that world by mobilizing the power of people against poverty” (http://www.oxfam.org). Similarly, Care works “with local, national and international governments to support and enact policies that address the underlying causes of poverty” (http://www.care.org/work).

According to Care, “[a]ll people, everywhere in the world, have the right to a life of dignity. This means a life free from poverty, violence, discrimination or human rights violations” (http://www.care.org/work).
In 2009, after a five-year trial, the Italian court acquitted the three accused from all charges, recognizing that they had acted for humanitarian reasons and not for profit.

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

Significantly, the Italian government didn’t make any attempt to publicize the resettlement, probably fearing domestic criticism from the right-wing opposition. Therefore, the interpretation of humanitarian action as a fig leaf for inhuman border policies would be flawed in this case.

The most significant example of the institutional popularisation of humanitarian intervention through the public media is probably 'La scelta di Catia’, a documentary co-produced by Rai and Corriere della Sera (Burchielli 2014).