

Crimes of solidarity

Migration and containment through rescue

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‘Solidarity is not a crime.’ This is a slogan that has circulated widely across Europe in response to legal prosecutions and municipal decrees, which, especially in Italy and France, have been intended to act against citizens who provide logistical and humanitarian support to transiting migrants. Such criminalisation of individual acts of solidarity and coordinated platforms of refugee support is undertaken both in the name of national and European laws, in opposition to the facilitation of irregular entries, and through arbitrary police measures. In Calais on the French coast, for example, locals have been prohibited from allowing migrants to take showers in their homes or to recharge their mobile phones, while in the Roya Valley at the Italian–French border, many locals have been placed on trial, including the now famous ploughman Cedric Herrou. Responding to accusations that he has been one of the main facilitators along the French–Italian underground migrant route, Herrou has replied that ‘it is the State that is acting illegally, not me’, referring to the French State’s own human rights violations.¹

‘Crimes of solidarity’, to use the expression employed by activists and human rights organisations, are defined and prosecuted according to the 2002 EU Directive which prevents and penalises ‘the facilitation of unauthorised entry, transit and residence’ of migrants. In both Italy and France there are national laws that criminalise the facilitation and the support of ‘irregular’ migration; what in France activists call ‘*délit de solidarité*’. Notably, citizens who help migrants to cross national borders are prosecuted in Italy under the same law that punishes smugglers who take money from migrants. In France, the ‘hu-

manitarian clause’, which exempts from sanctions citizens who support migrants whose life, dignity and physical integrity is at risk, is often disregarded. Nonetheless, the expression ‘crimes of solidarity’ should not lead us to overstate the legal dimension of what is at stake in this. Indeed, the ‘crime’ that is posited here goes well beyond the legal boundaries of European law, as well as national ones, and acquires an ethical and political dimension. In particular, the criminalisation of individuals and groups who are facilitating the crossing of migrants, without making a profit from doing so, opens up the critical question of exactly ‘who is a smuggler?’ today. Significantly, the very definition of ‘smuggling’ in European and international documents is a fairly slippery one, as the boundaries between supporting migrants for one’s own financial benefit or for ‘humanitarian’ reasons are consistently blurred.²

In a 1979 interview, Michel Foucault stressed the potential strategic role that might be played by ‘rights’ to ‘mark out for a government its limit’.³ In this way, Foucault gestured towards an extralegal conceptualisation and use of rights as actual limits to be set against governments. In the case of crimes of solidarity, we are confronted less, however, with the mobilisation of rights as limits to states’ action than with what Foucault calls ‘infra-legal illegalisms’;⁴ namely, with practices of an active refusal of states’ arbitrary measures that are taken in the name of migration containment, regardless of whether or not the latter are legally grounded or in violation of the law.

NGOs and independent organisations that undertake search and rescue activities to save migrants

in the Mediterranean have also been under attack, accused of collaborating with smuggling networks, of constituting a pull-factor for migrants, and of ferrying them to Europe. Three years after the end of the military-humanitarian operation Mare Nostrum, which was deployed by the Italian Navy to save migrant lives at sea, the Mediterranean has become the site of a sort of naval battle in which the obligation to rescue migrants in distress is no longer the priority. The fight against smugglers and traffickers has taken central stage, and the figure of the shipwrecked refugee has consequently vanished little by little. Today, the war on smugglers is presented as *the* primary goal and, at the same time, as a strategy to protect migrants from ‘traffickers’. The criminalisation of NGOs, like Doctors without Borders, Save the Children and SOS Mediterranee, and of independent actors, including Sea-Eye, Sea-Watch, Jugend-Rettet and Arms Pro-Activa, who conduct search and rescue operations, started with the simultaneous implementation of the Libyan mobile sea-barrier, which charges the Libyan Coast Guard with responsibility for intercepting migrant vessels and bringing them back to Libya. As a consequence of this agreement, being rescued means *being captured and contained*.

Following the signing of a new bilateral agreement between Libya and Italy in March 2017, in July, the Italian government put pressure on one of the three Libyan governments (the one led by Fayed al-Serraj) demanding better cooperation in intercepting and returning migrants who head to Europe by sea. In order to accelerate this process, Italy sent two Navy ships into Libyan national waters, with the purpose of ‘strengthening Libyan sovereignty by helping the country to keep control of its national waters’.⁵

Far from being a smooth negotiation, however, the Libyan government led by General Khalifa Haftar threatened to shoot in the direction of the Italian ships if they were to violate Libya’s sovereignty by entering their national territory.⁶

Overall, the ‘migration deal’ has been made by the EU and Italy in the context of different asymmetric relationships: on the one hand, with a ‘rogue state’ such as Libya, characterised by a fragmented sovereignty, and on the other, with non-state actors, and more precisely with the same smugglers that

Europe has supposedly declared war on. Indeed, as various journalistic investigations have proved, Italy has paid Libyan militias and smuggling networks to block migrants’ departures temporarily in exchange for fewer controls on other smuggling channels, specifically those involving drugs and weapons. In this way, smugglers have been incorporated into a politics of migration containment. Governing migration through and with smugglers has become fully part of the EU’s political agenda. As such, a critical appraisal of the criminalisation of migrant smuggling requires undoing the existing narrative of a war on smugglers, as well as challenging those analyses that simply posit smugglers as the straightforward enemies of society.



The naval battle in the Mediterranean has not been an exclusive affair of Italy and Libya. On the contrary, it is within this type of geopolitical context that the escalating criminalisation of sea rescue is more broadly taking place.⁷ On July 31, at the request of the European Commission, the Italian Home Office released a ‘Code of Conduct’ that NGOs have been asked to sign if they want to continue search and rescue activities. Given that the code of conduct imposes on NGOs the obligation to have armed ju-

dicial police on board,⁸ some organisations, including Doctors without Borders, Sea Watch and Jugend Rettet, have refused to sign, arguing that through the enforcement of the Code of Conduct, and under pressure from the European Commission, Italy has turned towards a militarisation of humanitarianism and of independent actors. As a consequence of the refusal to sign, their ships have been prevented from docking in Italian ports and the rescuers of the Jugend Rettet are currently on trial, accused of collaborating with Libyan smugglers. On August 11, Libya traced new virtual restrictive sea borders for NGOs, declaring that search and rescue ships will not be allowed to get closer than one hundred miles from the Libyan coast. The humanitarian scene of rescue has been shrunk.

In such a political context, two interrelated aspects emerging from the multiplication of attacks against refugee support activities and against search and rescue operations are worth considering. The first concerns a need to unpack what is now meant by the very expression ‘crime of solidarity’ within the framework of this shift towards the priority of fighting smugglers over saving migrants. This requires an engagement with the biopolitical predicaments that sustain a debate centered on the question of to what extent, and up to which point, rescuing migrants at sea is deemed legitimate. The second, related point concerns the modes of containment through rescue that are currently at work in the Mediterranean. One consequence of this is that the reframing of the debate around migrant deaths at sea has lowered the level of critique of a contemporary politics of migration more generally: the fight against smugglers has become *the* unquestioned and unyielding point of agreement, supported across more or less the entire European political arena.

The criminalisation of NGOs, accused of ferrying migrants to Europe, should be read in partial continuity with the attack against other forms of support given to migrants in many European countries. The use of the term ‘solidarity’ is helpful in this context insofar as it helps to highlight both actions undertaken by citizens in support of refugees and, more importantly, the transversal alliances between migrants and non-migrants. In fact, acting in solid-

arity entails supporting migrant struggles – for example, as struggles for movement or struggles to stay in a certain place – more than it does acting in order to save or bring help to them.⁹ As Chandra Mohanty argues, practices of solidarity are predicated upon the recognition of ‘common differences’,¹⁰ and in this sense they entail a certain shared political space and the awareness of being governed by the same mechanisms of precaritisation and exploitation.¹¹ In other words, solidarity does not at all imply a simple politics of identity, but requires building transversal alliances and networks in support of certain struggles. The reduction of migrants to bodies to be fished out of the water, simultaneous with the vanishing of the figure of the refugee, preemptively denies the possibility of establishing a common ground in struggling for freedom of movement and equal access to mobility.

Despite the many continuities and similarities between the criminalisation of refugee support activities on the mainland and at sea, if we shift the attention to the Mediterranean Sea, what is specifically at stake here is a biopolitics of rescuing or ‘letting drown’. Under attack in the Mediterranean scene of rescue and drowning are what could be termed crimes of humanitarianism; or, that is, crimes of rescue. Humanitarianism as such, precisely in its acts of taking migrants out of the sea through independent search and rescue operations that exercise an active refusal of the geographical restrictions imposed by nation states, has become an uncomfortable and unbearable mode of intervention in the Mediterranean.

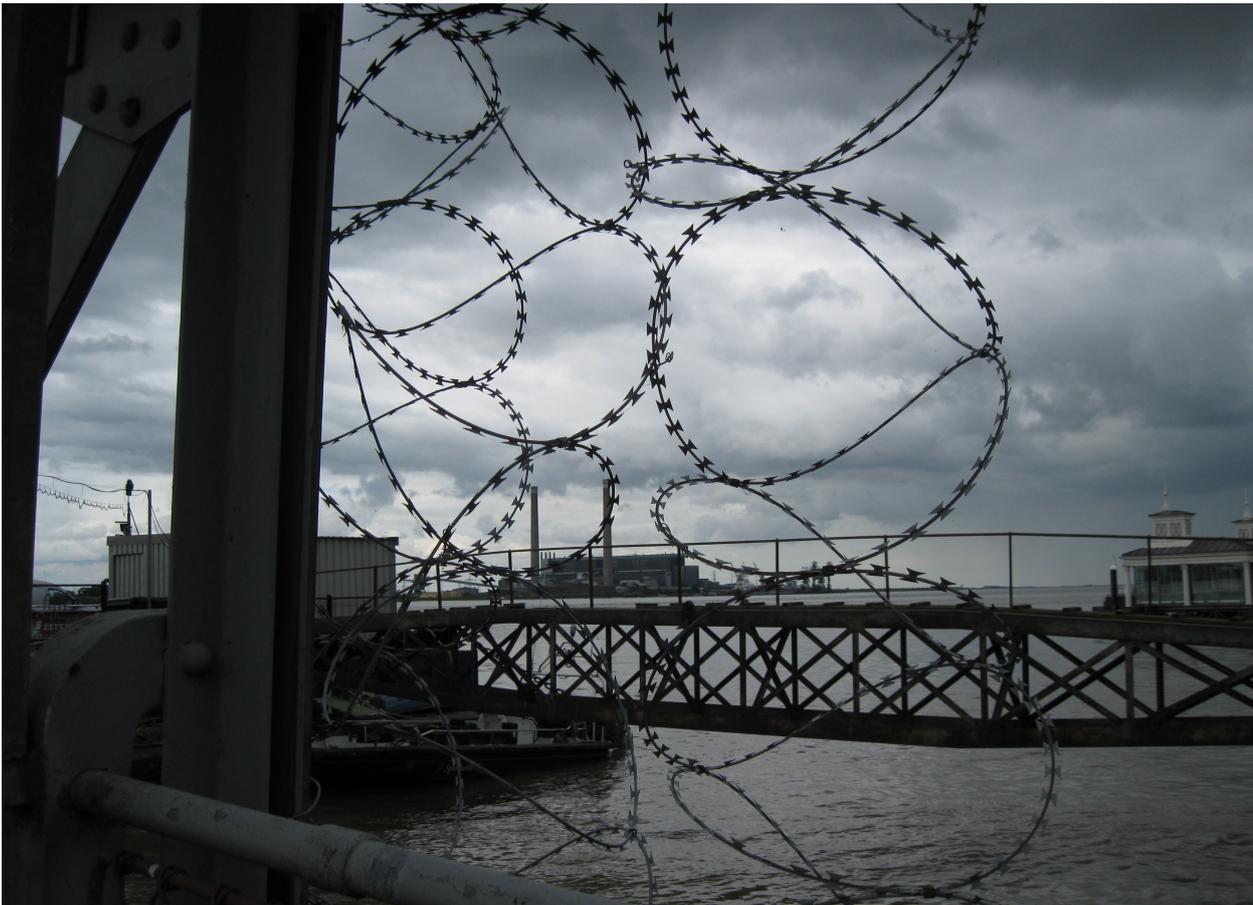
Geographies of ungrievability

The criminalisation of alliances and initiatives in support of migrants’ transit should not lead us to imagine a stark opposition between ‘good humanitarians’, on the one side, and bad military actors or national authorities, on the other. On the contrary, it is important to keep in mind the many entanglements between military and humanitarian measures, as well as the role played by military actors, such as the Navy, in performing tasks like rescuing migrants at sea that could fall under the category of what Cut-

titta terms 'military-humanitarianism'.¹² Moreover, the Code of Conduct enforced by the Italian government actually *strengthens* the divide between 'good' NGOs and 'treacherous' humanitarian actors. Thus, far from building a cohesive front, the obligation to sign the Code of Conduct produced a split among those NGOs involved in search and rescue operations.

In the meantime, the figure of the *refugee* at sea has arguably faded away: sea rescue operations are in fact currently deployed with the two-fold task of not letting migrants drown and of fighting smugglers, which *de facto* entails undermining the only effective channels of sea passage for migrants across the Mediterranean. From a military-humanitarian approach that, under *Mare Nostrum*, considered refugees at sea as shipwrecked lives, the unconditionality of rescue is now subjected to the aim of dismantling the migrants' logistics of crossing. At the same time, the migrant drowning at sea

is ultimately not seen any longer *as* a refugee, i.e. as a subject of rights who is seeking protection, but as a life to be rescued in the technical sense of being fished out of the sea. In other words, the migrant at sea is the subject who eventually needs to be rescued, but not thereby placed into safety by granting them protection and refuge in Europe. What happens 'after landing' is something not considered within the framework of a biopolitics of rescuing and of letting drown.¹³ Indeed, the latter is not only about saving (or not saving) migrants at sea, but also, in a more proactive way, about aiming at human targets. In manhunting, Gregoire Chamayou explains, 'the combat zone tends to be reduced to the body of the enemy'.¹⁴ Yet who is the human target of migrant hunts in the Mediterranean? It is not only the migrant in distress at sea, who in fact is rescued and captured at the same time; rather, migrants and smugglers are both considered the 'prey' of contemporary military-humanitarianism.



Public debate in Europe about the criminalisation of NGOs and sea rescue is characterised by a polarisation between those who posit the non-negotiable obligation to rescue migrants and those who want to limit rescue operations in the name of regaining control over migrant arrivals, stemming the flows and keeping them in Libya. What remains outside the order of this discourse is the shrinking and disappearing figure of the refugee, who is superseded by the figure of the migrant to be taken out of the sea.

Relatedly, the exclusive focus on the Mediterranean Sea itself contributes to strengthening *geographies of ungrievability*. By this I mean those produced hierarchies of migrant deaths that are essentially dependent on their more or less consistent geographic distance from Europe's spotlight and, at the same time, on the assumption of shipwrecked migrants as the most embodied refugee subjectivities. More precisely, the recent multiplication of bilateral agreements between EU member states and African countries has moved back deadly frontiers from the Mediterranean Sea to the Libyan and Niger desert. As a consequence, migrants who do not die at sea but who manage to arrive in Libya are kept in Libyan prisons.

Containment through rescue

On 12 August 2017, Doctors without Borders decided to stop search and rescue operations in the Mediterranean after Libya enforced its sea-barrier by forbidding NGOs to go closer than about one hundred miles from the Libyan coast, and threatening to shoot at those ships that sought to violate the ban. In the space of two days, even Save the Children and the independent German organisation Sea-Eye declared that they would also suspend search and rescue activities. The NGOs' Mediterranean exit has been presented by humanitarian actors as a refusal to be coopted into the EU-Libyan enforcement of a sea barrier against migrants. Yet, in truth, both the Italian government and the EU have been rather obviously pleased by the humanitarians' withdrawal from the Mediterranean scene of drown and rescue.

Should we therefore understand the ongoing

criminalisation of NGOs as the attempt to fully block migrant flows? Does it indicate a return from the staging of a 'good scene of rescue' back to an overt militarisation of the Mediterranean? The problem is that such an analytical angle risks, first, corroborating the misleading opposition between military intervention and humanitarianism in the field of migration governmentality. Second, it re-instantiates the image of a Fortress Europe, while disregarding the huge 'migration industry' that is flourishing both in Libya, with the smuggling-and-detention market, and on the Northern shore of the Mediterranean.¹⁵ With the empty space left by the NGOs at sea, the biopolitics of rescuing or letting drown has been reshaped by new modes of containment *through* rescue: migrants who manage to leave the Libyan coast are 'rescued' – that is, intercepted and blocked – by the Libyan Coast Guard and taken back to Libya. Yet containment should not be confused with detention nor with a total blockage of migrants' movements and departures. Rather, by 'containment' I refer to the substantial disruptions and decelerations of migrant movements, as well as to the effects of more or less temporary spatial confinement. Modes of containment through rescue were already in place, to some extent, when migrants used to be 'ferried' to Italy in a smoother way, by the Navy or by NGOs. Indeed, from the moment of rescue onward, migrants were transferred and channelled into the Hotspot System, where many were denied international protection and, thus, rendered 'illegal' and constructed as deportable subjects.¹⁶ The distinction between intercepting vessels sailing to Europe and saving migrants in distress has become blurred: with the enforcement of the Libyan sea barrier, rescue and capture can hardly be separated any longer. In this sense, visibility can be a trap: if images taken by drones or radars are sent to Italian authorities before migrants enter international waters, the Italian Coast Guard has to inform Libyan authorities who are in charge of rescuing migrants and thus taking them back to Libya.

This entails a spatial rerouting of military-humanitarianism, in which migrants are paradoxically *rescued to Libya*. Rather than vanishing from the Mediterranean scene, the politics of rescue, con-

ceived in terms of not letting people die, has been reshaped as a technique of capture. At the same time, the geographic orientation of humanitarianism has been inverted: migrants are 'saved' and dropped in Libya. Despite the fact that various journalistic investigations and UN reports have shown that after being intercepted, rescued and taken back to Libya, migrants are kept in detention in abysmal conditions and are blackmailed by smugglers,¹⁷ the public discussion remains substantially polarised around the questions of deaths at sea. Should migrants be saved unconditionally? Or, should rescue be secondary to measures against smugglers and balanced against the risk of 'migrant invasion'? A hierarchy of the spaces of death and confinement is in part determined by the criterion of geographical proximity, which contributes to the sidelining of mechanisms of exploitation and of a politics of letting die that takes place beyond the geopolitical borders of Europe. The biopolitical hold over migrants becomes apparent at sea: practices of solidarity are transformed into a relationship between rescuers and drowned.¹⁸

The criminalisation of refugee support activities cannot be separated from the increasing criminalisation of refugees as such: not only those who are labelled and declared illegal as 'economic migrants', but also those people who are accorded the status of refugees. Both are targets of restrictive and racialised measures of control. The migrant at sea is presented as part of a continuum of 'tricky subjectivities'¹⁹ – which include the smuggler, the potential terrorist and the refugee – and as both a 'risky subject' and a 'subject at risk' at the same time.²⁰ In this regard, it is noticeable that the criminalisation of refugees as such has been achieved precisely through the major role played by the figure of the smuggler. In the EU's declared fight against smuggling networks, migrants at sea are seen not only as shipwrecked lives to be rescued but also as potential fake refugees, as concealed terrorists or as traffickers. At the same time, the fight against smugglers has been used to enact a further shift in the criminalisation of refugees, which goes beyond the alleged dangerousness of migrants. Indeed, in the name of the war against the 'illegal' smuggling economy, as a shared priority of both left- and right-wing political

parties in Europe, the strategy of letting migrants drown comes, in the end, to be justified. As Doctors without Borders have pointed out, 'by declaring Libya a *safe country*, European governments are ultimately pushing forward the humanitarianisation of what appears at the threshold of the inhuman.'²¹

The migrant at sea, who is the subject of humanitarianism par excellence, is no longer an individual to be saved at all costs, but rather the object of thorny calculations about the tolerated number of migrant arrivals and the migrant-money exchange with Libya. *Who is (in) danger(ous)?* The legal prosecutions and the political condemnation of 'crimes of rescue' and of 'crimes of solidarity' bring to the fore the undesirability of refugees *as* refugees. This does not depend so much on a logic of social dangerousness as such, but, rather, on the practices of spatial disobedience that they enact, against the restrictions imposed by the European Union. Thus, it is precisely the irreducibility of migrants to lives to be rescued that makes the refugee the main figure of a continuum of tricky subjectivities in a time of economic crisis. Yet, a critical engagement with the biopolitics of rescuing and drowning cannot stick to a North-South gaze on Mediterranean migrations. In order not to fall into a Eurocentric (or EU-centric) perspective on asylum, analyses of crimes of solidarity should also be articulated through an inquiry into the Libyan economy of migration and the modes of commodification of migrant bodies, considering what Brett Neilson calls 'migration as a currency';²² that is, as an entity of exchange and as a source of value extraction.

Crimes of solidarity put in place critical infrastructures to support migrants' acts of spatial disobedience. These infra-legal crimes shed light on the inadequacy of human rights claims and of the legal framework in a time of hyper-visible and escalating border violence. Crimes of solidarity consist of individual and collective active refusals of states' interventions, which are specifically carried out at the very edges of the law. In this way, crimes of solidarity manage to undo the biopolitics of rescuing and letting drown by acting beyond the existing scripts of 'crisis' and 'security'. Rather than being 'rescued' from the sea or 'saved' from smugglers, migrants are

supported in their unbearable practices of freedom, unsettling the contemporary hierarchies of lives and populations.

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Notes

1. See the interview with Herrou in *l'Humanité*, accessed 30 September 2017, <https://www.humanite.fr/cedric-herrou-cest-letat-qui-est-dans-lillegalite-pas-moi-629732>.
2. Economic profit is an essential dimension of 'smuggling', as it is defined by the United Nations Conventions against Transnational Organised Crime (2000). However, it is not in the 2002 EU Council Directive defining the facilitation of unauthorised entry, transit and residence.
3. Michel Foucault, 'There can't be societies without uprisings', trans. Farès Sassine, in *Foucault and the Making of Subjects*, ed. Laura Cremonesi, Orazio Irrera, Daniele Lorenzini and Martina Tazzioli (London: Rowman & Littlefield, 2016), 40.
4. See Michel Foucault, *The Punitive Society: Lectures at the Collège de France, 1972-1973*, trans. Graham Burchell (Houndmills and New York: Palgrave, 2015).
5. See 'Il governo vara la missione navale, prima nave italiana in Libia', *La Stampa*, 18 July 2017, http://www.ilsecoloxix.it/p/italia/2017/07/28/ASBvqlal-parlamento_missione_italiana.shtml.
6. See, for example, the report in *Al Arabiya*, 3 August 2017, <http://english.alarabiya.net/en/News/middle-east/2017/08/03/Haftar-instructs-bombing-Italian-warships-requested-by-Fayez-al-Sarraj.html>
7. See Liz Fekete, 'Europe: crimes of solidarity', *Race & Class* 50:4 (2009), 83 - 97; and Eric Fassin, 'Le procès politique de la solidarité (3/4): les ONG en Méditerranée' (2017), *Mediapart*, accessed 30 September 2017, <https://blogs.mediapart.fr/eric-fassin/blog/170817/le-proces-politique-de-la-solidarite-34-les-ong-en-mediterranee>
8. The Code of Conduct can be found at: http://www.interno.gov.it/sites/default/files/allegati/codice_con-dotta_ong.pdf; see also the transcript by *Euronews*, 3 August 2017, <http://www.euronews.com/2017/08/03/text-of-italys-code-of-conduct-for-ngos-involved-in-migrant-rescue>
9. Sandro Mezzadra and Mario Neumann, 'Al di là dell'opposizione tra interesse e identità. Per una politica di classe all'altezza dei tempi' (2017), *Euronmade*, accessed September 30 2017, <http://www.euronmade.info/?p=9402>
10. Chandra Mohanty, "'Under western eyes" revisited: feminist solidarity through anticapitalist struggles', in *Signs: Journal of Women in Culture and Society* 28:2 (2003), 499--535.
11. As Foucault puts it, 'In the end, we are all governed, and in this sense we all act in solidarity'. Michel Foucault, 'Face aux gouvernement, les droits de l'homme', in *Dits et Ecrits II* (Paris: Gallimard, 2000), 1526.
12. P. Cuttitta, 'From the Cap Anamur to Mare Nostrum: Humanitarianism and migration controls at the EU's Maritime borders', in *The Common European Asylum System and Human Rights: Enhancing Protection in Times of Emergency*, ed. Claudio Matera and Amanda Taylor (The Hague: Asser Institute, 2014), 21--38. See also Martina Tazzioli, 'The desultory politics of mobility and the humanitarian-military border in the Mediterranean: Mare Nostrum beyond the sea', *REMHU: Revista Interdisciplinar da Mobilidade Humana* 23:44 (2015), 61--82.
13. See Lucia Ciabbari and Barbara Pinelli, eds, *Dopo l'Approdo: Un racconto per immagini e parole sui richiedenti asilo in Italia* (Firenze: Editpress, 2016).
14. Gregoire Chamayou, 'The Manhunt Doctrine', *Radical Philosophy* 169 (2011), 3.
15. As a matter of fact, the vessels of the EU naval operation EU Navfor Med and the vessels of the Frontex operation 'Triton' were increased in number a few days after the pull-out of the NGOs.
16. Nicholas De Genova, 'Spectacles of migrant "illegality": the scene of exclusion, the obscene of inclusion', *Ethnic and Racial Studies* 36:7 (2013), 1180--1198.
17. See, for instance, the UN Report on Libya (2017), accessed 30 September 2017, <http://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>.
18. Tugba Basaran, 'The saved and the drowned: Governing indifference in the name of security', *Security Dialogue* 46:3 (2015), 205 - 220.
19. Glenda Garelli and Martina Tazzioli, 'The Biopolitical Warfare on Migrants: EU Naval Force and NATO Operations of migration government in the Mediterranean', in *Critical Military Studies*, forthcoming 2017.
20. Claudia Aradau, 'The perverse politics of four-letter words: risk and pity in the securitisation of human trafficking', *Millennium* 33:2 (2004), 251--277.
21. Interview with Doctors without Borders, Rome, 21 August 2017.
22. Brett Neilson, 'The Currency of Migration', in *South Atlantic Quarterly*, forthcoming 2018.